



Australian Association for
Infant Mental Health

Comment on Issues Paper Review of Family Law System

The **Australian Association for Infant Mental Health (AAIMHI)** is a national not for profit organisation that has members from a range of disciplines, such as early child educators, health professionals working with children and their families, psychologists, social workers, psychiatrists, paediatricians.

Our mission is to provide professional and community understanding of infancy as the critical time of development in areas of emotional, social and cognitive growth. These early years form the basis of an individual's functioning throughout the lifespan. AAIMHI seeks to achieve this mission by:

- Improving professional and public recognition that infancy is a critical period in psycho-social development;
- Education of members and other professionals who work with infants and their families;
- Promotion and dissemination of research;
- Advocating in the interests of infant mental health;
- Development of competency standards and recognition;
- Liaising with affiliated and international colleagues.

NB. This submission will focus on children aged 0 to 4 years of age – referred to as “young children” who are at an extremely critical developmental stage, when nurturing care is of most importance for their short term and long-term wellbeing and when they are unable to provide input into their decision making.

Terminology used in our response

“A Secure Attachment forms naturally for a child when a parent or other primary caregiver can:

- help the child feel safe when frightened or uncomfortable;
- help the child feel secure enough to explore the world, essential to growth and development; and
- help the child accept and manage his or her emotional experience.”
(Hoffman, Cooper & Powell, 2017, p.12)

Secure care refers to nurturing, responsive care of a young child in a safe and supportive environment in the context of a trusting relationship with their parent or caregiver.

Risk from an Infant Mental Health perspective not only focuses on physical harm but also includes other risk factors such as disruptions of care, high levels of stress, trauma, abuse, and neglect because these risk factors are associated with long-term impact on the developing brain and the foundation of trusting relationships leading to poorer adult mental health outcomes.

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INFANT MENTAL HEALTH

Our responses refer to the questions posed in the Issues Paper.

Question 2

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

We agree with the principles of Section 43 of the Family Law Act (FLA). We also agree with the additional principles proposed during preliminary consultations for this inquiry:

- Be child-centred and trauma informed;
- Ensure equality of treatment for children regardless of their family structure;
- Foster ethical professional practices;
- Promote a learning culture.

We would suggest that acknowledgement and consideration is required in the family law system of the vulnerable and dependent nature of children aged 4 years and under. At this age children exclusively rely on parents or significant carers for all their developmental needs. We are concerned that family breakdown and the adversarial nature of the Family Law system impacts the capacity of parents to provide young children with optimal care needs and therefore can disrupt their development with ensuing and sometimes long-term damage.

We suggest that special arrangements are required to facilitate:

- more efficient and quick decision making for young children and their parents in family law;
- provision of greater support for parents/carers of young children who are in the family law system;
- greater understanding/education of the judiciary and other staff involved in provision of legal assistance about the special needs of this age of children; and
- expert input into the decision making from the beginning in all cases that involve young children. For example, Family Consultants and/or Independent Children's Lawyers need to be involved in all the Court processes.

Question 14

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

It is suggested that particularly in the area of "parenting orders" in the following:

- Who a child lives with;
- The time a child is to spend with another person or persons;
- The allocation of parental responsibility for a child.

There should be education provided in the form of written material and education programs for all parents of young children in addition to mandatory mediation currently required about the unique needs of this group.

Such education should include the critical importance of young children gaining consistent, reliable and predictable care from at least one adult (the "primary attachment relationship" – the one the child has relied on to provide their needs) to maintain their emotional and psychological security.

Such education should involve knowledge of the damage to young children's sense of security in an environment of parental acrimony even if it does not meet the threshold of family violence as defined in the Act. In these conditions shared care arrangements has been shown empirically to not meet a child's needs particularly for young children and this should be a baseline understanding for the public and the professionals involved in family law. There should also be endorsement of understanding that during these important years, children develop optimally if they are able to develop and maintain a significant and meaningful relationship with a parent who is the primary caregiver. This stable relationship will form the basis of an enduring and healthy relationship between the child and the other parent.

It is suggested that the FLA remove the "presumption of equal shared parental responsibility" as it is misunderstood as being equal amounts of time with each parent. Such an arrangement may be in a child's best interest at a later age (over 4 years) if each parent has the capacity to facilitate secure care for the child in partnership with each other. Instead of the term "equal", it is recommended that there be acknowledgement of the importance of having input from both parents into decisions concerning their child. The different input and considerations gained from having two parents making decisions about their ongoing interests will benefit the child's overall development. Similarly, we would caution against the use of 'sole parental responsibility' as this implies a diminished importance of the significance of the other parent's relationship with the child.

Question 21

Should courts provide greater opportunities for parties involved in litigation to be diverted to other dispute resolution processes or services to facilitate earlier resolution of disputes?

For young children, delays in making decisions about their arrangements puts them at greater risk of ensuing negative impacts on their developmental outcomes. Stress or trauma in young children arising from parental disputes, domestic violence, unpredictable parenting, and neglect can have long-term impact on the developing brain development and the foundations of future trusting relationships.

It is suggested to meet these requirements:

- There should be clear communication by the family law system of the urgency of making decisions pertaining to young children's care to avoid risks to young children and the relationships that they depend on for their care;
- Interim Court decisions should be made as soon as possible for young children to provide them with stable care;
- Matters involving young children should be case managed to fast track the matter through the Court process;
- Judicial offices and other court staff should be provided with understanding and education based on the empirical literature to communicate from the bench to parents/carers about the need to make urgent decisions for young children;
- Expert input to the Court process and to support parents' decision making regarding young children's needs should be provided by an Independent Children's Lawyers or by another expert as occurs in the UK model (expert Guardian Ad litem).

Question 32

What changes should be made to reduce the need for families to engage with more than one court to address safety concerns for children?

Question 33

How can collaboration and information sharing between family courts and state and territory child protection and family violence systems be improved?

Consideration of amalgamating the Family Court and the respective state and territory Children's Courts. This would enable a specialized judiciary to deal with family court cases in which there are identified child abuse and neglect concerns. This would provide a single judicial officer who could preside over all aspects of one case.

Question 36

What mechanisms are best adapted to ensure children's views are heard in Court proceedings?

Young children's "needs" are recognised, understood and implemented by the judiciary with professional input from "experts" available in Court (similar model to Child Responsive Model, 2014 could be adopted) for decision making for young children. Areas required – normal child development and neurodevelopment of young children; attachment relationships (i.e., close, reliable, emotionally safe relationships) and their impact on optimal development for young children; the impact of trauma on children's development; etc.

Question 42

What core competencies should be expected by judicial offices who exercise family law jurisdiction? What measures are needed to ensure judicial offices have and maintain these competencies?

Judges hearing matters involving young children should particularly have specialist training and knowledge in the following that would form the basis for decision making to address young children's particular needs and best outcomes:

- Normal child development, including neurodevelopment and the critical importance of a nurturing environment during the first 4 years;
- Child attachment and its relationship to developmental stages and achieving developmental milestones;
- What defines child trauma and developmental implications on children and how to minimize impact;
- Requirements for young children with specific needs;
- Impact of parental conflict and family violence on young children's development.

Ensuring participation in continuing education could be modelled on similar requirements for other professionals e.g. physicians where not only hours of continuing education need to be met but a range of learning activities have to be undertaken within a learning plan and including reflections of learning and implications for practice.

References

- Fabricus, W.V. and Luecken, L.J. (2007). Postdivorce living arrangements, Parent conflict, and Long-term Physical Health Correlates for Children of Divorce. *Journal of Family Psychology*. Vol 21, No 2, 195 -205.
- Hoffman, K.; Cooper, G.; and Powell, K. (2017). *Raising a Secure Child*. New York, NY: The Guildford Press.
- Kline Pruett, M.K.; Pape Cowan, C.; Cowan, P.A.; Pradham, L.; Robins, S.; and Pruett, K. D. (2016). Supporting Father Involvement in the Context of separation and Divorce. In L. Drozd; M. Saini; and N. Olesen (Eds) *Parenting Plan Evaluations. Applied Research for the Family Court*. 2nd Edition. NY: Oxford University Press.
- Kushner, M.A. (2009). A Review of the Empirical Literature about Child Development and Adjustment Postseparation. *Journal of Divorce and Remarriage*, 50 496-516.
- McIntosh. J. (2003). Enduring Conflict in Parental Separation: Pathways of Impact on Child Development. *Journal of Family Studies*, Vol 9, No 1, April, 63-80.
- McIntosh. J.; Smyth, B.; Kelaher, M.; Wells, Y.; and Long C. (2010). Post Separation Parenting Arrangements for Developmental Outcomes for Infants and Children. Collected Reports Australian Government Attorney General's Department.
- McIntosh, J.; Smyth, B.; Kelaher, M.; Wells, Y.; and Long, C. (2011). Post-separation Parenting arrangements. Patterns and developmental outcomes: Studies of two risk groups. *Australian Institute of Family Studies. Family Matters*. No 86.
- McIntosh, J. E., and Chisholm, R. (2008). Cautionary notes on the shared care of children in conflicted parental separations. *Journal of Family Studies*, 14(1), 37-52.
- Mahrer, N.E.; Sandler, I.N.; Wolchik, S.A.; Winslow, E.B.; Moran, J.A.; and Weinstock, D. (2016). How do Parenting Time and Interparental Conflict affect the relations of Quality of Parenting and Child Well-Being Following Divorce? In L. Drozd; M. Saini; and N. Olesen (Eds) *Parenting Plan Evaluations. Applied Research for the Family Court*. 2nd Edition. NY: Oxford University Press.
- Pruett, M.K.; Cowan, C.P.; Cowan, P.A.; and Diamond J.S. (2012). Supporting Father Involvement in the Context of Separation and Divorce. In K. Kuehnle and L. Drozd (Eds), *Parenting Plan Evaluations. Applied Research for the Family Court* (pp 123 -151). NY: Oxford University Press.
- Sandler, I.; Miles, J.; Cookston, J.; and Braver, S. (2008). Effects of father and mother parenting on children's mental health in High- and Low- Conflict Divorces. *Family Court Review*, Vol 6, Issue 2.
- Smyth, B.M.; McIntosh, J.E.; Emery, R.E.; and Higgs Howarth, S.L. (2016). Shared-Time Parenting: Evaluating the Evidence of Risks. In L. Drozd; M. Saini; and N. Olesen (Eds) *Parenting Plan Evaluations. Applied Research for the Family Court*. 2nd Edition. NY: Oxford University Press.
- Smyth, B. (2009). A 5-year Retrospective of post-separation shared care research in Australia. *Journal of Family Studies* 15; 36 – 59.