



06 January 2020

## Australian Association for Infant Mental Health: Submission to the Family Court Inquiry.

The Australian Association for Infant Mental Health (AAIMH) is a national organisation of professionals who work in the early childhood health, education and development fields.

Infant Mental Health refers to

*"the developing capacity of the infant and young child (from pregnancy to 3 years old) to experience, express and regulate emotions; form close and secure relationships; and explore the environment and learn," all in the context of the caregiving environment that includes family, community, and cultural expectations. (Osofsky & Thomas)<sup>j</sup>.*

Our aims include:

- to improve professional and public recognition that infancy is a critical period in psycho-social development
- to provide access to the latest research findings and observations on development in infancy
- to facilitate the integration of such findings into clinical practice and community life
- to work for the improvement of the mental health and development of all infants and families by provision of educational programs and otherwise
- to provide where possible reports and submissions to governments, other authorities, organisations and individuals on matters relating to infant and family health and welfare.

In Family Court matters where there are usually powerful and passionate adult interests at the forefront, the needs of and impact on children, especially the very young, have the potential to be unrecognised and/or underrated in Australia and around the world <sup>ii</sup>. This can also occur because of lack of knowledge about infancy and the influence of the first three years on future health and emotional and social wellbeing. For example, contrary to current research, many people still believe that the impact of parental problems/stress on infants is short term and negligible because they are too young to understand or unable to remember specifics.

This AAIMH submission, while recognising the other relevant interests to the Inquiry, focuses on the paramount needs and wellbeing of infants and children under three years of age, and is based on the best available peer reviewed current research. Our submission has concentrated on using strong, reliable evidence.

In the last twenty years, there has been an upsurge of research into:

- what is important to the health and wellbeing of infants <sup>iii</sup>
- the capacities of infants and the ways they learn and remember<sup>iv v</sup>
- the importance of the early years to the ongoing health and development of infants <sup>vi vii</sup>
- the importance of infancy in building foundations for people to live fulfilling personal lives and to make effective contributions to their community through education, employment and their mental and social health<sup>viii ix x xi xii</sup>

The outcomes of this inquiry can make significant differences to the lives of Australian infants, children and to the wider community.

The Family Law Act 1975 under the heading **Best interests of the child** focuses on the rights of the child, over and above parental rights. This relies on the court findings about what the best interests of the child are and therefore implies that the court must know what is important for the health, welfare and

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development of children. As the best interests of the child vary according to age, experience and circumstances, this should not be pre-judged but assessed in each case. Infants, who are the most vulnerable, deserve particular attention. The other major consideration is the need for the Family Court to make judgements which promote the best possible chance of a parent being able to provide what the infant needs now and in the future. Assessing each child and family is crucial to safe and positive outcomes from court procedures.

The Family Court should have access to high quality research-based information on the factors which support children's early development, in addition to expert assessment of each child's situation, to give the best chance for children's best interests to be implemented.

**Recommendations:**

- 1. AAIMH wholeheartedly supports giving the best interests of the child priority over all other considerations in Family Court hearings involving children, and we recommend that the best interests of children under the age of three be given special consideration in view of their vulnerability and the risks of unfavourable outcomes to their current and future health and wellbeing.**

This means it is vitally important that judges understand what is in the best interests of the child in handing down decisions. As childhood and infancy are areas where everyone has some prior knowledge and opinions, it is important the Court have available properly informed guidance about the health and wellbeing of the infant. (See recommendations 3 and 4.)

Disturbances in caregiver–infant interaction are particularly important to infant mental health. Developmental studies have consistently shown the importance of the caregivers' attentive regulation of infant stress for the infant's adequate health and development<sup>xiii</sup>. Protection of infants from stress due to separation or relationship trauma benefits the child and also the community in mental health, educational achievement, employment and law-abiding lifestyle, (Lyons-Ruth et al 2017)<sup>xiv</sup> (McIntosh, Smyth et al (2010) ), have detailed the lower developmental outcomes of children faced with the conflictual post separation parenting.<sup>xv</sup>

- 2. a) That the Family Court change its operating paradigm from an Adversarial to Inquisitorial process. Adversarial processes in human relationship matters inherently polarise positions and thus heighten emotions, making conflict more likely.**  
**b) Inquisitorial processes encourage judges to develop knowledge and experience about the best interests of children, rather than act only as a neutral arbitrator of any information presented.**<sup>xvi</sup>

The Family Court has acknowledged difficulties of an adversarial process in relation to children. The Less Adversarial Trial Handbook (Family Court of Australia, 2009) gives the judge over-riding control and requires that judges consider 'what they think is in the best interests of the child, not just adjudicate'. Initiatives reported by McIntosh et al.<sup>xvii</sup> about the "less adversarial initiatives of the Family Court of Australia" one example of projects to try movement in that direction. Other authors make comparison and comments that the Court being able to take more control of the inquiry process, results in shorter, less acrimonious, more satisfying outcomes for children, and others in matter where parties are in close relationships.<sup>xviii xix xx</sup>

- 3. Every Family Court hearing involving infants and very young children be guided by an assessment from a professional who is qualified and experienced in infant mental health. Such skills are specialized and cannot be assumed in any particular profession or discipline.**

*The Family Court Practice and Procedure: The Right of the Child to be heard* (2010) states that if the care, welfare and development of a child is relevant to proceedings under the Family Law Act, the court may direct a family and child counsellor or welfare officer to prepare a family report on such matters as the court thinks desirable. These reports are used in a majority of cases and are 'very influential', so in the case of infants and young children appropriate knowledge and training is crucial for reporting and giving expert advice to the court.

Knowledge, particularly about **infants** and their emotional and neurobiological development, comes from current emerging research. No particular type of professional undergraduate training in Australia provides the up to date knowledge and skills required; it is gained by participation in post graduate and continuing professional development training, accreditation programs and workshops. The professional assessing Australian Association for Infant Mental Health.

infant needs must know about the attachments of an infant to its caregivers, the adequacy of parent-child interaction and relationships, the subtle signs of infant stress, have knowledge of normal infancy and early childhood development, and the effects on later wellbeing, alongside having the demonstrated capacity to articulate that information together with knowledge of adult mental disturbance.

*The Australian Standards of Practice for Family Assessments and Reporting 2015*<sup>xxi</sup> is acknowledged, but it does not specifically address **infants**. AAIMH asks the Family Court to require professionals undertaking the work of advising the court, when assessing **infants** with their caregivers, have demonstrated particular skills and knowledge for this age group. It is unethical for professionals to subject Infants and their caregivers to assessments when they are not deemed professionally competent in this area.

AAIMH (WA Branch), supported by funding from the WA Mental Health Commission has adapted for West Australia a set of *Competency Guidelines Endorsement for Culturally- Sensitive, Relationship-Focused Practice Promoting Infant Mental Health*<sup>® xxii</sup> (adapted from the Michigan Association for Infant Mental Health Competency Guidelines Endorsement for Culturally Sensitive, Relationship-Focused Practice Promoting Infant Mental Health<sup>®</sup> and used throughout USA & in Ireland). It contains details for competency development and assessment through four levels of qualification and experience and is applicable across disciplines and settings. AAIMH intends that this framework be made available across Australia. AAIMH suggests the Family Court use it as a foundation for settings standards for competency for its use.

- 4. The Family Court judiciary are asked to ensure they gain a basic understanding of the importance of decision making appropriate for infants and very young children and why this age group is different even from children 3 years and older.**

*The Family Court Practice and Procedure: The Right of the Child to be heard* (2010) recommends that The Family Court should consider implementing a training program for judges and, with State and Territory agreement, magistrates exercising federal family jurisdiction on more inquisitorial approaches to determining the best interests of the child. AAIMH strongly supports that recommendation, and that such training be on the latest knowledge of infancy, the impact of environment and type of caring relationships. Good infant mental health and wellbeing is the prevention of later social, mental health, educational, economic and justice problems in adolescents and adults.

- 5. In cases of Family Violence infants and children should be protected from further trauma by ensuring that their exposure to violence does not continue. Stress from ongoing conflict experienced by a parent is likely to project onto the infant and therefore any caregiving parent should be protected from further violence and conflict also.**

*AAIMH Position Statement on Family Violence*<sup>xxiii</sup> states that "Infancy, more than any other developmental period, is a time of heightened vulnerability to disruptions in attachment relationships. Ongoing exposure to adult conflict or harassment can place stress on parents which can lead to reduced reciprocity in the attachment relationship with the infant, and therefore disorders in infancy compromising future development."<sup>xxiv</sup> As noted in the World Health Organization's (2016) global plan of action on violence and INSPIRE publication, threats to children's well-being can have enduring developmental consequences across multiple domains of functioning, leading to long-term economic and public health impacts." (Lyons-Ruth et al see endnote xiv)

- 6. In cases of family violence where the Court orders therapy or parenting training for the perpetrator, clear evidence of change of behaviour rather than just completing a course should be required.**

While some programs for change show promise, there is a high rate of continued family violence after attending these programs.<sup>xxv xxvi</sup> Information about perpetrator behaviour long-term should be taken from multiple sources. These programs in themselves may provide some monitoring and linking to resources while they are being attended. Programs for victims show more promise than those for perpetrators. More work is clearly needed in this area before relying on them as a safe pathway for families with infants.

- 7. Infants and very young children who have had majority overnight care from one parent should not be separated from that parent overnight except where there is no other option. Daytime separations from the primary care giver should be limited to what the infant can tolerate.**

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As detailed in the AAIMH Position paper on *Infants and Overnight Care – post separation and divorce*<sup>xxvii</sup> there are significant developmental aspects that may make overnight care away from a primary caregiver difficult for infants and young children. When considering separating an infant or young child from their main caregiver overnight, important factors that impact on infant development need to be considered. These factors include secure attachment, breastfeeding and stress.

Infants under the age of eighteen months or so need consistent, responsive parenting and a predictable environment especially at night, i.e., sleep in the same place with the same carer. Where overnight care has in the past been equally shared, and where the surrounding environment can be similar, and where the infant perceives both parents as supportive, the infant may be able to cope with some overnight care in a different home. However, for infant and caregivers, perception of the environment, previous experience of stress and temperament can all affect this and the infant's response needs sophisticated assessment. It is AAIMH's position that **infants** have a right to be heard. As with grandparents and other close carers, a warm relationship can be built without overnight care, until the child is able to cope with it.

It is understood, from communication with Infant specialists who have been contracted by the Family Court, that in some cases where the relationship between parents is conflictual and a parent does not have sufficient parenting knowledge and experience, that "therapeutic reunification" is being used (parent infant/child interaction monitored and coached by a clinician). This idea is supported by AAIMH.

- 8. Finally, we recommend that the Joint Committee appoint an advisor with expertise in infant mental health to their panel in order to help assess submissions related to infants and young children.**

We refer you also to the previously mentioned Position Statements on *Infants and Overnight Care* and *Infants and Family Violence* on our website [www.aaimh.org.au](http://www.aaimh.org.au) and would welcome the opportunity to provide further information on any of the above issues.

Yours sincerely

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National Chairperson  
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And the AAIMH National Committee [www.aaimh.org.au](http://www.aaimh.org.au)

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