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# **Fatherhood and fatherlessness**

Michael Flood

Research Fellow  
The Australia Institute

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## Summary

A national debate about families and parenting is gathering momentum in Australia, with fathers and fathering at its centre. Fatherhood is changing as the social, economic and cultural conditions which sustained traditional meanings of fatherhood have shifted or been challenged, and in recent decades debates over fathers, mothers and family life have been a staple feature of the news. This debate has intensified in 2003, due to the Howard Government's consideration of the introduction of a rebuttable presumption of joint custody following family breakdown.

At the beginning of the twenty-first century, we have reached a pivotal moment in terms of fathers' roles in families and communities. There is, at present, a significant opportunity for fathers to develop stronger, more intimate bonds with their children and to enhance their roles within their families. Indeed a growing number of fathers are embracing this situation. But the opportunity is in danger of being lost. The unhelpful agendas of some participants in fatherhood debates, and continuing economic and cultural obstacles to paternal involvement in child-rearing, threaten to limit men's positive involvement in parenting.

Fathers, and mothers, are important to the well-being of children, families and communities. Supporting fathers' positive involvement in their children's lives is a vital element in the maintenance of healthy families and communities. However, current proposals to change family law do not represent either an appropriate or effective means to enhance fathers' positive involvement in families.

A rebuttable presumption of joint custody would apply to the five per cent of divorcing couples with children whose cases are decided in the Family Court. The Family Court would assume that children will physically reside with both separated parents for equal periods, living one week with the mother and the next with the father for example, unless there were good reasons to do otherwise. Changing family law in this way will not enhance shared parenting. Instead, it has the potential to diminish the well-being of children. Furthermore, it is a far less effective way to encourage paternal involvement than other measures which address the real obstacles to active fathering both in couple families and after divorce or separation.

### **The best and worst of times**

Fatherhood in Australia has been undergoing contradictory trends in recent years with growing numbers of fathers becoming actively involved with their children *and* growing numbers withdrawing or being excluded from paternal involvement.

Over the past century, fatherhood has been shaped by profound shifts in family structure, the circumstances and timing of fertility, norms regarding marriage, childbearing, sexuality and gender, and images of fathering. There has been an overall tendency for fatherhood to move out of the domain of stable marriage, with a decline in rates of marriage, an increase in non-marital cohabitation, an increase in divorce, and an increase in non-marital childbearing.

Of children aged 0 to 17 years, just under four-fifths live in two parent families. One in six children live in one-parent families, mostly headed by mothers. After separation and divorce, more than one-third of Australian children have no face-to-face contact with their fathers, and one in six children has contact only during the day.

Perceptions of fathering have shifted, and the image of the nurturant and involved father now exerts a powerful influence on popular perceptions. However, the culture of fatherhood has changed much faster than the conduct. Fathers share physical care of children equally in only 1-2 per cent of families, and are highly involved in day-to-day care in only 5-10 per cent of families. Many fathers aspire to do more fathering than they actually perform, yet they face important economic, policy and cultural constraints to their involvement.

### **Fatherlessness and divorce**

Fathers' absence from families is said to cause a wide range of social problems, from crime and delinquency to poor school achievement. The research evidence shows that, in general, children raised in two-parent families do better on measures of educational achievement and psychological adjustment than children raised in single-parent families. But the research also shows that neither fatherlessness nor divorce by themselves determine children's well-being. The quality of parenting and the nature of parents' relationships with each other and their children are the critical factors in shaping the impact of father absence upon children.

One of the most significant influences on children's well-being, whether in dual-parent or single-parent families, is the quality of parenting and family relationships. Conflictual and unhappy relationships are damaging to children, in both 'intact' marriages and between separated parents. In situations where children do not live with their fathers, paternal contact is not by itself a good predictor of their well-being. Instead, the most consistent predictor is fathers' 'authoritative' parenting – that is, parental encouragement and support and non-coercive rule-setting and monitoring.

Selection effects also help explain negative outcomes among children who grow up without their fathers or after divorce. Some families are characterised by parental conflict, drug abuse, mental illness or violence. Couples in these circumstances are more likely to divorce, *and* their children are more likely to show behaviour problems, both before and after divorce. The association between father absence and poor outcomes among children is shaped by the changes which accompany divorce or separation, particularly economic insecurity and loss of access to social networks and communities. Poverty is both a cause and an effect of single parenthood, and post-divorce economic hardship is associated with negative outcomes among children. While children experience their parents' separation and divorce as traumatic, three-quarters of children show no resulting negative effects or long-term problems in adjustment.

Fathers' presence has diverse effects on children, and in some cases these are negative. Because of drug abuse, violence, crime, and other forms of anti-social behaviour, a minority of fathers are not in a position to engage in positive ways with their families or provide authoritative parenting. When fathers are abusive, dishonest, or irresponsible,

and reside with their children, their children suffer. Fathers dealing with such issues must be supported, but not at the expense of children or mothers.

Public claims that fatherlessness causes a host of social problems have sometimes been based on a confusion of correlation and causation, the selective use of research evidence, and even the repetition of fictional statistics. For example, the claim that ‘Boys from a fatherless home are 14 times more likely to commit rape’ received widespread coverage when it was released in the National Fatherhood Forum’s ‘12 Point Plan’ in June 2003, yet investigation of the origins of the statistic reveals that this ‘fact’ is both misleading and invented.

### **Fatherlessness and male role models**

A second common argument in contemporary debates about fatherlessness is that children, and boys in particular, require male role models in the form of a biological father to ensure their healthy development. While there is no doubt that boys, and girls, benefit from the presence in their lives of positive and involved fathers, the research evidence again tells a more complicated story than that allowed by simplistic assumptions about male role models.

Positive and nurturant parenting by mothers *or* fathers (and ideally both) makes more difference to children’s outcomes than the simple presence of a father *per se*. In terms of boys learning ‘how to be men’ from their fathers, the research finds that fathers’ masculinity and other individual characteristics are far less important formatively than the warmth and closeness of their relationships with their sons. The characteristics of fathers as parents, rather than their characteristics as men, influence children’s development, and there is no evidence that fathers’ involvement is more beneficial for boys than it is for girls.

Boys (and girls) raised only by women, whether single mothers or lesbian couples, are no more likely than other children to adopt an unconventional gender identity or homosexual sexual orientation. Mothers have long been blamed for outcomes among children, from schizophrenia in the 1950s to boys’ emasculation in the 1990s, but mother-blaming is both inaccurate and unhelpful.

Fathers’ involvement in families is highly desirable. When fathers are actively involved, they expand the practical, emotional and social resources available for parenting. With two parents rather than one, children are likely to receive more emotional support, supervision, and to have greater access to wider networks and material resources. Fathers’ involvement is also important because of the distinctive, but not unique, contribution to parenting made by male parents. Mothers and fathers typically interact with children in different, although overlapping, ways. Gender differences in parenting can be positive, exposing children to the richness and complexity of gender diversity. But stereotypes of mothering and fathering also constrain women’s and men’s parenting. Fathers and mothers are equally capable of parenting: highly involved fathers become sensitive to, and in tune with, their children, just as involved mothers do.

## **Fathering politics**

Fatherhood is now very much on the mainstream political agenda. Important shifts in men's gender roles, and growing policy attention to men's issues, are generating new possibilities for men's parenting. However, some of the most vocal advocates for fathers seem to wish to turn back the clock, reasserting men's traditional paternal authority rather than fostering shared and positive parenting.

There have been profound shifts in gender relations in every sphere of society, from the bedroom to the boardroom. Many men are flourishing because of the opening up of gender roles, enjoying egalitarian relations with women and being involved fathers to their new babies and children. Yet other men are struggling. Separation and divorce represent key times of crisis, and one response among men to personal crises or wider changes in gender relations is 'fathers' rights'.

Fathers' rights groups typically represent an anti-feminist backlash, focused on men as victims of injustice in family law, education, health, and other realms. Such groups overlap with 'men's rights' groups, and they have worked in alliance with conservative Christian organisations to lobby for changes in child custody and child support policies. Fathers' rights groups have achieved significant changes in both the practice and popular perceptions of family law over the last eight years. Yet there has been no increase in shared parenting among separated partners. The widespread assumption that children must have contact with both their parents has meant in practice that children's best interests at times have been compromised through heightened exposure to violence and parental conflict.

A rebuttable presumption of joint custody following family breakdown, a long-standing goal of fathers' rights groups in Australia, is now on the policy agenda. The House of Representatives Standing Committee on Family and Community Affairs is conducting an inquiry into 'child custody' arrangements in the event of family separation, including the question of 'whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted'. The proposed presumption of joint residence will, ostensibly, enhance shared parenting of children after divorce and separation, a goal with which few could argue. However, in practice it is likely that the changes will do little to encourage shared parenting. There are at least five problems with the presumption.

First, the proposed rebuttable presumption of joint custody is unnecessary: there are no formal legal obstacles to parents sharing the care of children after separation and divorce. Family law already endorses the principle of shared parenting, stressing that children have the right to know and be cared for by both their parents and that parents are jointly responsible for their children. Separating parents can make arrangements for shared residence, and small numbers do.

Second, the parents to whom this legal change would apply are those least able to set up shared parenting. The small minority of separating parents who reach the courtroom are often experiencing the most intractable and bitter conflicts, face issues of violence and abuse, and are the least likely to be in a position to share residence and parenting of their children.

Third, one size does not fit all. The best interests of the child, a key principle in family law, would be compromised by *any* presumption of a specific type of custody arrangement. The proposed law would undermine the ability and flexibility families need in order to develop parenting arrangements which best fit their children.

Fourth, the introduction of a presumption of joint custody is likely to increase the use of litigation to rebut the presumption, stretching the resources of the Courts and government.

Finally, a legal presumption of joint custody is likely to expose women, children and men to higher levels of violence. This prospect is particularly troubling given that there are already cases where the practice of family law privileges parental contact with children over children's safety.

While there is positive potential in contemporary discussions of fatherlessness, it is currently a long way from being realised. Promoting fathers' positive involvement with children is a laudable goal. But it will not be achieved by ill-considered changes in family law. If a rebuttable presumption of joint custody is neither an appropriate nor an effective way to effect this goal, what is?

### **Promoting the positive role of fathers**

The most important obstacle to fathers' parenting after separation is the absence of fathers' parenting *before* separation. Workplace relations, policy barriers, practical disincentives and social obstacles limit men's involvement in parenting, both before and after separation and divorce.

To promote fathers' involvements with their children, five strategies are vital.

First, establishing father-friendly (parent-friendly) workplace practices and cultures will make the most difference to men's opportunities for fathering. Fathers perceive the major barrier to their involvement in parenting to be their involvement in paid work, and their patterns of working make it difficult to be involved parents. In a labour market characterised by gender inequality, many couples make pragmatic decisions that the mother will work part-time or take time off while the father will continue to do paid work. Two institutional strategies have the potential to make a significant difference to men's parenting opportunities. Employers, with governmental support, must create more flexible workplaces free of penalties for involved parents of either sex, and must promote equal economic opportunities for women.

The second strategy is to remove policy barriers to shared care. Family policy in Australia currently discourages shared care of children, both in couple families and between separated parents, by rewarding a homemaker/breadwinner split in couple families and penalising single-parent families which share care of the child with the other parent.

The third strategy is to support fathers through family and parenting services. Family-related services, including antenatal and postnatal services, community-based services for families with children, and early childhood education services, have an important

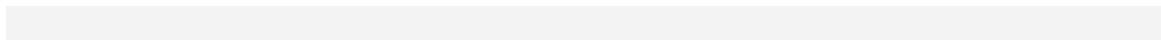
role to play in fostering fathers' involvement in families. Family-related services require dedicated funding and policy support for this goal. In addition, the activities, atmosphere and staffing of family-related agencies must be father-friendly, and family-related services should develop forms of service delivery which are effective in engaging fathers.

The fourth strategy addresses the cultural obstacles to paternal involvement. Common cultural norms in Australian society, including a culture of work and materialism, the absence of a culture of fatherhood, a culture of maternalism, and suspicion towards fathers, are unsupportive of men as parents. At the same time, many men have managed, despite these obstacles, to create and sustain an experience of involved fathering.

The final strategy in this five-point plan is the most general yet it will have practical impacts on men's involvement in parenting. Fostering fathers' active involvement with children requires cultural change in gender norms, particularly those norms which define manhood as non-nurturant and unemotional and which stifle boys' and men's parenting and relationship skills and commitments.

Men's positive involvement with children will also be fostered by improving men's relations with women. Non-conflictual and cooperative relationships between parents, whether in relationships or separated, are the bedrock of their positive involvements with children. When men share equally in the care of children with women, their marriages and relationships also improve. Thus both men and women benefit from men's involvement in parenting.

Fathers in Australia face a real moment of opportunity. Shifting social and economic conditions have both intensified the obstacles to, and created new possibilities for, involved fathering. In order to capitalise on this opportunity, however, both the Government and the community must adopt a much more sophisticated approach to analysing the causes and consequences of fatherlessness. Australian fathers need policies that help them connect with their children at all stages of life, not simplistic laws that fail to address the real obstacles to involved fathering.



## 4. Fathering politics and policies: The destabilisation of fatherhood

Fatherhood is now on the mainstream political agenda, and there is widespread support for the promotion of fathers' positive and responsible involvement in families.

Important shifts in men's gender roles, plus growing policy attention to men's issues, are generating new possibilities for men's parenting. However, some of the most vocal advocates for fathers seem to wish to turn back the clock, reasserting men's traditional paternal authority rather than fostering shared and positive parenting.

### 4.1 The policy context

The immediate political context for debates over fatherhood and families is the Howard Government's consideration of the introduction of a rebuttable presumption of joint custody following family breakdown.<sup>29</sup> Yet such debates have preoccupied the popular imagination for decades. Debates over fathers both revive old areas of controversy and create new ones, not only over parenting, families, marital and divorce law, child custody, and family structure, but also over sexuality, reproductive law, and welfare and poverty policy (Daniels 1998, pp. 1-6; Stacey 1998, pp. 61-62).

Contemporary discussions of the role of fathers in families come from across the political spectrum, although when they began in the 1970s they were associated with social conservatism. Political campaigns in the name of 'The Family', organised by 'New Right' and primarily evangelical Christian constituencies in the 1970s, represented a backlash against the sexual revolution, feminism and gay liberation, and the politics of motherhood were central to their assertion (Stacey 1998, pp. 54-55). In Western countries such as Australia, the US and UK there have been three shifts in family politics over the last two decades. First, by the late 1980s, family values rhetoric had proliferated across a broad ideological spectrum (Stacey 1998, p. 55). Second, while public attention has often focused on single motherhood, in the mid-1990s there was a growing emphasis on the place of *fathers* in the lives and homes of women and children (Daniels 1998, p. 1). Particularly in the US, as debates over family values became more widespread in the 1990s, their focus shifted from the social hazards caused by single mothers to those caused by missing fathers (Stacey 1998, p. 51). Commentaries critical of mothers are still pervasive however, whether of teenage mothers, welfare mothers, single mothers, or single and married career women (Stacey 1998, p. 54).

The third shift is the growing policy interest in the need to promote fathers' involvement in families, particularly since the late 1990s. This is most developed in the US, where 'Responsible Fatherhood' initiatives began under the Clinton Administration in 1995 and continue today under President Bush. In the US there has been bipartisan support for new fatherhood initiatives promoting responsible fatherhood aimed at increasing fathers' contact and co-residence with their children and strengthening marriage (Waller and Bailey 2002, p. 2). In the UK, in 1998, the Home Office began

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<sup>29</sup> Details of the Standing Committee on Family and Community Affairs 'Inquiry into child custody arrangements in the event of family separation' can be found here: <http://www.aph.gov.au/house/committee/fca/childcustody/index.htm>.

developing family policy aimed at encouraging fathers' positive role in their children's upbringing and provided funding to such agencies as FathersDirect (Featherstone 2003, pp. 245-246).

In Australia since the mid-1990s, state and federal governments have shown an increased willingness to fund services directed specifically at men, in the context of growing community and governmental attention to men's issues. In 1997 the Federal Government allocated \$6 million to services intended to 'assist men manage a range of relationship difficulties with partners and ex-partners, children and step-children and to help organisations develop more sensitive and responsive approaches to working with male clients'.<sup>30</sup> A major conference in 1998, focused on men and relationships, was sponsored by the Commonwealth Department of the Attorney General. The Men and Family Relationships initiative now has \$22 million in funding over five years from 1998 to 2003. Government support for strengthening the roles of fathers in families and their children's lives is reflected in the booklet 'Supporting Fathers in Families' (2002) which states:

The Commonwealth Government is working hard to ensure fathers are supported to be the best parents they can. ... Regardless of the structure of a family, fathers have an invaluable role to play in the development of their children. They have the capacity to make a difference to the quality and happiness of their children's lives.

Early policy initiatives in the UK focused on men's parenting practices *after* divorce or separation, stressing the importance of maintaining contact between fathers and children in the name of children's welfare. More recent efforts have attempted to shift men's involvement in parenting during existing relationships (Collier 2001, pp. 529-531). In Australia, initiatives intended to 'support fathers in families' cover both. They include programs for non-resident parents (usually fathers) and assistance for separated parents in negotiating child contact, as well as groups for first-time fathers, programs promoting fathers' involvement in their sons' or daughters' schools, and workplace programs addressing work/family balance. On the other hand, since the joint custody inquiry commenced in June 2003, media commentary has often focused on fathering after divorce or separation.<sup>31</sup> This prompted Federal Sex Discrimination Commissioner, Pru

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<sup>30</sup> Men and Family Relationships Services website, Australian Government Department of Family and Community Services (FaCS). URL: [http://www.facs.gov.au/internet/facsinternet.nsf/family/mfr-men\\_family\\_relationships.htm](http://www.facs.gov.au/internet/facsinternet.nsf/family/mfr-men_family_relationships.htm). Last modified 13 October 2003.

<sup>31</sup> See for example: Metherell, Mark (2003) Divided by child access details. *The Sydney Morning Herald*, 19 June; ; Arndt, Bettina (2003) To care for the kids, keep dad in the picture. *The Sydney Morning Herald*, 19 June; Bagnall, Diana (2003) Family repair. *The Bulletin*, 2 July; Arndt, Bettina (2003) If courts won't change custody parents should. *The Sydney Morning Herald*, 29 August; Arndt, Bettina (2003) After divorce, kids need both parents. *The Australian*, 29 August; Tanner, Lindsay (2003) Hands in pockets won't buy them love. *The Sydney Morning Herald*, 1 September; Jackman, Christine (2003) Parents rage at custody inquiry. *The Australian*, 13 September; Arndt, Bettina (2003) Teen pregnancy more likely for fatherless girls. *The Sydney Morning Herald*, 23 September.

Goward, to comment that if fathers wish to be involved in parenting after divorce, they must start earlier, sharing parenting in intact relationships and marriages.<sup>32</sup>

Promoting fathers' positive involvement in families is also an increasingly visible aspect of the practices and perspectives of health and welfare agencies in Australia (see Section 5.3 below for an overview of their efforts). Why have father-inclusive and father-specific services emerged at this time?

Service agencies perceive that the women's movement has prompted greater interest in and discussion of men's lives. Around Australia there are many examples of female practitioners advocating and initiating programs for fathers, and of programs initially for women later being extended to men (Russell *et al.* 1999, p. 96). Men's movement activity, including men's groups and male practitioners within workplaces, has also been influential. The development of programs for fathers has been influenced by the emergence of other services which are inclusive of or specific to men, and by the greater political will at government, service and agency levels to recognise the role of fathers in parenting. Research and popular publications on fathers have helped shape agency practice, policy-making and funding. Finally, there has been growing demand for services from fathers themselves. Many fathers desire more active involvement with their children, 'wish to father differently to their parents', and give greater emphasis to being a parent as an important and desirable aspect of self (Russell *et al.* 1999, pp. 96-98).

#### **4.2 The social and political context: gender and fathering**

The wider context for debates about fathers and families is the profound shifts in gender relations which have so unsettled and changed women's and men's lives over the last three decades. In every sphere of society, from the bedroom to the boardroom, women's and men's positions and interactions have shifted, been questioned and re-negotiated. Connell (1995) identifies disruptions to, and contestations of, the social organisation of gender in at least three realms – power relations, labour relations and sexual relations.

In power relations, the legitimacy of men's domination has weakened dramatically, in particular under the influence of feminism. Work and economic relations in Western capitalist countries have undergone fundamental changes since World War II, including married women's increased entry into paid employment and the decline of traditionally male areas such as primary industry. There have been important shifts in sexual relations, in particular with the emergence and stabilisation of lesbian and gay sexualities as public alternatives to heterosexuality (Connell 1995, pp. 84–85).

A fourth shift is cultural, the emergence of new images and accounts of alternative masculinity identity such as the 'New Man' and the 'Sensitive New Age Guy' or 'SNAG,' gay, bisexual and queer men, the 'New Lad,' and 'Wussy boys', and 'metrosexual'. To varying degrees, these open up new spaces for rethinking what it means to be a man. At the same time, they jostle for space with images which celebrate

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<sup>32</sup> 'Shape up, fathers told,' *The Courier Mail*, 25 July 2003; 'Fathers must also be parents,' *The Sydney Morning Herald*, 11 August 2003.

the virtues of a more traditional masculinity, including films which represent men's violence against other men or against women as normal, legitimate, exciting and even sexy, pornography which teaches boys and men to see women only as sexual objects, and so on.

These historical processes, in tandem with the efforts of new social movements such as the women's movement, have disrupted traditional constructions of masculinity. Beginning in the 1970s in advanced capitalist countries, men's lives have been questioned and debated with passion.<sup>33</sup> Men have been examined 'as a sex, in a way until recently reserved for women - as a problem' (Segal 1993, p. x). This attention to masculinity and men's issues has opened up new possibilities for men, including new possibilities for men's relations with women, children and other men.

Changing gender relations have shifted 'the landscape in which men and women meet' (Featherstone 2003, p. 244). This paper has already identified changes in the social organisation of fathering and families (see Section 2.2 above.) In addition to new arrangements of work and money, the sexual and emotional contracts between women and men are being rewritten. Traditional gender stereotypes are breaking down; women are no longer seen as necessarily dependent and vulnerable while there is greater recognition of male emotional vulnerability. These ruptures have produced contradictory developments in terms of what women want from men and from the fathers of their children. Some women want men to share in the nurturing and economic work equally, while others want men to be the economic providers. Some emphasise the desirable qualities that parents of either sex should have, while others call for distinct roles for each sex (Featherstone 2003, pp. 244-245).

Some men are flourishing because of the opening up of gender roles generated by the women's movements and other changes. They are enjoying having more trusting, respectful and egalitarian relationships with their wives and partners, developing greater connections with female and male friends, and being involved fathers to their new babies and children. Thus some men are finding both relief and exhilaration in the new forms of intimate life and public life available to them. Some men are delighted to see some of the bonds of traditional manhood loosening, some of the rigid divisions between stereotypically feminine and stereotypically masculine behaviours and identities crumbling apart. There are various signs of positive change among men. Men show increased support for women's paid work outside the home; young men are taking greater responsibility for contraception and safe sex (Lindsay *et al.* 1997, pp. 29-30; NCHSR 1999); there is a decline in men's agreement with myths about domestic violence (Office of the Status of Women 1995); and there is increased attention to the quality of fathering.

Yet other men are struggling. Some men are confused, lost, troubled and angered by the uncertainties of contemporary gender relations. While it is an exaggeration to claim that

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<sup>33</sup> Periods of intensified struggle over the dominant definitions of manhood are far from unique according to Michael Kimmel, and he identifies other periods of destabilisation in dominant notions of masculinity (Kimmel 1987).

in general men are in crisis, at least one form of heterosexual masculinity is increasingly felt to be obsolete - one that is stoic, work-obsessed, focused on power over others, rigid and emotionally limited (Carrigan *et al.* 1987). In terms of fatherhood, perhaps the clearest examples of male crisis are among fathers who have undergone divorce and separation. To illustrate, consider a typical story of one such man.

A 40-year-old heterosexual husband and father who has just been left by his wife is most likely in crisis. The models of manhood with which he grew up probably gave him few resources with which to deal with grief, loss and anger, and possibly not even the skills to sustain a healthy relationship in the first place. He was taught that being a real man means not expressing emotions (except anger), avoiding feminine and vulnerable emotions like love, fear and compassion, and being psychologically and emotionally isolated. He probably depended on his wife as the main source of his experience of love, affection and nurturance, and he relied on her emotional work to sustain the relationship. He probably did not see the divorce coming, and he is poorly equipped to deal with it. He loves his children, and he has tried to be a good father to them. He has done far less of the direct parenting than has his wife because of his heavy involvement in paid work. His wife works too, but she has sometimes worked part-time and taken more time off. This father and his ex-wife have agreed that it's best that the children live with her. Nevertheless, he is grieving the loss of both his relationship and his resident fathering role.

This father's story is only one version of the diverse processes and situations experienced by men around Australia. Of course, the dimensions of such experiences are shaped by other aspects of men's and women's lives, such as poverty or financial security, social isolation or connection, the presence or absence of conflict and violence, and physical and mental health.

Research among divorced men finds that some respond to divorce by making a priority of relationships with their children, setting aside differences with their ex-wives to ensure good co-parenting. However, other men respond to the stresses and turmoil of divorce by focusing on their 'rights' and their victimisation; they attempt to retain control over their former wives, and respond to the undermining of their paternal authority with strategies of parental and financial withdrawal (Arendell 1995). More widely, among both men and women, one response to recent and profound shifts in gender relations and family lives is the attempt to reassert patriarchal gender roles and the 'traditional' nuclear family. The most visible examples of this response are fathers' rights groups, and these often overlap with men's rights and conservative Christian mobilisations.

There are two further reasons why appeals to an 'essential' father and a nuclear family structure are attractive; these involve an authentic concern for children's welfare on the one hand and a backlash against new forms of power sharing and role sharing, particularly among men, on the other. First, family life has changed rapidly over the past three decades, and there is a widespread social anxiety about 'who will raise the children' (Silverstein and Auerbach 1999, p. 404). Second, changes in gender and sexual relations have:

[R]equired heterosexual men to relinquish certain aspects of power and privilege that they enjoyed in the context of the traditional nuclear family. Most men no longer have sole economic power over their families. Similarly, most men must accept some degree of responsibility for child care and household tasks. The majority of heterosexual men no longer have full-time wives to buffer the stress of balancing work and family roles (Silverstein and Auerbach 1999, p. 404).

This shifting landscape is deeply unsettling for a number of men, and some have responded by reasserting traditional values of biologically determined gender roles and male power.

While most men (and women) find the processes of divorce and separation to be hurtful, only a minority subscribes to the conservative agendas of anti-feminist men's groups. In addition, there are other fathers' organisations which promote positive and collaborative visions of men's relations with women and children, such as Dads and Daughters in the US and FathersDirect in the UK. However, the agendas of fathers' rights groups have a significant influence on media and governmental visions of family policy. It is therefore important to assess these agendas.

### 4.3 Fathers' rights groups

Fathers' rights groups in Australia include the Lone Fathers Association, the Men's Rights Agency, the Men's Confraternity, Fathers Without Rights, the Shared Parenting Council, Dads Against Discrimination, and many others. There is an overlap between men's rights groups, fathers' rights groups and non-custodial parents' groups where members are often fathers. These groups sometimes have female members and even co-founders, including second wives and other family members of men who have had some engagement with family law (Kaye and Tolmie 1998a, p. 22). The men in the fathers' rights movement<sup>34</sup> are typically in their forties and fifties, often divorced or separated, and nearly always heterosexual. Participants are frequently angry, bitter and hurting, and they have often gone through deeply painful marriage breakups and custody battles (Bertoia and Drakich 1993; Cosic 1999; Maddison 1999; Milburn 1998; Wilson 1997). Members of men's rights and fathers' rights groups focus on service provision, lobbying and activism. They offer self-help meetings, provide support for men undergoing separation, divorce and family law proceedings, lobby local and national governments to change policies and laws, and promote their views through newsletters, websites and media campaigns.

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<sup>34</sup> Cornell (1998) and some other authors refer to the 'fathers' movement'. Here the phrase 'fathers' rights movement' is used to distinguish this from other advocates and organisations promoting fathers' involvement in families which do not share the agendas and worldviews of fathers' rights groups such as those listed above. Nevertheless, fathers' rights perspectives do have a wide currency across the political spectrum. Also the term 'movement' is used cautiously, given that many fathers' rights groups have only a small active membership.

Some fathers' rights and men's groups represent an organised backlash to feminism.<sup>35</sup> They focus on the costs and destructiveness to men of masculine roles, claiming that both women and men are equally oppressed or limited or even that men are oppressed by women. These groups consider that males have been displaced from the labour market, schools and universities, deprived of their role as fathers, and are now regarded only as 'gene pool and cash machine' (Bouchard, Boily and Proulx 2003, pp. 5-7, 26-33). As far as rights are concerned, such groups believe that men's right to a fair negotiation in child custody settlements, to a fair trial in domestic violence cases, and to fair treatment in the media have all been lost. Responsibility and blame for these problems is attributed to women, the women's movements and feminism (Kaye and Tolmie 1998a, pp. 62-65).

Several men's rights and fathers' rights groups have links to conservative Christian organisations and support a traditional patriarchal family as the only legitimate and natural form of family (Kaye and Tolmie 1998b, pp. 182-184). One of the key groups in Australia currently lobbying for a rebuttable presumption of joint custody is the Shared Parenting Council of Australia, a new coalition between fathers' rights groups and such conservative Christian groups as the Festival of Light.<sup>36</sup> Another, the National Fatherhood Forum, has close links to the Australian Family Association, a conservative Christian and 'pro-family' organisation.<sup>37</sup>

Fathers' rights groups represent one form of masculinity politics - 'those mobilizations and struggles where the meaning of masculine gender is at issue, and, with it, men's position in gender relations' (Connell 1995, p. 205). Three other forms of masculinity politics currently visible include men's groups and networks focused on men's liberation or masculinity therapy, spiritual or mythopoetic concerns, and pro-feminist

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<sup>35</sup> For example, DADs Australia describes itself as 'concerned with the deliberate degrading of families and marginalising of Fathers in children's lives by the feminist movement and unreasonable interference by Government Departments in our personal lives' (<http://www.dadsaustralia.com/>). The website of the Men's Confraternity asks, 'Why is it that the FAMILY COURT has become so anti-male and anti-father, all to [sic] eager to accept notions of political correctness, feminist ideology and a social dogma which demands acceptance and obedience?' (<http://www.mensconfraternity.org.au/>). OzyDads describes itself as 'dedicated to promoting shared parenting and to correcting the false stereotype images while exposing the Anti-Father gender bias in the Family Law arena and putting the fathers back in to families.' (<http://www.geocities.com/ozydads/>). An open letter to Prime Minister Howard from Barry Williams, President of the Lone Fathers Association (Australia), complains that 'Excessive funds are put into socially divisive programs, instigated by or hijacked by radical feminists' (<http://www.lonefathers.com.au/augsep03/page7html>). Another open letter to Prime Minister Howard from the Fatherhood Foundation states, 'For too long Aussie dads have been libeled by the media, vilified by feminists, and denied justice by our court system.' (<http://www.lonefathers.com.au/augsep03/page16html>).

<sup>36</sup> Shared Parenting Council (2002) A New Force in Family Law. Media Release, 21 October. David Phillips, the National President of the Festival of Light, commended the legal initiatives of the Shared Parenting Council, as reported in the Shared Parenting Council News Update, 1(2), 30 Nov. 2002.

<sup>37</sup> For example, Bill Muehlenberg of the Australian Family Association is the author of 'The Facts on Fatherlessness', the document that provides an important basis for the National Fatherhood Forum's agenda on fatherlessness and that is included in its '12 point plan'.

and anti-patriarchal activism. These four forms have been collectively described as ‘the men’s movement’ (Flood 1998), but this term is problematic insofar as it includes groups and agendas involving both the defence of men’s privilege and efforts to undo it.

*Changing the practice and perception of family law*

Fathers’ rights groups have achieved significant changes in both the practices and popular perceptions of family law. Changes in family law made in 1995, particularly the enshrining of children’s right to contact with both parents, were influenced by the lobbying of fathers’ rights groups. There have been policy shifts in the distribution of family tax benefits for shared care which advantage non-resident/access parents (usually fathers) at direct cost to the resident parents (usually mothers) (Keebaugh 2003, p. 154). Similarly, major changes to the child support system have disadvantaged resident parents and increased the control exerted by the non-resident parent (Keebaugh 2003, p. 175).

Research into the operation of the *Family Law Reform Act* 1995 from the time it came into effect in June 1996 to the end of 1999 finds that since the 1995 changes, there has been no increase in shared parenting among separated partners (Rhoades *et al.* 2002, p. 1). The studies have shown that those parents who do enter into workable and flexible shared residence arrangements after separation are doing so without legal assistance and without any knowledge of the *Family Law Reform Act* 1995. Parents who share parenting had voluntarily agreed to the arrangement, had a history of co-operation, and men had taken an active caregiving role. On the other hand, the reforms have created greater scope for abusive non-resident parents to harass or interfere in the life of the child’s primary caregiver (Rhoades *et al.* 2002, pp. 2, 55).

An uncritical assumption that children’s contact with both parents is necessary pervades the courts and the media. Among legal practitioners a *de facto* ‘presumption’ in favour of contact with the non-resident parent is widespread, although the legislation makes it clear that children’s ‘right’ to contact with both parents only operates to the extent that such contact is found to be in the child’s best interests (Rhoades *et al.* 2002, p. 6). In practice the presumption of parental contact has meant that the interests and welfare of children are being compromised as a result of more frequent awards of joint custody orders in the context of distrust and hostility between ex-partners and the consequent potential of heightened exposure to violence.

While the Family Court must see the best interests of the child as its paramount consideration in deciding whether and how to make an order in relation to a child, children’s welfare has been compromised in the approaches to making residence and contact orders and responding to allegations of violence at interim hearings (Rhoades *et al.* 2002, p. 4). Between 1996 and 1999, a greater number of orders for unsupervised contact were made at interim hearings in cases involving domestic violence or child abuse. There has been an increase in the numbers of joint residence orders made in contested proceedings in circumstances where there is a high level of conflict between the separated parents and one parent strongly objects to shared residence (Rhoades *et al.* 2002, pp. 6-8). In other words, orders for children’s joint residence are being made in the absence of the mutual trust and cooperation between parents previously seen in legal judgments as necessary for shared parenting.

In a more recent Australian study among 40 women negotiating child residence and contact arrangements with ex-partners who had been violent towards them, 13 children had been the targets of physical violence by their fathers. In half these cases, fathers had unsupervised contact with the children, and fathers had residence in four cases (Kaye *et al.* 2003, p. x). In 25 cases children had witnessed violence against their mother and fathers had been granted unsupervised contact with children in 17 of these cases and residence in four. Half the women in the survey felt that the contact and residence arrangements compromised either their own safety or that of their children. Children witnessed high levels of violence during contact and contact changeover. Being subject to domestic violence, and witnessing domestic violence, are both highly detrimental to children's well-being (Domestic Violence and Incest Resource Centre 2003, p. 8). Yet the legal system and legal professionals placed enormous pressure on women to consent to contact and gave insufficient attention to the issue of their safety or that of their children (Kaye *et al.* 2003, pp. 149-150).

The legal changes have also intensified the pressure for shared residence arrangements motivated in part by some non-custodial parents' desire to reduce child support liabilities (Rhoades *et al.* 2002, p. 8). Under changes to child support laws in 1993, the amount of child support payable is reduced where a parent has contact with a child for at least 30 per cent of the nights in a child support year ('the 109 nights requirement').

The political influence of fathers' rights groups appears to have been boosted by their ostensible compatibility with the policy agenda of the Coalition Government. The Federal Coalition Government has adopted tax, child support and other policies making participation in the paid workforce more difficult for women and providing incentives for them to stay at home full-time and raise children (Summers 2003a). It has removed subsidies for community-based child care centres and frozen child care assistance (Summers 2003a), and its recent pronouncements supportive of work and family issues have not been matched by action (Summers 2003b). Fathers' rights advocates have also been able to take advantage of the symbolic capital generated by images of the nurturant father or new dad, as well as the backlash against 'political correctness' and efforts at social justice.

#### *A brief critique*

Fathers' rights advocates have adopted the liberal feminist language of gender equality and rights but show more concern with equality in their legal status than in their everyday parenting. Their claims of discrimination in child custody decisions exaggerate the disparity in awards of custody to women versus men, neglect the ways in which custody decisions are shaped by divisions of labour prior to divorce and separation, and ignore the fact that in the vast majority of cases mothers end up with responsibility for children by private arrangement with the father (Kaye and Tolmie 1998a, p. 36; Pease 2002, p. 36). The claims of fathers' rights groups also:

tend to ignore how work and family institutional relations benefit them, both before and after divorce [and] focus entirely on the economic and institutional costs that are attached to these masculine privileges (Messner 1997, p. 47).

When it comes to bias in custody decisions, for example, fathers' rights groups often claim that in Family Court decisions only five per cent of fathers are granted sole custody of children (Kaye and Tolmie 1998a, p. 35), yet Australian studies document rates anywhere from three to six times as high.<sup>38</sup> Moloney (2001, p. 366) summarises the evidence. A 1983 study of family court orders in which both parties consented to the outcome found that 18 per cent resulted in custody going to fathers; another 1983 study of fully defended hearings found that 31 per cent were decided in favour of fathers compared to 54 per cent in favour of mothers. Eleven years later, a 1994 study of fully defended hearings again found that 31 per cent of fathers were successful in their applications, compared to 60 per cent of mothers (Moloney 2001, p. 366). Finally, a Family Court survey in 2003 of 850 cases across Australia found that mothers retain custody in 78 per cent of cases in which parents agreed not to proceed through the court system. That reduces to 69 per cent if the case proceeds to trial, when fathers then have a 22 per cent success rate of receiving custody – up from nine per cent in pre-court agreements (Macdonald 2003). The fact that fathers are roughly twice as successful in litigation as they are when negotiating on their own behalf has been seen as evidence that men do not have grounds for complaint about Family Court bias (Rhoades 2000, cited in Moloney 2001, p. 366).

Patterns of custody decisions must be seen in the context of parenting divisions of labour. Women continue to be the primary caretakers in most families prior to separation and divorce, and family courts tend to decide in favour of the parenting status quo in judging the 'best interests of the child' (Pease 2002, p. 36). Family Courts are not gender-neutral in their decision-making and, like many social institutions, they are influenced not only by divisions of labour but also by wider assumptions of mothers as caretakers and fathers as breadwinners (Pease 2002, p. 36). A recent Australian study examined closely contested parenting cases in the Family Court between 1988 and 2000.<sup>39</sup> It found that:

[M]others were likely to be successful if they appeared to conform to a maternal stereotype of self-sacrifice on behalf of their children. Generally, fathers were successful when mothers were judged to be in some way inadequate – that is, fathers tended to be successful by default... there is also evidence of judicial scepticism concerning their capacity to parent without the assistance of a mother figure, and/or scepticism about fathers' plans to reduce their commitment to the paid work force. (Moloney 2001, p. 363)

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<sup>38</sup> While around 30 per cent of contested custody decisions go to fathers, a far smaller proportion of children are being raised by sole fathers. Of children aged 0 to 17, 1.8 per cent live with a lone father, while 14.4 per cent live with a lone mother (ABS 1999b, pp. 1, 21). This disparity reflects the fact that the great majority of decisions regarding children's living arrangements after separation and divorce are made privately by parents, not in contested hearings in Family Courts.

<sup>39</sup> Moloney (2001) focused on cases in which men and women appeared to be functioning as good or at least as adequate parents, excluding cases involving violence, abuse or abduction of children. Moloney also focused on cases described by judges as 'closely contested' or similar. This resulted in 25 cases, involving between 18 and 25 judges, and delivering roughly equal awards of child residence to mothers and fathers.

Although Family Courts are not gender-neutral, neither are they anti-male or feminist-dominated as groups such as the Men's Confraternity and OzyDads contend.<sup>40</sup> Instead, judges' assumptions about 'incapable' fathers and properly 'self-sacrificing' mothers reflect the traditional gender stereotypes which feminists have worked to undo.

Fathers' rights advocates in Australia use the language of shared parenting, offering an ideal few could dispute, but this goal is undermined by their acrimony towards the female custodial parent and their commitments to a patriarchal family structure (Kaye and Tolmie 1998a, pp. 33-34; Kaye and Tolmie 1998b, pp. 188-189). In addition, their proposed solutions to child support and contact issues often show insensitivity to children's welfare and involve one-sided restrictions on the custodial parent (Kaye and Tolmie 1998a, pp. 36-42). A Canadian study of fathers' rights groups found that while members portrayed themselves as caring, loving fathers who had been denied their rights to equal custody and access to their children, they did not want a larger role in the day-to-day caregiving but rather in the decision-making related to their children and ex-spouses' lives (Bertoia and Drakich 1993).

Fathers' rights perspectives tend to conflate the interests of children and fathers and ignore the possibility of conflict between them. At times, they appear to compromise children's interests by giving priority to the prevention of false allegations of child abuse over safeguards for genuine victims of abuse. At the extreme, some fathers' rights advocates have expressed sympathy for men 'who are so distressed by their loss of access to the children they purportedly love that they *murder* the objects of their affection' (Kaye and Tolmie 1998b, pp. 178-181).

Finally, fathers' rights strategies can, in fact, be harmful to men themselves. Men's rights advocates have attacked women-oriented policy bodies, women's refuges, and women's health centres while simultaneously calling for either parallel services for men (refuges, health centres, even an Office for the Status of Men and Their Families) or services for both men and women. For example, in his 2001 'Men's Manifesto', Melbourne advocate Alan Barron calls for the abolition of the Office of the Status of Women, all equal opportunity and affirmative action laws, and all special programs and funding for women and girls in education, health and employment (Barron 2001, p. 13). The National Fatherhood Forum's '12 point plan' (2003) offers similar proposals. Attacking services primarily for women is an ineffective way to gain services for men. Such strategies focus on the wrong target, they antagonise potential supporters, they taint as backlash the need to address such men's issues, and they appear to be motivated more by a simplistic logic of equality than by an informed appraisal of the kinds of services men are going to use and like.

#### **4.4 What is wrong with a 'presumption of joint custody'?**

The goal of a rebuttable presumption of joint custody following family breakdown is shared among a range of fathers' rights groups in Australia.<sup>41</sup> In alliance with

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<sup>40</sup> See respectively <http://www.mensconfraternity.org.au/> and <http://www.geocities.com/ozydads/>.

<sup>41</sup> For example, the national peak body for lone fathers' associations, the Lone Fathers Association (Australia), has been lobbying for 'a presumption for shared parenting' since 1980. The LFA resolved at

conservative Christian and other organisations, these groups have been instrumental in pressing for legal reform. Backbench politicians in the Coalition Government have also heavily lobbied Prime Minister Howard, repeatedly raising family law and custody issues at party meetings (Schubert 2003). The current inquiry into ‘child custody’ arrangements in the event of family separation has put a presumption of joint custody on the policy agenda. The House of Representatives Standing Committee on Family and Community Affairs is required to:

[I]nquire into, report on and make recommendations for action:

(a) given that the best interests of the child are the paramount consideration:

(i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted.

(ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

While Australian Prime Minister, John Howard, has not publicly committed himself to any action until the inquiry concludes on December 31, he is reported to have given the impression that he genuinely wants to have the law changed. It is claimed that he has already asked for legislation to be introduced into Parliament early in 2004 (Tippet *et al.* 2003).

This discussion focuses only on (a) (i) above, the ‘presumption that children will spend equal time with each parent’. This is a presumption of joint *physical* custody – that children will physically reside with both separated parents for equal periods, living one week with the mother and the next with the father for example. The phrase ‘joint custody’ has been used more broadly, particularly in the US where it originates, to signal that both parents have legal responsibility for the child and should be involved in the child’s upbringing after separation. In that sense,

the Family Law Act in Australia gives parents ‘joint custody’ automatically, although it may be necessary for a court to modify that position, and to restrict or prevent contact, if it is necessary for the safety and wellbeing of a child. (Parkinson 2003, p. 16)

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its 2002 annual conference that, ‘The starting point for discussions about custody after separation should be custody shared between the parents on the basis of equal time.’

(<http://www.lonefathers.com.au/augnov02/page3.html> ;

<http://www.lonefathers.com.au/augnov02/page14.html>, Accessed 14 August 2003)

In the Australian context however, ‘joint custody’ commonly refers to joint *physical* residence. Parkinson (2003, p. 17) notes further confusion between the American and Australian family law systems which inform some Australian advocates’ mistaken claim that joint custody operates widely in the US<sup>42</sup>

The changes in the *Family Law Reform Act* 1995 did away with the language of ‘custody’ and ‘access’, replacing them with ‘residence’ and ‘contact’ respectively. But the old terminology persists in media accounts, among family court staff and among the general public (Rhoades *et al.* 2002, p. 3). Its use in the current government inquiry is old-fashioned, inaccurate, and misleading (Rodgers 2003, p. 2; Parkinson 2003, p. 16). Nevertheless, this discussion will use interchangeably the terms ‘custody’ or ‘residence’, and ‘access’ or ‘contact’, to reflect both the terms of the inquiry and contemporary legal language.

The proposed presumption of joint residence will, ostensibly, enhance shared parenting of children after divorce and separation, a goal with which few could argue. However, in practice it is likely that the changes will do little to encourage shared parenting and may even threaten the safety and well-being of some family members.

#### *Legal endorsement of shared parenting*

The first problem with the proposed rebuttable presumption of joint custody is that it is unnecessary: there are no formal legal obstacles to parents sharing the care of children after separation and divorce. Family law in Australia already endorses the principle of shared parenting, stressing that children have the right to know and be cared for by both their parents and that parents are jointly responsible for their children. Separating parents can make arrangements for shared residence, and small numbers do. Situations where fathers do not see their children after divorce are far less often the product of a Family Court order and far more often the reflection of patterns of parenting prior to divorce and decisions by the parents themselves (Family Court of Australia 1999; Pease 2002, p. 36). Research into the operation of the *Family Law Reform Act* 1995 finds that parents who share parenting did so without legal assistance, had voluntarily agreed to the arrangement, had a history of co-operation, and men had taken an active caregiving role (Rhoades *et al.* 2002, pp. 1-2).

The Australian proposal for a presumption of joint physical custody of children based on equal time with each parent has been tried elsewhere in the world only rarely. Parkinson (2003, p. 17) suggests that ‘there is not a single jurisdiction in the world which has a *presumption* in favour of equal time arrangements.’ The Families, Law and Social Policy Research Centre (2003, p. 4) submission to the custody inquiry describes only two states in the US where a presumption of joint physical custody exists, and notes that there is no evidence yet as to the impact on children’s wellbeing.

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<sup>42</sup> A joint custody order in America generally indicates only that both parents will continue to have substantial involvement in children’s lives, and in most cases one parent is still designated as the primary caregiver. Even orders for joint *physical* custody in the US do not necessarily provide for an equal time arrangement: if a non-resident parent has the child stay for at least 30 per cent of nights, then this is classified as ‘shared parenting’ or ‘joint physical custody’ (Parkinson 2003, p. 17).

Of all couples who separate, 50 per cent go to the Family Court to settle property or child issues or both with only five per cent of couples proceeding to a final defended hearing decided by a judge (Family Court of Australia 1999). Couples commonly settle on parenting arrangements through alternative channels, and residency arrangements are reached most commonly by agreement between parents without a legal determination. Thus the proposed amendment applies only to a minority of couples who are unable to reach an agreement over parenting.

*When sharing parenting is difficult*

The second problem with the proposed rebuttable presumption of joint custody is that the parents to whom it applies are least able to set up shared parenting arrangements. Those who reach the courtroom are often experiencing the most intractable and bitter conflicts, face issues of violence and abuse, and are the least likely to be in a position to share residence and parenting of their children.

Many separated and divorced families simply do not have the capacity to establish and maintain equal time shared care. Parents who have set up shared parenting arrangements after separation and divorce are a relatively small and select group, with particular characteristics and resources. Shared care after separation is rare in Australia: only three per cent of children residing in one-parent households are in shared care arrangements where the other parent plays a major caring role (ABS 1999b, p. 28). Studies among separated couples who have set up joint (physical) custody arrangements find that a cooperative and smoothly running co-parenting relationship is critical to their success. Such parents are motivated to sustain a child-centred orientation to parenting. They focus on the children's needs, contain their own anger and hostility, respect the other parent's privacy and autonomy, and are flexible and accommodating (AIFS 2003, pp. 15-17; Families, Law and Social Policy Research Centre 2003, pp. 1-3).

Separated mothers and fathers who have established arrangements of shared parenting typically have made mutual decisions to end the relationship and to choose shared parenting. They have higher-than-average incomes, the ability to set up two households that can work as residences for the children, and access to family-friendly workplaces. As the AIFS (2003, p. 17) submission summarises,

Socio-economic resources (as reflected in education, home ownership, and mothers' income and employment) thus appears to be a critical facilitator of shared parenting arrangements.

Yet separation often represents a financial crisis. A significant minority of families have their assets tied up in the family home and superannuation, have substantial debts, and simply do not possess the material resources to establish a shared care arrangement (Families, Law and Social Policy Research Centre 2003, pp. 2-3). Separated parents in shared care are also more likely to live near each other and less likely to have re-partnered, and such arrangements are more likely with children aged five to 11 than with younger or older children (AIFS 2003, pp. 17-18).

Shared parenting is 'logistically complex' and places great demands on parents, both personally and materially (AIFS 2003, p. 23). A rebuttable presumption of joint

physical custody ‘would make shared-care the default parenting arrangement post-separation and divorce – causing considerable hardship for parents and children who lack the capacity to sustain it’ (Families, Law and Social Policy Research Centre 2003, p. 1). As the HREOC (2003, p. 12) submission emphasises, ‘Successful shared parenting cannot be legislated and joint residence arrangements work best when they are by consent not coercion.’

A second reason that the cooperative relationship required for shared parenting is likely to be beyond many parents, at least in the short-term, is the presence of conflict and violence. Separation and divorce also represent interpersonal crises, and a significant proportion of separating partners experience violence (Families, Law and Social Policy Research Centre 2003, p. 2). From a national random sample in Australia, 30 per cent of divorced women and five per cent of divorced men report having been the victim of severe and ongoing violence during the marriage and/or after separation. And a majority (65 per cent of women and 55 per cent of men) report experiencing some form of physically abusive or threatening behaviour (Families, Law and Social Policy Research Centre 2003, p. 2).

While a rebuttable presumption of joint residence after separation is the goal of many fathers’ rights groups, its imposition in fact may be unfair for many fathers. Some fathers ‘view their parental responsibilities as being predominantly met by financially providing for their families’ (HREOC 2003, p. 15). A presumption of 50:50 shared care after separation may place unfair pressure on fathers to enter into working arrangements they do not desire, and may encourage the perception that fathers who focus on financial provision for their children rather than shared care are inadequate or less worthy parents (HREOC 2003, pp. 15-16).

### *One size doesn't fit all*

The third problem with rebuttable presumption of joint custody lies precisely in the fact that it is a *presumption*. The best interests of the child, a key principle in family law, would be compromised by *any* presumption of a specific type of custody arrangement. A ‘one-size-fits-all’ law would undermine the ability and authority of families to develop parenting arrangements which reflect parenting capacities, work arrangements, location and housing according to the best interests of the child (ACOSS 2003, p. 4; HREOC 2003, p. 12). As the submission to the joint custody inquiry by the Families, Law and Social Policy Research Centre (2003, p. 3) stresses, a ‘child focused parenting model must be sensitive and flexible, not rigid and imposed by law’. Parents should be able to change arrangements at different times to suit children’s needs at particular ages or in particular circumstances. The presumption of a particular parenting arrangement is excessively prescriptive and would impede the flexibility that separated parents require.

Reviews of the evidence on sole and joint custody do not find that any particular post-separation parenting arrangement is more advantageous than another for children (AIFS 2003, p. 15). Certainly, after separation and divorce the equal participation of fathers and mothers in parenting is the ideal. The research evidence suggests that, ‘the best interests of children post-divorce are best served when children can maintain ongoing and frequent contact with both parents who co-operate and communicate with low levels of conflict.’ (AIFS 2003, p. 25) This finding does not mean that joint physical

custody is necessarily the best arrangement for children's well-being. A review of the evidence

does not reveal any particular post-divorce residential schedule to be the most beneficial for children... [T]he weight of evidence does not support the view that higher levels of child-nonresidential father contact are automatically or always beneficial to children. (Lye 1999, pp. 4-14 – 4-17).

For example, the relationship between post-divorce parenting and children's well-being is complicated by the levels of conflict between parents and non-residential parents' payment of child support (Lye 1999, pp. 4-17 – 4-19). Given such findings, "One size fits all" approaches, such as legal presumptions in favor of certain specified arrangements, are likely to be harmful to some families' (Lye 1999, p. 4-20).

#### *See you in court*

In addition to making it harder for parents to negotiate alternative agreements, the introduction of a presumption of joint custody is likely to increase the use of litigation to rebut the presumption (Families, Law and Social Policy Research Centre 2003, p. 4). The Australian Institute of Family Studies submission to the joint custody inquiry notes that this would be in contradiction to the family law principle that the use of non-adversarial dispute resolution processes to resolve children's matters be a priority (AIFS 2003, p. 3).

Increased litigation would stretch the resources of the Courts and create pressure on governments to increase funding. Furthermore, any increase in family law litigation would affect demand for legal aid. Such aid is already scarce, and more litigants would be forced to represent themselves, compromising their ability to pursue their cases effectively (Families, Law and Social Policy Research Centre 2003, pp. 4-5).

#### *Compromising safety*

Finally, a legal presumption of joint custody is likely to expose women, children and men to higher levels of violence. The belief that the proposed changes to family law will place victims of family violence and child abuse at further risk of harm is shared among a range of family law, fathering and domestic violence agencies in their submissions to the joint custody inquiry (CANFACS 2003, p. 7; Domestic Violence and Incest Resource Centre 2003, pp. 5-6; Families, Law and Social Policy Research Centre 2003, p. 5). It was also echoed in recent comments by the Family Court's Chief Justice Alastair Nicholson (Crabb 2003).

The proposed legislation is based on a notion of presumed shared residency. This means that separated parents would be required to prove why shared residency should not occur in cases where an ex-partner has been or continues to be violent. This arrangement would be at odds with measures being taken in Australia and overseas to work from a presumption of no contact for a perpetrator of violence (Kaye *et al.* 2003, p. 149). Women or men subject to violence in relationships may be further discouraged from leaving the relationship for fear of their children's safety should joint residency be enforced (Domestic Violence and Incest Resource Centre 2003, p. 5). Most victims of

domestic violence do not report it, and may find it difficult to demonstrate clearly why a perpetrator should not have shared residency of children. The legal presumption is likely to create further avenues through which perpetrators of domestic violence can threaten and harass ex-partners and children (CANFACS 2003, p. 7; Domestic Violence and Incest Resource Centre 2003, p. 7).

These possibilities are particularly troubling given that there are already cases where the practice of family law privileges parental contact with children over children's safety. In recent years, the workings of family law have given weight to children's ongoing contact with both parents even in cases where there is clear evidence that one parent is perpetrating violence against the other partner or against a child (Kaye *et al.* 2003, p. 149). Instead, priority should continue to be given to determining what is in the best interests of the child in deciding residence and contact arrangements for the children of separated parents (ACOSS 2003, p. 4; CANFACS 2003, p. 7; Domestic Violence and Incest Resource Centre 2003, p. 10).

#### 4.5 Progress or regress?

The new politics of fatherlessness has the potential to enhance men's positive involvement in parenting and families. With family politics and family values debate now focusing on fathers, there may be more room to change narrow and oppressive definitions of fatherhood and masculinity (Stacey 1998, p. 55). The belief that it is desirable for men to play an active role in parenting is shared across the fathers' rights movement and feminism (Cornell 1998, pp. 185-186). Yet there are deep divisions between the fathers' rights movement and feminism over what this means and over families and parenting more broadly.

Early 'second-wave' feminism argued for breaking down sexual divisions of labour in both the home and paid work. Feminists called for women's and men's shared parenting, as well as shorter and more flexible working days, parental leave, and the public provision of child care. In other words, they imagined 'creating the material conditions in which opportunities would exist for men and women to care equally' (Williams 1998, p. 80). But in contrast to feminist interest in dissolving the rigidity and inequality of traditional gender divisions in families, the fathers' rights movements typically insist on rigid gender codes within the family and the re-establishment of paternal authority (Cornell 1998, p. 185; Stacey 1998, p. 56). In the writing of prominent fathers' advocate Wade Horn for example, there is a scornful rejection of the 'New Father ideal' in which men adopt nurturant forms of parenting involvement (Stacey 1998, p. 57).

According to Cornell (1998, p. 187), the fathers' rights movement does *not* aim to encourage men to parent. Instead, it wants men to *father*. To be a father is to have paternal authority in a family structured by rigid gender divides. It is for men to be kings in their domains of the family, reminiscent of the saying, 'A man's home is his castle'.

The gulf between the fathers' rights movements and feminism is constituted not only by these diametrically opposed visions of ideal family relations, but also by the perception

of fathers' movements that women and feminism are the causes of fatherlessness. As Stacey (1998, pp. 55-56) notes:

Much talk about fatherlessness portrays feminism as leading women selfishly to deny children the benefits of paternal investment - by choosing to have children outside of marriage and even outside of heterosexual coupling; by deserting or ejecting husbands and fathers they deem unsatisfactory and then taking unfair advantage of maternal child custody preferences; or, alternatively, by driving men away from marriage and paternity through the unreasonable, excessive demand that men embrace a 'new fatherhood' whose responsibilities strike many as uncomfortably similar to those of motherhood.

While in contemporary discussions of fatherlessness there is positive potential, it has yet to be realised. Promoting fathers' positive involvement with children is a laudable goal. But it will not be achieved by ill-considered changes in family law. If a rebuttable presumption of joint custody is neither an appropriate nor effective way to effect this goal, what is?

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