

Media, Men and Violence in Australian Divorce

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Introduction

The *Family Law Act 1975* (Cth) (Family Law Act) created a revolution in family law. Marriage was no longer the hallmark of family life. For the first time a person could get a divorce without having to prove fault. Supporters of the reform included progressive politicians in both major parties. Opponents included bishops from major Christian religions and conservative men's groups.

Some considered the Act to be feminist inspired, partly because it gave the same rights to both men and women. Indeed, the large majority of applicants for divorce in the 1970s were women.

Since the 1970s, newspaper reports often expressed sympathy for men who were affected by the family law system. Commercial talk-back radio also provided a sympathetic forum for men who felt aggrieved because they were not

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allowed to physically stop their wives from leaving. The media coverage sometimes implied that domestic violence should be understood in terms of ordinary men trying to preserve their family or to have access to their children after separation. The popular discourse encouraged disaffected men by offering them solace, justification and mainstream understanding if not support for violent acts.

In the meantime conservative governments, which have always prioritised the traditional male-headed family, became sensitised to the demands of the father's rights groups and began reforming some of the initiatives introduced by the Family Law Act.

Background of the Family Law Act

Australian governments since Federation have been concerned about high divorce rates. Social policy assumed that marriage was the basis of the family, and the family was the basis of society. Consequently, some feared high rates of divorce signalled the collapse of society. Marriage was traditionally 'til death do us part', and centuries of religious influence on English common law made it difficult for the ordinary man or woman to divorce. Many agreed that it was better for society if unhappy couples stayed together rather than divorce. When trouble developed and couples parted, typically the wife was blamed for failing to keep her husband and to hold the marriage together.

By the 1970s, there were thousands of married people living separately, unable or unwilling to divorce under the *Matrimonial Causes Act 1959* (Cth) because of the cost, delays, complexity and embarrassment of the legal process. The procedures often involved collusion, sometimes guided by lawyers and anticipated by the courts, a fact that damaged the reputation of both the legal profession and the legal system.¹ The tabloid press offered frequent exposés such as

¹ Leonie Star, *Counsel of Perfection: The Family Court of Australia* (1996).

the private detective and photographer bursting into a motel room to catch the (real or faked) adulterous couple in action. The Family Law Act removed the relevance of adultery, and denied the media's practice of titillation and voyeurism.

On 8 August 1971, the *Sydney Morning Herald* reported Senator Lionel Murphy, Labor's Shadow Attorney General, had began an inquiry into the 'injustices from outmoded, inefficient and oppressive divorce laws'.² After several long debates in 1974, the Senate Standing Committee reached 'a remarkable consensus' on replacing the notion of matrimonial fault with the grounds of irretrievable breakdown. The major churches opposed the reform and claimed it gave in to social fashion (feminism) and was contrary to the natural family order. On 4 November 1974, the *Sydney Morning Herald* reported that Catholic Bishop Edward Kelly attacked the government from his pulpit for 'taking the value out of marriage' and saying it 'could go down in history as having begun, at the basic level of the unit of society, the destruction of the nation'.

Many were influenced by the views of the church. Within two weeks of the Bishop's attack, the *Sydney Morning Herald* published a letter signed by 132 'parishioners of St Leonard's parish, Naremburn', expressing their 'firm opposition' to the Family Law Bill because divorce was 'a personal disaster and a social evil'.³ Protestant churches also opposed the Bill and in February 1975 the Festival of Light organised a campaign against the reform. Rev Fred Nile was a strident critic of the Labor Government and accused it of taking the 'easy way out rather than building up family life'.

Despite opposition from many quarters and Parliamentary debates lasting two years the Family Law Act was passed on 1 June 1975 and came into effect on 5 January 1976. In theory, marriages that continued after 1975 would be with the free and

² Senator Lionel Murphy, *Sydney Morning Herald* (Sydney), 8 August 1971.

³ *Sydney Morning Herald* (Sydney), 28 November 1974, 21.

equal assent of both parties. However, the theory was flawed by the naïve assumption of a 'level playing field' for men and women in social, economic and employment opportunities. The theory also assumed there was no oppression or controlling behaviour within marriages to stop women from leaving their husbands if they wished.

As matrimonial offences were abolished, the sole grounds for divorce became irretrievable breakdown of the marriage and the evidence was twelve months separation. The new law meant that husbands lost the privileges and status of being the head of the family because no longer could they formally control their wives. Many men were not prepared for the impact this change would have on their personal lives.

The Problem for (some) Men

The divorce reform coincided with the rise of feminism in Australia in the 1970s. Governments were influenced by demands for equality between women and men in all areas of life. The feminist movement in the 1970s received political and bureaucratic support from Gough Whitlam's Labor Government, which came to power on 2 December 1972 after 23 years in opposition. The reforms initiated under Whitlam were considered by some to be radical.⁴ It was no surprise that the government appointed a woman as the first Chief Justice of the Family Court of Australia, Justice Elizabeth Evatt.⁵ However, the legislators clearly did not anticipate the

⁴ In the first year the ALP Government abolished the death penalty, ratified the ILO Agreement 111 against discrimination on the basis of sex, abolished sales tax on oral contraceptives, promoted child care services, established the Australian Legal Aid Office, passed the *Trade Practices Act* and the *Racial Discrimination Act*, and introduced the Human Rights Bill, the Federal Court Bill and the Family Law Bill.

⁵ Former Prime Minister Gough Whitlam recalled he had intended to appoint Kenneth Pawley as the first Chief Justice of the Family Court, but he told Pawley he had 'found someone younger, more attractive, female and Labor': 'Obituary - Justice Kenneth William Pawley' (1993) *67 Australian Law Journal* 482, 483.

reactions to the Family Law Act.

The Family Court began with a rush from a backlog of separated couples, producing the most significant jump in the divorce rate in the nation's history. There were 3,000 applications for divorce filed in two weeks and in its first year of operation there were 76,564 divorces, far in excess of what was expected.⁶ The divorce rate eventually levelled at nearly three times the rate before 1975.⁷ Some women were so keen to divorce they went without a property settlement or agreed to an unfair settlement according to law.⁸ Some women were not intimidated by the economic consequences of divorce which was later described as the 'feminisation' of poverty.⁹

As most applicants for divorce were women, most respondents were men, many of whom felt victimised as they had no defence against the application for divorce if the couple had been separated for twelve months.¹⁰ A proportion of these men were confused and angry that their wives were able to walk away and 'destroy their marriage' with the

⁶ 'Family Court not to Blame, Attorney-General', *Sydney Morning Herald* (Sydney), 4 April 1978; '3,000 Applications for Divorce in Two Weeks', *Sydney Morning Herald* (Sydney), 22 January 1976, 4.

⁷ 'Divorce Increases almost Fourfold in One Year', *Sydney Morning Herald* (Sydney), 5 May 1976, 10; Gordon A Carmichael, 'The Changing Structure of Australian Families' (1985) 57 *Australian Quarterly* 102.

⁸ 'Divorce is still a Long and Painful Operation', *Sydney Morning Herald* (Sydney), 20 December 1977, 7; Anne Riches, 'The Family Law Act: Principle and Practice' in Judy Mackinolty and Heather Radi (eds), *In Pursuit of Justice: Australian Women and The Law 1788 – 1979* (1979) 212, 217; Ruth Weston, 'Money isn't Everything' in Peter McDonald (ed), *Settling Up: Property Income and Distribution on Divorce in Australia* (1986) 279, 307.

⁹ Ruth Weston, 'Changes in Household Income Circumstances' in Peter McDonald (ed), *Settling Up: Property and Income Distribution on Divorce in Australia* (1986) 100; Weston, above n 8, 307.

¹⁰ Australian Bureau of Statistics, 'Vital Statistics: Petitions Filed for Dissolution, Nullity and Judicial Separation' in *Official Year Book of Australia: 1974* (1974) 176; Australian Bureau of Statistics, *Marriages and Divorces Australia 1994* (1995) 71.

approval of the Family Court. Most Australian men had been raised in a society with patriarchal values supported by the law, the churches and hundreds of years of culture. There was a clear division of labour and separate realms of gender, where women were subordinate to men in both public and private life, and where upon marriage women swore an oath to 'love, honour and obey' their husbands. Men were privileged beings, sheltered by their mothers and later their wives from mundane chores and the routines of domesticity. Men essentially had two tasks: to be in control of, and to provide for, the family.

The Family Law Act overturned laws that had developed over several hundred years. The change impacted suddenly and disrupted the personal lives of many men. Some were aggravated further when the Family Court ordered child custody in favour of their former wives. In these men's view it was outrageous that a wife, 'guilty' of desertion, could be rewarded with custody of the children. However, under the Family Law Act there was no fault, and the court decided custody matters by looking at the children's best interest. In addition, the Family Court often gave women a greater proportion of the matrimonial property, because women usually had a lower income, little work experience, no superannuation and often had to provide housing for the children.

The final outrage for some men was being refused legal aid under the means test, although it was approved for their former wives. The Legal Aid Commissions were consequently targeted by men's groups for bias and accused of being in league with the Family Court and part of a feminist conspiracy against men.

Men's Groups – Outrage and Backlash

Since the Family Law Act was passed, disaffected male litigants have felt the Family Court discriminated against them in disputes involving both children and property.

Research found no bias in the outcomes of trials in the

Family Court.¹¹ To the contrary, the involvement of a judge in decision making statistically increased the likelihood of an outcome more favourable to the man.¹² Nevertheless, the Family Court was increasingly vilified in the media for being feminist inspired and biased against men. Some men organised themselves into small but active groups which routinely lobbied politicians, wrote letters to the editor and demonstrated outside the Family Court and the state Legal Aid Commissions.

The 'Divorce Law Reform Association' was possibly the first conservative men's group in Australia, forming in the early 1970s during the debates on the Family Law Bill.¹³ In an ominous sign of future attitudes, the group criticised provisions in the Bill that empowered 'spiteful wives', and gave women 'unfair advantages'.¹⁴

Another group calling itself the South Australian Divorce Law Reform Association lobbied against the Bill on behalf of 'fugitive maintenance slaves in Australia' in 1974.¹⁵ However it was not until the Child Support Scheme was enforced in 1988 that significant numbers of men complained about having to pay maintenance, and joined the ranks of men lobbying against the 'unfair' Family Court system.¹⁶

¹¹ F M Horwill, 'The Outcomes of Custody Cases in the Family Court of Australia' (1979) 17(2) *Family and Conciliation Courts Review* 31.

¹² Don Edgar et al, *Information Collection under the Family Law Act: Melbourne Family Court Hearings* (1983); F Horwill and S Bordow, 'The Outcome of Defended Custody Cases in the Family Court of Australia' (Research Report No 4, Family Court of Australia, 1983).

¹³ 'Stop Divorce Advice - Judge', *Sydney Morning Herald* (Sydney), 14 August 1973; "'Disgraceful," Judge tells Reform Body', *Sydney Morning Herald* (Sydney), 16 March 1974.

¹⁴ 'Fraser Amendment on Divorce Bill Attacked', *Sydney Morning Herald* (Sydney), 28 May 1975.

¹⁵ Commonwealth, *Senate Standing Committee on Constitutional and Legal Affairs: Transcripts of Evidence 1974*, Parl Paper No 315 (1974) 251.

¹⁶ The *Child Support (Assessment) Act 1989* (Cth) made it difficult for non custodial parents (mostly men) to avoid their maintenance obligations and contributed to many men's opposition to the Family Court system and to the rise of the 'men's movement' in Australia.

In the 1980s, there developed a phalanx of reactionary men's groups oriented against the Family Court because they claimed it was unfair to men. The groups included the 'Army of Men', 'Abolish Child Support/Family Court Party', DADS (Dads Against Discrimination), 'The Family Law Reform Association NSW Inc.', 'Parents Without Rights', 'Equality for Fathers', the 'Lone Father's Association'; DAWMA (Defence Against Women Marriage & Alimony); FORCE (Fathers Organisation for Revolutionary Custody Entitlement), the 'Men's Meeting Place', the 'Men's Confraternity', 'Save Our Families' and 'Family Action'.¹⁷ Also, religious groups such as the Festival of Light and Right to Life continued to oppose the Family Law Act for being contrary to the natural family order.

Despite the number of groups and their success in using the media there was no indication they represented a significant number of men. Numbers were in fact small and many groups survived because of the tireless efforts of particular individuals.¹⁸ One example was Nevil Abolish Child Support and the Family Court, who changed his name by deed poll, and headed Parents Without Rights for over eight years.¹⁹

The Beginning of Domestic Violence

Domestic violence as we know it in Australia began in the 1970s. There had always been wife-killing and matrimonial cruelty and Australian cases were typical of common law societies where the courts tolerated a moderate degree of wife-beating, within limits, to keep the wife under control and the

¹⁷ Regina Graycar, 'Equal Rights versus Father's Rights: The Custody Debate in Australia' in Carol Smart and Selma Sevenhuijsen (eds), *Child Custody and the Politics of Gender* (1989).

¹⁸ Miranda Kaye and Julia Tolmie, 'Fathers' Rights Groups in Australia and their Engagement with Issues in Family Law' (1998) 12 *Australian Journal of Family Law* 19, 22.

¹⁹ 'Nevil With a Cause', *The Age* (Melbourne), 3 October 1987.

family together.²⁰ There was broad acceptance of patriarchal assumptions that a wife should obey her husband, although these attitudes were not uniformly accepted and began changing rapidly in Australia in the 1960s.

The social changes in the 1970s led to a raft of 'equality' reforms that impacted significantly on the personal lives of men. Not only did the Family Law Act abolish fault, enable women to leave their husbands, and for the first time reflect equality in the marriage, but anti-discrimination Acts also enabled women to sue for discrimination based on sex.²¹ Increasing numbers of women began leaving oppressive marriages, living independent lives, entering the job market and competing with men at many levels in society.

Many men in Australia were emotionally unprepared for these changes. Their world view was formed by the long history of law that reflected patriarchy and helped subordinate women. The major religions also approved of the male-headed hierarchy in the family and opposed the Family Law Act. Much of the popular media espoused sympathy and understanding for men who were 'driven to extremes' by feminists and the Family Court and who were denied legal aid.

It is understandable that some men felt their masculinity was challenged or diminished because they were no longer considered the family head with control over their wives. The new laws obscured what had been a man's natural authority and denied men historical privileges enjoyed by their fathers and grandfathers. As desertion was no longer a matrimonial offence, men could do little about their wives who escaped oppression by walking out and taking the children. At that

²⁰ See, for example, *Egan v Egan* (1910) 26 WN (NSW) 184; *Anderson v Anderson* (1927) 44 WN (NSW) 9; and *Maney v Maney* [1945] Tas SR 15.

²¹ A distinct jurisdiction of law began with passage in Victoria of the *Equal Opportunity Act 1977* (Vic), followed by the *Anti-Discrimination Act 1977* (NSW), *Equal Opportunity Act 1984* (WA), *Sex Discrimination Act 1984* (Cth), *Discrimination Act 1991* (ACT), *Anti-Discrimination Act 1991* (Qld), *Anti-Discrimination Act 1992* (NT) and the *Sex Discrimination Act 1994* (Tas).

point, some men used threats, intimidation and violence to stop their wives from leaving or to force them to return.

It is likely that violence by men against women in domestic circumstances increased significantly in the 1970s in reaction to the empowering of women brought about by the Family Law Act. Until that Act commenced, many women with controlling or abusive partners were compliant. They had no option but to tolerate the abuse and remain in their homes. Many women could see no alternative to providing a home for their children. Many were tied to their husbands by social, familial, religious and internalised expectations to preserve the marriage and to protect the children from the effects of a 'broken home', regardless of the personal sacrifice involved. As some women tolerated the abuse for these reasons, acquiescing to control by their husbands, these men were appeased and their abuse did not progress to physical violence.

Once women had an alternative to the abuse, in the form of 'easy' divorce under the Family Law Act, some men resorted to violence to maintain control over their wives. Suddenly there was a real need for women's refuges. While statistics for domestic violence are not available prior to 1975, there was an abrupt and overwhelming demand for places in women's refuges. In 1974 'Elsie' opened as the first women's refuge in Australia. It was the result of direct action by Sydney feminists who seized a house owned by the Church of England and then demanded government assistance.²² Similar direct actions by feminists caused a groundswell and by 1979 there were more than 100 government-funded refuges in Australia and 265 refuges by 1990.²³

²² Anne Summers, Report, *Sydney Women's Liberation Newsletter*, May 1974; Anne Summers, *Damned Whores and God's Police: The Colonization of Women in Australia* (1975) 517-9; Vivien Johnson, *The Last Resort: A Women's Refuge* (1981).

²³ Department of Prime Minister and Cabinet, Office of the Status of Women, *Women's Budget Statement 1990-91* (1990) 110; Judith Healy, *After the Refuge: A Study of Battered Wives in Adelaide* (1984).

The first analysis of domestic violence in Australia was a 1975 study of 184 cases that came before magistrates in New South Wales.²⁴ In the same year, the Australian Institute of Criminology marked 'International Women's Year' by presenting a seminar on 'Women as the Victims of Crime' and called for legal reforms and funding for women's refuges.²⁵ Following the 1977 Royal Commission on Human Relationships, which found that 'family violence is common in Australian society ... [and] the damage done to women is often severe', all State governments conducted separate inquiries into domestic violence and independently reached conclusions similar to those of the Royal Commission.²⁶

The NSW Bureau of Crime Statistics found that between 1968 and 1981, 43 per cent of all homicides in New South Wales occurred within the family, involving 79 husbands killed by their wives and 217 wives killed by their husbands.²⁷ In almost all of the cases of husband killing there was a history of domestic violence by the husband against the wife.²⁸

²⁴ NSW Bureau of Crime Statistics and Research, *Domestic Assaults*, Statistical Report 5, Series 2 (1975).

²⁵ Resolutions 13 to 21; John P Noble, *Women as the Victims of Crime* (1975) 7, 7-9.

²⁶ Commonwealth, Royal Commission on Human Relationships, *The Family* (1977) vol 4, 133; Attorney General's Department, South Australia (1981); NSW (1983); Department for Community Welfare, Northern Territory (1983); Victoria (1981-85); and Western Australia (1985); Task Force on Domestic Violence to the Western Australian Government, *Break the Silence: Report of Domestic Violence Task Force* (1986) 20.

²⁷ NSW Bureau of Crime Statistics, *Homicide in New South Wales: 1968-1981*, includes both de jure marriages and de facto relationships; Alison Wallace, *Homicide: The Social Reality* (1986).

²⁸ Wendy Bacon, *Women Homicide Offenders in NSW* (1982); Stella Tarrant, 'Something is Pushing Them To The Side of Their Own Lives: A Feminist Critique of Law and Laws' (1990) 20 *Western Australian Law Review* 573; Stella Tarrant, 'A New Defence in Spouse Murder' (1992) 17 *Alternative Law Journal* 67.

Violence against the Court

In addition to the increase in domestic violence, the Family Court of Australia came under violent attack within five years of its inception. These attacks appeared to be calculated and sophisticated acts of terrorism. However, no arrests were made and the crimes remain unsolved. Much of the media response to the violence against the court and its judges suggested that at some level the Family Court was responsible for the violence perpetrated against it.²⁹

On 23 June 1980, Justice David Opas was shot dead with a single round from a small caliber rifle in front of his young family outside his Sydney home. Justice Michael Gee was then appointed to replace Justice Opas in the Family Court at Parramatta. At 1.45am on 6 March 1984 about ten sticks of gelignite demolished the home of Justice Gee while he and his young children were asleep in the rear of the house. Five weeks later on 15 April 1984 another bomb devastated the entrance to the Family Court at Parramatta. Then on 4 July 1984 a bomb was set to explode with a booby trigger at the Greenwich home unit of Justice Ray Watson. His wife Pearl Watson died instantly at 8.12am that day when she opened her front door.

The day after the killing of Pearl Watson the leader in the *Sydney Morning Herald* claimed that some would feel 'there must be something seriously wrong with the Family Court system for such an outrage to occur'.³⁰ According to Sydney's *Daily Mirror* the incident showed the Family Court was

²⁹ Therese Taylor, 'Australian Terrorism: Traditions of Violence and Family Court Bombings' (1992) 8 *Australian Journal of Law and Society* 1, 18; Taylor's analysis of responses to the attacks on the Family Court refers to the few dissenters who argued it was the perpetrators and not the Family Court that should bear the blame for the violence. See also, Patricia Abrahams, 'Violence Against the Family Court: Its Roots in Domestic Violence' (1986) 1 *Australian Journal of Family Law* 67.

³⁰ *Sydney Morning Herald* (Sydney), 5 July 1984.

'losing the war on divorce', implying the attacks were broadly based and not the actions of one or a few individuals. Some comments almost invited the reader to commiserate with the perpetrators of the crimes, as if they were the real victims with legitimate claims.

Sydney's conservative religious leaders, long-time critics of the Family Law Act, sought advantage from the bombings. The front page of the *Sydney Morning Herald* reported the Dean of Sydney saying: 'Good could come out of the evil bomb blasts. A review of the Family Law Act is urgent.'³¹ And according to the *Bulletin* on 17 July 1984, an article titled 'Family courts – too much of a revolution?' claimed the violent attacks against the Family Court, its judges and their families 'have exposed serious flaws in our divorce machinery'.³²

A subheading on the front page of the *Sydney Morning Herald* on 6 July 1984 read, 'There are a lot of bitter, angry men out there'. Similarly *The Australian* published a letter from the chairman of the Festival of Light who said 'such an extreme reaction must have been triggered off by a deeply felt sense of injustice.'³³

The legal profession was silent, showing an embarrassing lack of support for the Family Court following the shootings and bombings. A rare exception was Justice Michael Kirby who regretted 'that the notable silence of the legal profession

³¹ *Sydney Morning Herald* (Sydney), 9 July 1984, 1 quoting Rev Lance Shilton, Dean of Sydney; Justice Michael Kirby commented with alacrity in a speech to the Victorian Ethnic Communities Council that one of the 'sorriest features of the media coverage' was the 'widespread attention given (to the proposition) that good could come out of the evil of bomb attacks on the homes of Family Court Judges...', as reported by Victoria Green and Robin Urr, 'The Media and the Family Court of Australia: A Marriage of Inconvenience?' (1987) 12 *Legal Service Bulletin* 243, 245.

³² 'Family Courts – Too Much of a Revolution?' *The Bulletin* (Melbourne), 17 July 1984, 3, 32.

³³ Letter from the Chairman of the Festival of Light, *The Australian* (Sydney), 12 July 1984, 89.

in defending the Family Court, despite the terrible events ... (shows they are) hide-bound traditionalists who naively think (we should be) ... returning to concepts of fault in marriage breakdown.'³⁴

The terrorism against the Family Court was successful. The government appeared to 'get the message' from the bombings and killings and agreed to talk with the fathers' rights groups. Then Attorney-General Gareth Evans wrote to several groups including the Lone Fathers Association requesting a dialogue on changes they would like to see in family law.³⁵ *The Australian* reported him as adding 'there will have to be some more thinking about the whole future of the court'. A week later in the front page article titled 'Hit List – Three judges named', the *Sydney Morning Herald* reported a comment from FLAG (Family Law Action Group) stating, '[y]ou will get more response from the politicians about changing the Act if a few more get killed.'³⁶

Clearly the government was willing to negotiate with terrorists. The government's responsiveness suggested that violence in some cases is justifiable. In the meantime, divorce rates continued to climb and thousands of women and children sought protection from violent men in newly established refuges across the country.

Government Responses to Domestic Violence

In 1980, a Joint Select Committee proposed amendments to allow the Family Court to recognise domestic violence in determining custody disputes, but they were rejected by the Liberal Government.³⁷ While official concern about domestic

³⁴ Green and Urr, above n 31, 246.

³⁵ *Sydney Morning Herald* (Sydney), 6 July 1984, 1.

³⁶ 'Hit List – Three Judges Named', *Sydney Morning Herald* (Sydney), 13 July 1984, 1.

³⁷ Joint Select Committee on the Family Law Act, Australian Parliament, *Report of the Joint Select Committee on the Family Law Act* (1980).

violence increased, so too did the rates of violence. In 1985 there was a National Conference on Domestic Violence in Canberra, followed by another National Conference in 1987. By 1989 all the Australian States had legislated to enable women to apply for restraining orders to discourage male violence.³⁸

The risk to women seemed to worsen with commencement of the Child Support program in 1988. The father's rights groups uniformly opposed the scheme and protested that the amounts levied by the formula were too high, and there should be some 'balance' between the child support they paid and the child contact they received.³⁹ In addition, the groups alleged that women often made false accusations of domestic violence and applied for protection orders to give them an advantage later in contested child residence and contact disputes.⁴⁰ A third common complaint was that many women poisoned the minds of their children against the fathers causing 'parental alienation syndrome'.⁴¹

Complaints by men's groups intensified in the late 1980s.⁴² They continued to articulate their opposition to the Family

³⁸ Amendments were made in 1982 to the Justices Act 1921 (SA) and the Justices Act 1902 (WA); *Crimes (Domestic Violence) Amendment Act 1983* (NSW); *Peace and Good Behaviour Act 1982* (Qld); Amendments were made in 1985 to the *Justices Act 1959* (Tas); *Crimes (Family Violence) Act 1987* (Vic); *Criminal Code (Amendment) Act 1989* (NT).

³⁹ Joint Select Committee on Certain Family Law Issues, Parliament of Australia, *Inquiry into the Operation and Effectiveness of the Child Support Scheme* (1998).

⁴⁰ Submission to Australian Law Reform Commission, in response to Australian Law Reform Commission, *Speaking for Ourselves: Children and the Legal Process*, Issues Paper No 18 (1996).

⁴¹ Carolyn Quadrio, 'Parental Alienation in Family Court Disputes' (Paper presented at the Child Sexual Abuse: Justice Response or Alternative Resolution Conference convened by the Australian Institute of Criminology, Adelaide, 1 2 May 2003).

⁴² Commonwealth, *The Family Law Act 1975: Aspects of its Operation and Interpretation – Report of the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act*, Parl Paper No 326 (1992) 99-100.

Court with the assistance of the media. In 1996, on the day after Jean Majdalawi was killed with five bullets fired by her husband in front of the Parramatta registry of the Family Court, the *Sydney Morning Herald* gave page-one space to the president of DADs (Dads Against Divorce), quoting him saying 'men could kill when their children are taken from them, or (when) the mothers frustrated court-authorized access visits'.⁴³

The *Family Law Amendment Act 1995* (Cth) was a capitulation. This Act imposed shared parenting of children in some cases, also called 'joint custody', which had been a major demand of father's rights groups since the 1970s. The Joint Select Committee in 1992 had recommended *against* shared parenting, favouring instead keeping the focus on the best interests of the child, which meant in most cases giving custody to the primary caregiver.⁴⁴ It was apparent that 'shared parenting' was based more on electoral advice than on the interests of children or considered research. The object was to satisfy a relatively small but vocal number of men who were prepared to take extreme action and who, with the assistance of the press, had represented themselves as having mainstream support.

One researcher noted the irony in the 1995 Act which imposed 'equality with a vengeance' and that while women continued to perform the larger share of care-giving work in families, father's rights groups did not demand reforms that would give them greater responsibilities for children *before* separation.⁴⁵

⁴³ *Sydney Morning Herald* (Sydney), 22 March 1996.

⁴⁴ See Parl Paper No 326 (1992), above n 42, 111; see particularly at 106 where the Committee cautioned against 'the potential damage to children' that might result in cases where shared parenting was imposed on unwilling parents.

⁴⁵ Helen Rhoades, 'Posing as Reform: The Case of the Family Law Reform Act' (2000) 14 *Australian Journal of Family Law* 142, 156; B Arendt, 'When School's Out for Fathers', *Sydney Morning Herald* (Sydney), 4 May 1996 acknowledges that men's groups had influenced new family law policies.

As the Courts apparently failed to get the Government's message and continued to apply the child's best interest in custody decisions, the Family Law Amendment (Shared Parental Responsibility) Bill 2005 (Cth) was introduced recently. This Bill imposes a rebuttable presumption of shared parenting. Fathers who 'win' joint residence of children would generally need to pay less child support and in many cases would receive a larger proportion of the matrimonial property.

The Bill ignores research on domestic violence, especially the effects on children of witnessing violence and abuse between their parents, and the experience of other jurisdictions, such as California which repealed similar legislation after nine years.⁴⁶ Evaluations there found joint custody further disadvantaged and impoverished women, and destabilised and hurt children, especially where parents were not cooperating.⁴⁷

Conclusions

There was optimism in the legal profession and parts of the community in the early 1970s that the challenging mix of law and social science in the Family Law Act would contribute to the quality of family and personal life in Australia. However, in the first 14 years of its life there were eighteen constitutional challenges to the validity of the Act.⁴⁸

In the late 1870s and 1880s Sydney's *Bulletin* published vitriolic letters from men railing against activist women.⁴⁹

⁴⁶ Renata Alexander, 'Law Ignores the Reality of Split Families', *The Age* (Melbourne), 16 December 2005.

⁴⁷ Margaret A Little, 'The Impact of the Custody Plan on the Family: A Five Year Follow Up' Executive Summary. Statewide Office of Family Court Services, Administrative Office of the Courts, State of California; Hugh McIsaac, 'Parenting Our Children: In the Best Interest of the Nation' (1996) Report of the U.S. Commission on Child and Family Welfare.

⁴⁸ Star, above n 1, 156; Riches, above n 8, 213.

⁴⁹ Cartoon entitled 'Relief' in *Bulletin* (Sydney), 28 March 1885 and 5 June 1886. See also, *Sydney Morning Herald* (Sydney), 29 November 1875.

Similarly in the 1970s much of the popular media in Australia was critical of feminist initiatives and many leaders took the man's position in criticising the Family Court.⁵⁰ The churches used the media effectively in the debate against reforming divorce and their criticisms of the Family Court were shared by men who felt themselves victims of an unjust system. Both the churches and men's groups stood to lose from the symbolic loss of the marriage-based family as the corner-stone of society.

The popular view of the Australian marriage saw it as something women wanted and men avoided. However, research shows that most men got more out of marriage than women, and women usually coped better than men after divorce.⁵¹ The Family Law Act and other reforms helped to overturn official forms of patriarchy. The process included significant changes in areas of material and symbolic importance for the self-identity of some men, leading them to experience a 'crisis of masculinity'. Some men reacted violently even to the point of murder and received a degree of understanding if not justification through the media. The decisions of the editors to publish letters and articles that were supportive or at least not critical of the violence may not reflect mainstream public opinion at the time, but possibly an attempt to appease dissenters and promote conservative views at times of significant cultural change.

The media was culpable for reporting the violence uncritically, giving a voice and therefore credibility to the perpetrators and their attitudes. The press assumed the role of neutral observer presenting a 'balanced' view, as if violence had as much integrity as non-violence. The reports supported the perpetrators by implying that violence might be

⁵⁰ *Sydney Morning Herald* (Sydney), 28 May 1975.

⁵¹ Peter K Jordan, 'Men Hurt: The Effects of Marital Separation on Men', (Research Report No 6, Family Court of Australia, 1985); Peter K Jordan, 'The Effects of Marital Separation on Men' (1988) 12 *Journal of Divorce* 57; Peter K Jordan, 'Ten Years On – The Effects of Marital Separation on Men' (1997) 11 *Australian Journal of Family Law* 133.

understandable in some circumstances, such as when a man faced losing the control of his wife and family. The media also facilitated attacks on the Family Court by uncritically repeating the assertions of the perpetrators and their supporters who claimed that the law reforms had 'gone too far' in giving women equal rights and failing to acknowledge the natural entitlement of the man as the head of the family.

The political response was and remains one of expediency. In attempting to preserve the marriage-based family and discourage women from separating, most governments have played down the significance of male controlling violence. The latest amendments to the Family Law Act appear to be a political acquiescence to a vocal male minority of disaffected litigants posing as the silent majority and purporting to present a mainstream view. Specifically, the latest reforms accept the view that many women make false allegations of domestic violence to get a better hearing in the Family Court. Consequently the law now discourages women from raising the issue of domestic violence by penalising those who do so without proof. While domestic violence is a complex issue, researchers and those who work in the area know that 'proof' exists in relatively few cases of real violence, and the worst cases involve years of abusive and violent behaviour often affecting children and for which there is very little evidence aside from the woman's testimony.

Similarly, the current reforms negate well-grounded case-law on the best interests of the child and ignore decades of research confirming the importance of the primary care giver in maintaining responsibility for the child. Women wanting to separate now face exposing their children to joint custody, albeit in the guise of 'shared parental responsibility'. As an example of social engineering, the reforms are likely to succeed, because many women in violent relationships will at least hesitate before deciding to leave, reducing the apparent rate of marriage breakdown. Some women will tolerate their unhappy situation for longer and some will remain with their abusive partner, risking exposing the children to more violence, rather than endure a legal fight over parenting orders they are likely

to lose. The current rules forcing courts to consider the option of joint custody ignores the fears of these women and the lessons from history. Matrimonial fault has been reintroduced by punishing those who value their safety and wellbeing, and that of their children, more than the notion of family, inviting a new era in male-dominated family life.