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Shared parenting was enshrined in changes to the Family Law Act in 2006, but as **Malcolm Knox** discovers, the only thing that many separated parents now share is confusion, isolation and heartbreak.

**A**NNA\* AND HER ex-husband had been sharing the care of their three-year-old daughter and two-year-old son for nearly a year when she noticed a change in the toddlers' behaviour.

"We'd split up when they were very young and had a shared parenting agreement," she says. "Then, one day, my son said his grandfather had 'done a wee' on his stomach. As I watched them, they started to act out in a highly sexualised way, putting toys in their anuses and licking each other's genitals, and my daughter said she'd touched her grandfather's doodle."

Stunned – sexual misconduct had not been part of her marriage split – she asked her ex-husband, Michael\*, to stop the children sleeping over with his

parents. "He refused and I agonised for a week over what to do," Anna says. "But I just thought if it was another child, I would certainly report it."

If only it were that simple. Going through the criminal justice system was unthinkable for Anna, as the children were too young to give evidence. Reporting it to community services risked having the children put into state care.

So Anna took her evidence to the Family Court, setting off a nightmarish chain of events. By the end of it, she would find herself accused of manipulating her children to deny Michael access and be designated an "unfriendly parent" under the auspices of the Family Law Act. The court deemed her mentally unstable, reducing her access. In a turn of the tables two years ago, a Family Court judge ordered that Michael have sole custody of the children. >

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“After a three-day trial, the kids, who’d been living with me, were taken away,” Anna says, breaking down. “I wasn’t even allowed to say goodbye to them. They didn’t have clothes, toys, anything. They were just gone, like that, and security took me out of the building like I was a criminal. The only lesson I learnt was, don’t report sexual abuse because if you do, you will lose your children. Reporting it was the worst thing I ever did.”

Professor Freda Briggs of the University of South Australia says, “A third of women who lose their children in the Family Court are labelled mentally ill.” She calls Anna’s case “the victim’s dilemma – if you report violence, you risk seeing less of your children, who, because of the action taken against you, end up spending more time with the abusive parent”.

If not for changes to the Family Law Act in 2006, Michael would not have had regular access to the children in the first place. If the separation had taken place 10 years ago, Anna would probably have had sole custody. Yet after several years in which men’s groups lobbied against a perceived bias in the Family Court, the Howard government changed the law to favour “shared parenting”, recognising that children’s interests were best served by substantial time with both parents. The new law said children “have the right to know and be cared for by both parents, regardless of whether their parents are married, separated, have never been married or have never lived together”. The Gillard Labor government is now attempting to reverse some – but not all – of those changes.

In 2006, Canberra was swayed by the belief that women were using the Family Court, in the words of Melbourne academic John Hirst, as “a poison-pen service”. Wayne Butler, a member of the Shared Parenting Council of Australia, says, “We’d been concerned about mothers taking out AVOs [Apprehended Violence Orders] against fathers based on spurious allegations, then using them in the Family

Court. If there’s genuine domestic violence, action should be taken. Our concern is where the allegation is used as a tactic to gain advantage in a Family Court matter.”

The Howard government changed the law to make an accuser pay legal costs if the claims were proven to be knowingly untrue. The accuser also faced being labelled an “unfriendly parent”, with repercussions affecting custody, for influencing the children against the other parent. It was under this new regime that Anna lost her son and daughter.

Separated fathers were mostly happy with the 2006 changes, which they saw as redressing an imbalance in favour of custodial parents, mostly mothers. “Before 2006, there was a groundswell of opinion that the Family Court was tailing fathers and children,” says the Shared Parenting Council of Australia’s federal director, Edward Dabrowski. “There was a default position favouring sole mother custody, with the onus on fathers to prove that more time with them would benefit the children.

“By pushing parenting onto one parent, usually the mother, it meant more litigation from fathers to claw back what they had lost. In the shadow of the law – the expectation that they would lose – many fathers gave up.”

The swing back in fathers’ favour brought some bizarre results. In one case, a mother had to live in a caravan on the edge of Mount Isa, Queensland, with her children, despite having no friends or family there, because her ex-husband didn’t want to give up his job there as a mining engineer. In another, a mother was ordered to move her three children from Tasmania to her ex-husband’s town in Victoria, despite

their unwillingness, because the law prescribed substantial time with both parents. In a third, two young children were sent for equal time to their father, a convicted user of child pornography. On appeal, their mother had the time slightly adjusted in her favour, but the children still had to spend every second weekend and half their school holidays with him.

The shift toward shared parenting dates to legislative changes soon after the Howard government was elected in 1996. A year later, divorced mother-of-one Wendy\* lost custody of her four-year-old daughter to her ex-partner, a convicted paedophile with AIDS.

“I’d left him when I found out he’d caught AIDS from picking up prostitutes,” says Wendy. “When our daughter was two, he went to the Family Court to get shared access. I fought it, but the court never wants to rake over the past. It listened to his arguments that our daughter should have a father as well as a mother. I panicked and ran away with her to another state.”

After three months in hiding, Wendy was found and brought back to the Family Court, which awarded the father full time custody. “For the next

nine years, I was the one who had limited, supervised access,” Wendy says.

“The court didn’t give a stuff about the safety of my daughter. It was all about the importance of shared parenting.”

During those years, Wendy spent \$200,000, eventually gaining a court-ordered co-parenting

agreement. “I agree with co-parenting in ‘normal’ families. But how do you cooperate with this kind of man when you know what he’s done?”

Family disputes are the most emotionally fraught of all and can prompt desperate behaviour. Last month, a protesting father scaled Sydney’s Harbour Bridge.

**30%**

of separated mothers and fathers say their relationship with their child is either neutral or friendly

Less than a week later, another father killed his former wife and daughter in a murder-suicide.

The Family Court, established in 1976, was designed to be approachable. Judges discarded their wigs, proceedings were meant to be more "caring" and the Family Law Act abolished the concept of fault in divorce. Domestic violence gained greater recognition as a cause for separation and in the court's first year, divorce applications rose from 28,000 to 66,000, mainly as women were able to air their grievances and escape from abusive husbands through the court's new "user-friendly" procedures.

The Family Court was meant to be different and when this writer spent time in it late last year, I found it different all right. The Family Court is a vale of tears. I saw the kind of raw passion you seldom get even in murder trials. I saw men and women break down sobbing, or turn steely with the effort to hold it together.

The cross-examinations are just as stringent as in the criminal courts, with the difference being that the questions are about how gently a woman handed her ex-husband a drink bottle, or what a child said about how much she hated her mother. Despite procedural changes to make the process less adversarial, the Family Court is still a court and every day sees the brutal forensic exposure of the poisonous trivialities that gut families.

The only sane conclusion, having witnessed the Family Court in action, is

in the Family Court, by definition, they're not communicating."

Kathleen Swinbourne of the Sole Parents' Union of Australia agrees. "The Family Law Act sets out an ideal that people should aim for," she says, "but in reality, the cases that come to court are the last that could and should have shared custody because they're the cases with the most conflict and where children are the most vulnerable."

Kathleen says the cases where shared parenting works are the exception rather than the rule. "I'm a single parent and I grew up in a single-parent household," she says, "and the constant juggling of arrangements makes things so hard for kids.

"Very young children often need things only their mothers can give them, such as breastfeeding, and teenagers often prefer having a base rather than switching home all the time. Even when there isn't violence, shared parenting isn't always ideal."

IT WOULD BE wrong to presume that women are the only ones hurt by the changes to family law. Jonathan\* is a miner in outback Queensland who has spent \$90,000 over the past three years trying to get the Family Court to enforce its own orders and let him see his two children.

"Jonathan came to me with tears in his eyes," says Barry Williams, who founded the Lone Fathers Association almost 40 years ago. "I've been in lots of mining towns seeing these men who are underground

went okay for a while until she started pulling out last-minute excuses why the kids couldn't see me," he says.

This period coincided with Clive finding a new partner. Yet when that relationship broke down – "my partner couldn't handle the stress of what was happening with me trying to see the kids" – he says Michelle again allowed him to share the parenting.

"When I was single, it worked fine. I saw them every second week," says Clive. "Then Michelle said, 'Let's get back together and you can see them as much as you like.' I didn't want to and she went back to disappearing when I turned up for visits."

He obtained a Family Court order requiring Michelle to give him access, but when she defied it, the court did not enforce it. "I sent her text messages arranging when I'd pick them up, but she wouldn't reply or turn up."

Eventually, he found they had moved interstate. "I haven't seen them since 2007," Clive says. "I found out what school they go to and the court order allows me to see their report cards and photos, but that's it.

"I went to the police and they said I should wait outside the school and say hello to the kids when they come out, but I don't want to do [that]. I've played by the rules, but because the court won't follow through with its orders, Michelle ends up controlling my life even when she's not in it."

He continues to pay Michelle \$380 a week in child support, which he has done

**"I've played by the rules, but because the court won't follow through with its orders, Michelle ends up controlling my life even when she's not in it."**

that you would have to be crazy to let things get that far. Which is precisely the point made by many women's advocates, who say that the Family Law changes of 2006 ignore the simple fact that the people who need to go to the courts are those least equipped to receive the "ideal" prescription of shared parenting.

"Shared care is great when the parents can communicate," says Robyn Cotterell-Jones, director of the Victims of Crime Assistance League. "But when they're

risking their lives trying to keep their families together. They're rightfully paying child support, they have no history of violence and they know that shared parenting doesn't mean 50:50 time sharing. Yet the Family Court won't do anything to enforce its own orders when they're being defied by custodial mothers."

When Clive\* and his wife, Michelle\*, split up six years ago, the court ordered a shared parenting agreement. "She'd left me for someone else, but the visitations

without fail since 2004. He has remarried and the financial stress increased when the son he has had with his new wife, Mary\*, was born with cystic fibrosis.

"Some people tell me I should just move on, I've got a new family now," Clive says. "But I have two children who are eight and six years old who barely know me. I'm back in the Family Court system now, representing myself, so that even if it doesn't work out those two kids will eventually know that I never stopped trying."

**“Divorce doesn’t always break families; it often fixes them. You can still be a ‘normal’ family after separation. You’re always a parent, whether it’s ‘your weekend’ or not.”**

Wronged men’s grievances with the Family Court have had as much legitimacy as women’s. Coral Slattery formed the Family Law Reform Association in 1991 and praises the 2006 changes. “We think it’s been going very well,” she says. “Both parents are entitled to a relationship with their children. The nature of families has changed, so that men aren’t necessarily the breadwinners with women staying at home, and shared parenting reflects this.”

Mostly, she sees the benefits in what’s *not* happening so much now. “We had men come to us who had not seen their children in years and it was increasing their animosity and driving them to suicide. If you saw the crying men coming to meetings, you would never forget it.”

Sue Price, of the Men’s Rights Agency, fears a “roll back” from shared parenting in the Family Court and believes individual judges are using their broad discretion to favour custodial parents. “Even though the judges favour custodial mothers,” she says, “it’s been shown that children do better when they have both parents in their lives. They’re more confident and happy when they can live with both families.”

That’s the case for Edward Dabrowski, who, since his divorce 10 years ago, has shared the parenting on a 40:60 time ratio with his ex-wife. “My children are doing well in school and move seamlessly between my home and their mother’s. I pay significant support to my ex-wife because I want to see the kids looked after and we’re flexible with pick ups. It is far and away the best result for the kids.”

It is, but level-headed parents such as Edward aren’t typical of the horror stories that get bogged in the court itself. For those cases, Professor Briggs calls for a revamp. “It’s a very adversarial court,” she says. “Only the wigs are missing. We need a different style of court, where the judges are trained in the care and needs of children.”

After the Labor Party won power in 2007, several academic studies were commissioned into whether the pendulum

had swung too far away from mothers. The biggest of those surveys, by the Australian Institute of Family Studies (AIFS), which gathered 28,000 responses from participants and professionals, found that 71 per cent of respondents believed the 2006 changes favoured fathers at the expense of mothers and 61 per cent thought the changes favoured parents’ rights over children’s.

The AIFS study found overall satisfaction, more than 80 per cent, with disputes that were resolved outside of court. Yet the cases that go to court tell a different story. The report found a “significant ... increase in delays and costs” for Family Court cases since 2006.

Six other studies were delivered in 2010, leading to a bill, now before the parliament, proposing to remove “unfriendly parent” and costs provisions, which were seen potentially as a disincentive to report violence. It broadens the definition of “family violence” to include financial and psychological bullying.

The University of South Australia’s Dale Bagshaw, who wrote one of the research studies, says, “More than a thousand people responded and it was like a cracked record, hearing of physical or sexual abuse by men against women and psychological or emotional abuse by women against men.

“In criminal law, there’s a narrow definition of violence. But what about when a woman is fearful of future violence? Some women we spoke to couldn’t go to the toilet or eat without permission. Some had their finances controlled down to the last dollar. Sometimes the man was abusing a pet, to create fear in the home. None of these meets the criminal standard for violence, but they should be recognised as violence in family law.”

The draft bill is, however, leaving the priority of “shared parenting” intact. If that was an attempt at compromise it has so far failed, with the federal Opposition saying it would vote against the changes.

Zoe Ratus, a family law academic from Griffith University, says the presumption of shared parenting is at the heart of the problem. “The 2006 changes entrenched

two principles: shared parenting is desirable for children and

they must be protected from violence. But those two aims are in such regular conflict in Family Court cases, it was never going to be workable.”

The real hope, says Kathleen Swinbourne, is for separated partners to “learn how to parent across two households ...

Divorce doesn’t always break families; it often fixes them. You can still be a ‘normal’ family after separation. You’re always a parent, whether it’s ‘your weekend’ or not.”

Such commonsense has come too late for Wendy and Anna, who face a lifetime of estrangement from their children. Their experience is the wreckage of a system caught between high principles of care and differentiating truth from the vicious lies common in family break-ups.

Anna believes her children have paid an irrevocable price for her honesty. For Wendy, whose daughter later ran away from her paedophile father, reconciliation is ongoing. “She asks me why I didn’t try to run away with her again,” Wendy says. “I say I’d have been thrown into jail and she wouldn’t have seen me at all. I keep telling her that I fought and fought and fought. One day, I hope she’ll understand that I never stopped fighting for her.”

\* Names changed for legal reasons.

25%

