

## WON'T SOMEBODY THINK OF THE CHILDREN

Professor Patrick Parkinson AM has been teaching, researching and contributing to public policy in family law and child protection for more than 30 years. He is calling for urgent reform to the family law system to tackle the more litigious members of the legal profession, especially in Sydney. JULIE MCCROSSIN reports.

Professor Patrick Parkinson, AM, has a room with a view in the Sydney Law School's futuristic new building. It overlooks the green expanse of Victoria Park, which borders the University of Sydney. Perhaps it reminds him of the green fields around the University of Oxford where he gained a law degree with first-class honours.

Parkinson went on to study a master of laws at the University of Illinois, where he also taught, and developed an enduring interest in international family law. He is the immediate past president of the International Society of Family Law and was a member of the Expert Group on Family Policy Development convened by the United Nations in New York in 2015. This international perspective underpins his views on the wellbeing of children, as does his faith – he entered Oxford with a plan to become an Anglican minister before turning his mind to the law.

Parkinson is deeply committed to the role of the academic lawyer in the development of public policy, especially in the neglected field of child protection. His work influences the education of law students in Australia. His recent books include *Australian Family Law in Context: Commentary and Materials*, 6th edition, 2015; *Tradition and Change in Australian Law*, 5th edition, 2013, and *The Voice of a Child in Family Law Disputes*, 2008, which he co-wrote with Professor Judy Cashmore, a highly regarded researcher in child protection and psychology.

"I believe it is part of the role of academics to be able to speak to the public about what is going on and to speak simply," Parkinson says as we meet in his office, which is piled high with books and articles.

Parkinson is a former chairman of the Family Law Council, an advisory body to the federal Attorney-General. He chaired a review of the Child Support Scheme in 2004, leading to major legislative reforms. He is currently chairman of

the Families and Children Activity Expert Panel, advising the Australian Government on evidence-based services for families and children. He is special counsel at Watts McCray Lawyers, a leading family law firm, working one day a week with his own clients and providing advice and running seminars for the solicitors.

His work is telling him one thing: Australian families are in trouble and, as a consequence, Australian children are in trouble. Big trouble.

"It is encapsulated in one statistic. Twenty-five years ago, 25 per cent of all Australian children would experience their parents living apart by the age of 15 (D de Vaus and M Gray, 'The Changing Living Arrangements of Children, 1946-2001' (2004) 10 *Journal of Family Studies* 9). Now, the figure is 40 per cent by the ages of 15 to 17 (ABS 4442.0 – Family Characteristics and Transitions, Australia, 2012-13, released February 2015)," Parkinson says.

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"The number of children born in Australia into single mother households is now at least 13 per cent (Paula Laws, Samantha Abeywardana, Jane Walker and Elizabeth Sullivan, *Australia's mothers and babies 2005*, National Perinatal Statistics No. 20, Australian Institute of Health and Welfare, Canberra, 2007), and 34 per cent of children born in Australia are born outside marriage (ABS 3301.0 – Births, Australia, 2015).

"These statistics paint a very, very serious picture about the wellbeing of children in Australia. And it is no surprise that we are seeing real and discernible increases in mental illness and complex problems in children's and adolescents' lives."

Is there a link between the changes in family make up and the growing evidence of mental distress among children? "Like everything, it is heavily contested, of course," Parkinson replies. "But if you look at the statistics on children in families that are not traditional, father-and-mother, biological-parent families, you will find that they are exposed to greater problems of poverty, greater risk of child sexual abuse and greater risk of other forms of child abuse.

"Family lawyers in Sydney are notoriously litigious. More than half of all appeals to the Full Court come from Sydney, although the city and its environs have only about 25 per cent of the Australian population."

There are complex causal pathways behind all of that. But while we can argue about the causal pathways, the correlations are very, very strong."

Parkinson believes we need urgent action on several fronts, beginning with the legal system.

"There is an urgent need to reform the family law system," he says. "This is ... a widely held view in the community and among lawyers in the field. We have a system that is far too expensive for ordinary people and the resolution of disputes takes far too long for children."

Resolving family disputes more quickly would benefit everyone, especially the children, Parkinson says. He says most cases are resolved before reaching court, but delays can have a knock-on effect. He says delays can be caused by one person having a reason to hold out. For example, they don't want to leave the family home.

"If there is a long delay in getting to court, there's no incentive necessarily to settle," he says. "For those who can't reach agreement, the process of navigating the system is expensive, time consuming and stressful."





He adds that people often resolve their cases just as they are getting ready for trial. At this point, barristers are involved and providing realistic advice about the prospects of success. The thought of getting into the witness box is causing tension and mounting legal costs are becoming an incentive to settle.

"A two- or three-year wait for a hearing has an impact on the entire family law system by delaying the impetus for some people to reach a compromise," he says.

"We know that children caught up in parenting disputes are in a household, or households, full of stress. We know from surveys that most parents litigating through the family law system are in the clinical range of distress during that period and for some time afterwards. That impacts on the children."

To help parents stay out of court and make sensible arrangements for their

children, Parkinson recently launched the website [amicableseparation.org](http://amicableseparation.org).

Parkinson believes key reforms that tackle unnecessary litigation can play a critical role in repairing the system.

"Family lawyers in Sydney are notoriously litigious," he says.

"More than half of all appeals to the Full Court come from Sydney, although the city and its environs have only about 25 per cent of the Australian population."

He outlines reforms that could reduce delays and benefit children. These include imposing a statutory requirement in the Family Court and the Federal Circuit Court that the courts and legal practitioners must aid a just, quick and cheap resolution.

He says all practitioners should have to certify that any application to the court has a reasonable chance of success, and judges should also be able to dismiss applications that aren't necessary, or

don't resolve a dispute. In addition, it should be possible to force litigants who have unreasonably brought a case to court, or pursued a case that has little prospect of success, to contribute to court costs.

Finally, he says the Family Law Regulations 1984 (Cth) should specify that non-compliance with court orders has consequences. For example, missing a deadline for filing a document would mean the document can't be admitted into evidence, unless it was not in the interests of justice.

"These reforms are about preventing abuse of the court process by running up legal costs to force less well-off litigants into settlements, and avoiding trial by ambush," he says. "It is also about freeing up court time to give to ordinary Australians who need to resolve their disputes."

Parkinson's call to action goes far beyond reforms to family law processes. He believes public policymakers and couples planning a family need to face up to what is good for children. The evidence, he says, shows that marriage is good for children. Children flourish in families with their biological parents, where the parents nurture the children and each other, and the family is stable.

He is concerned that the cultural and religious significance of marriage has been undermined in recent years. So while marriage is still associated with stability in a relationship, will this continue when 75 per cent of Australians now choose a secular celebrant?

"We still have a strong cultural echo of Judeo-Christian values in our society," Parkinson says. "But that echo is fading and the prognosis for the stability of family life in Australia,

and indeed in all Western societies, is not a good one."

Parkinson presents thought-provoking evidence, especially when you consider that 78 per cent of couples live together before marriage. He says Australian research shows that couples who have never married and have children are seven times more likely to break up than couples who didn't live together before marriage. Couples with children who live together but aren't married are four times more likely to break up than couples who live together and go on to marry.

"I think marriage is a protective fence," he says. "Ultimately, it cannot hold people in. If people want to jump over the fence, they will do so."

But, he says, the public commitment people make before family and to each other has a stabilising effect and people don't leave that relationship lightly.

"The evidence seems to be that some couples who aren't married do not have the same protective fence," he says.

"Nobody breaks up easily or quickly, but statistically the unmarried are more likely to do so and that is a particular problem because so many break up when the children are small."

On the issue of same-sex marriage, Parkinson sees the benefits. "I see both sides of the argument, but I feel uneasy at this stage. Marriage has had an almost universal religious and cultural meaning, across faiths and societies, as between a man and a woman. This is a powerful argument against change that needs to be given respect," he explains.

"However, I am much more concerned about the 98 per cent of children who are born to heterosexual couples than I am about continuing a massive cultural argument about a very small number." **LSJ**



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