

Empty days, lonely nights

Published: April 29, 2014 - 6:16PM

Across Australia, fathers are being told in mediation sessions or by lawyers that there's no hope of overnight contact with children under three years old.

At Family Relationship Centres (FRCs), where couples attend compulsory mediation prior to a Family Court appearance, any sharing of overnight care of infants and toddlers tends to be discouraged.

"Sharing of overnight care of infants is problematic," states a South Australian Family Law Pathways document produced for local family law organisations. The document, funded by the Commonwealth Attorney-General's department, is circulated by many FRCs throughout the country.

It stresses the "importance of the primary attachment relationship" with the mother and reassures dads that with regular contact, even of a few hours, they can "readily develop close and loving relationships" with their children.

But according to a recently published academic paper endorsed by 110 leading international experts, it is not the case that sharing of overnight care of infants is problematic. The paper, *Social Science and Parenting Plans for Young Children: A consensus report* was published in February in the American Psychological Association's journal, *Psychology, Public Policy and Law*.

It is backed by leading Australian academics including Don Edgar, the former head of the Australian Institute of Family Studies, Judy Cashmore, Associate Professor in Socio-Legal Studies at Sydney University and Barry Nurcombe, Emeritus Professor of Child & Adolescent Psychiatry, University of Queensland.

This article analyses existing research and finds that infants commonly develop attachment relationships with more than one care giver and concludes that in normal circumstances children are likely to do better if they have overnight contact with both parents.

It also finds that depriving young children of the opportunity to stay overnight with their fathers could compromise the quality of developing father-child relationships.

The article makes compelling reading because it challenges current policy on the care of young children – policy that has such a firm grip on Australia's family law system. The report also provides a review of the research underpinning that policy. The most influential study was led by La Trobe university adjunct professor and clinical psychologist Jennifer McIntosh. Her study suggests even one night a week of overnight care undertaken by the non-primary parent may increase the stress levels of children aged zero to two in certain circumstances.

The influence of this study on Australia's family law system has been so profound that barristers have a special phrase to describe the common experience of losing the battle for some overnight care of toddlers – they joke they've been "McIntoshed". But for the fathers concerned it is no joking matter.

The McIntosh era dates back to 2010 when the Labor government commissioned her to lead an investigation into the impact on preschoolers of overnight contact in their father's care.

The previous Coalition government had implemented a series of reforms to family law aimed at enabling children to have more contact with their fathers after a divorce, including in 2006, a presumption of shared parental responsibility.

Prime minister John Howard was an outspoken advocate of the father's role in children's lives but the Rudd government showed no such inclination.

"Our government supported the right of children to contact with both their parents, provided the child is not exposed to any risk," says Philip Ruddock, the attorney-general who implemented the 2006 reform. "Labor has sought to wind that back. They've long been captured by the female lobby determined to retain sole control over their children."

In 2007, McIntosh published a report highly critical of the Coalition's shared custody reforms. When Labor attorney-general Robert McClelland appointed a lead researcher for the new "preschoolers" study McIntosh was the obvious candidate.

The results brought bad news for fathers. McIntosh's key finding was that infants under two who spent one night or more a week and toddlers who spend 10 days a month of overnight time in their non-primary caregiver's care are more irritable, more severely distressed and insecure in their relationships with their primary parent, less persistent at tasks, and more physically and emotionally stressed.

However, the significance of these findings have been questioned in two papers published online in February in *Psychology, Public Policy and Law*. The expert report, *Social Science and Parenting Plans for Young Children: A consensus report*, written by Richard Warshak, psychiatry professor from the University of Texas Southwestern Medical Centre claims that McIntosh and her colleagues "drew unwarranted conclusions from their data".

The report finds that there are issues with the way the data in McIntosh's study was collected and analysed and this leads to problems with the way the findings have later been applied in policy making and agenda setting.

The report finds that the study provides no reliable basis to support custody policy, recommendations or decisions and hence the findings from the data should not have been used as a platform for developing public policy in the area. This is something that McIntosh acknowledges in her research paper.

Further criticisms of McIntosh's study and the way it has been used are laid out in the second paper by Linda Nielsen: *Woozles: Their Role in Custody Law Reform, Parenting Plans and Family Court* which was published at much the same time in the same psychology journal. This claims the McIntosh research has been used by policymakers, the media and academic circles in a way that goes beyond its original findings.

McIntosh has recently co-written a two-part paper soon to be published in the *Family Court Review – Parental separation and overnight care of young children: Consensus through Theoretical and Empirical Integration* examines the current research evidence and acknowledges that "cautions against any overnight care during the first three years have not been supported".

This paper is "welcome", says University of Sydney law professor Patrick Parkinson. Parkinson applauds the emerging consensus that it is fine for infants and toddlers to spend some overnight time with their fathers provided the child is comfortable in that care.

"Blanket statements to the effect that children under three should never stay overnight with their non-resident fathers should now be treated as entirely incorrect," he says. However, he also says that many family law practitioners, counsellors and mediators have had the impression that the research supported such a policy.

McIntosh claims she has "never suggested that children under three should never stay overnight with the father". While acknowledging that the limitations of her study have always been on clear view, she defends the reliability of the data on which her study was based.

In a discussion paper for the Australian Association for Infant Mental Health (AAIMH) in 2011, McIntosh wrote that: "Regardless of socio-economic background, parenting warmth or co-operation between parents, the shared overnight care of children less than four years of age had a significantly negative impact on the emotional and behavioural wellbeing of the child. Babies under two years who lived one or more overnights a week with both parents were significantly stressed."

The same year she also wrote a guest editorial for *The Family Court Review* which included the following summary: "Repeated overnight stays away from the primary caregiver in the first year or two may strain the infant and disrupt formation of secure attachment with both parents. Overnight stays away from the primary caregiver in early infancy are generally best avoided unless of benefit to the primary caregiver."

In response to questions from *The Age* McIntosh says the overnight studies "should not on their own dictate any kind of policy".

McIntosh's background papers were used to prepare guidelines on infant care for a number of leading organisations such as the Australian Psychology Society and AAIMH. She is listed as the lead author of the APS position paper which states "infants (under three) have biologically grounded needs for continuous reliable care from a primary care giver".

McIntosh told *The Age* that Richard Warshak and Linda Nielsen are "impassioned advocates who have sought to discredit me . . . to further political agendas". Warshak is an international authority on parental alienation in child custody who has worked as a White House consultant on family law reform. Nielsen is a professor of adolescent and educational psychology who has published extensively on father-daughter relationships and shared parenting.

"The experts who signed the report are amongst the best in the world in their fields," says Barry Nurcombe, Emeritus Professor of Child & Adolescent Psychiatry at the University of Queensland, who is among the 110 academics who endorse Warshak's paper.

Nurcombe says the paper highlights the fact that current policies relating to overnight contact with these young children have been excessively affected by misplaced concern about the primary attachment to the mother.

"Since we didn't know whether any shared overnight care was harmful we fell back on the default position assuming that primary attachment was all important," he says, explaining that many experts, like him, have now been convinced that these children can form multiple attachments.

He notes that the consensus report was signed by world authorities on attachment Ross Thompson, Karin Grossmann and Avi Sagi-Schwartz and the editor of the leading journal in the area, Howard Steele.

The very notion of a "primary parent" or "primary attachment" has come in for a battering in the fierce public discussion that has taken place over this issue. Many academic and media articles point out this doesn't make sense given that most children under two living with single mothers at least occasionally and sometimes frequently stay overnight with other people – grandparents or other relatives, babysitters – plus spend long hours in childcare. There are also many cultures where shared care is normal in extended families.

For the last few years thousands of Australian fathers have had their contact with their young children limited to a few hours often spent wandering in parks or fast food restaurants. They have been forced to spend huge sums on lawyers, fighting to be able to care for their children overnight.

The McIntosh study is one of the major reasons they have not been successful, says Justin Dowd, a leading family lawyer and past president of the Law Society of NSW.

"It led to the belief, almost a presumption, that children under three should not spend overnight time with their non-resident parent. Faced with that research many fathers have been discouraged from even bringing applications for overnight time with very young children and the ones who have gone to court have often been disappointed to find that research being quoted against their application."

While many fathers will celebrate if that research finally loses the hold it has had on our family law system, others will be angry that it cost them years of being active fathers closely involved in the lives of their children. There are signs that the expert consensus paper may prove a game changer for many fathers trying to negotiate overnight care of young children. Diana Bryant, the Chief Justice of the Family Court, whilst stressing cases before the court are subject to individual assessment, says it is vitally important that "family consultants and experts giving evidence in family law proceedings, as well as judges, are familiar with the current research and differing views about it".

She also expects the court's family consultants to keep up to date with current debates: "They have been made aware of this particular issue in relation to overnights and young children."

The Australian Association for Infant Mental Health is revising its policies as are some key organisations which run the FRCs. "Given the new position papers that have recently been published we will be reviewing the literature that we give to parents to help them make the best decisions they can for their children," says Matt Stubbs, the acting clinical services director of Interrelate.

But it is the fathers themselves who have the strongest motivation to ensure the family law system responds to these new events. Their support groups are determined this will happen. Barry Guidera, CEO of Dads in Distress Support Services: "We will make sure fathers are informed about the new consensus statement so that they choose lawyers and mediators who are up to date with the current expert opinion on this vital issue."

Social commentator Bettina Arndt has served on two federal government committees concerned with child support and family law.

This story was found at: <http://www.theage.com.au/national/empty-days-lonely-nights-20140428-37e3e.html>