CHAPTER 3

DIVORCE

"And so I always advise men clients who are in the position to pay more money to the wife.... as a joke I don't mean it seriously because if you give her too much she may think she's on to a good thing and hang on to it. But I always say send her expensive perfumes, offer to babysit for her and get her, you know, send her out to dances.... because the sooner she's off your hands and into someone else's the better. .... You know you've got to strike a nice balance so that she's happy and attractive and then somebody else will take her because theoretically she's on his back until she remarries" (Smart, 1984, p.190)

INTRODUCTION

Socially and economically, divorced women illustrate a transition from mainstream to marginal. In this way they provide a longitudinal profile of the importance of many of the issues related to the patriarchal structure of housing provision and economic welfare.

The process of divorce also involves many useful insights into the operation and economics of marriage and the family. (Smart, 1984; Funder, 1993(b), p.245) Given the traditional view of marriage and the family as the social and economic cornerstones of society, Smart argues that it is enlightening to examine these institutions at the point of breakdown

"because it is at this point that the economic vulnerability of women caused by marriage and the sexual division of labour is most clearly exposed. At this point the sphere of the private is rendered open to public scrutiny, and the disproportionate poverty of women as a whole, but most especially women with children, is revealed. In this sense divorce opens a window on to marriage and the private sphere and consequently constitutes a valuable resource for understanding of family life." (Smart, 1984, p.xiii)
While traditionally economists have assumed that husbands and wives derive similar utility from the sexual division of household labour (Ferber, 1982, p.276-277) and share equally in the household income (Edwards, 1982, p.255) and expenditure (Spalter-Roth, 1983, p.231) divorce in many cases proves these assumptions to be ill-founded. The disproportionate poverty of women can arise from an inequitable distribution of resources and labour within marriage, inequitable sharing of human resources related to income earning when the marriage ends and the usual responsibility of women for children once the marriage has ended.\(^1\)

The consequences of divorce suggest the need for further research on the exercise of power in decision-making and the economic situation within intact family units. (Ferber, 1982, 278-279) Recent research, for example, has indicated that within marriage husbands more commonly exercise orchestration power, which is defined as the making of important, but infrequent decisions. Within this framework wives more commonly exercise implementation power, or the carrying out of less important time-consuming tasks made within the framework of the husband’s broader decision-making. (Madigan, Munro and Smith, 1990, p.635) The lesser role of women in influential decision-making in marriage is an ideological partner to the sexual division of labour and will impair their ability to function independently on divorce. The experience of divorce also raises the question of the relative power of each spouse in the case of divergence within ongoing families.

ATTITUDES TO DIVORCE

In 1948, Goode noted that a divorced women had no clearly defined social status, with her and her family existing in social limbo. In 1971, Staples commented that the single-parent family continued to be regarded as a deviant form (Brandwein,

\(^1\) Mothers gain custody of children in at least 90% of cases. (Raymond, 1987, p.36)
Brown and Fox, 1974, p. 505-6) a situation that has not changed significantly since. In fact, many authors assume that the single-parent state is temporary, and remarriage constitutes re-equilibrium of the family, (Brandwein, Brown and Fox, 1974, p. 507) reducing or negating the need to provide for a temporary situation. (Symonds, 1982)

In similar ways, the problem of other non-traditional households has been disguised by consideration of their situation as temporary or their behaviour as pathological. During the 1960's in Britain, for example, a pathology model was applied to the homeless, which Watson claims distracted policy attention from underlying structural changes. (Watson with Austerberry, 1986, p. 59)

While divorce has been viewed in the past in policy terms as indicative of a "bad home environment" , to which our political leaders have prescribed home ownership as the palliative, (Watson, 1988, p. 11-12) and the single-parent family as an aberration, sociologists argued in the 1960's and early 1970's that divorce can also be viewed as an adaptive device, enabling greater attention to be paid to the quality of marriage and allowing the dissolution of less than ideal marriages with the likelihood of remarriage. (Yeatman, 1970-71, p. 28-33) Smart echoes Watson's criticism of assumptions about the homeless, by pointing out that the flaw in the sociologist's argument at that time was to to abstract the discussion of divorce from a legal and social context which favoured the nuclear family unit, and present it as a matter of individual choice. (Smart, 1984, p. 56-59)

With regard to divorce, it has also been argued that "the freedom of modern life is bought at the price of the instability of family ties", (Scholnick and Scholnick, quoted in Glick and Lin, 1986, p. 145) with consequent personal losses to provide benefits to capital.
SOCIAL AND ECONOMIC CONSEQUENCES OF DIVORCE

Little information has been available in the past on the social and economic consequences of divorce. (Eekelaar and Maclean, 1984, p.208; Smiley, Chamberlain and Dalgleish,1984) Recent studies undertaken by the Australian Institute of Family Studies (AIFS),in association with the Law Reform Commission Matrimonial Property Research, have collected survey-based data which addresses the economic consequences in a more comprehensive way.

Two parts of the AIFS survey have been conducted. The first, in 1984, examined the economic circumstances of 825 divorced men and women during the latter years of their marriage, immediately after separation and 2 to 5 years after final separation. The second stage of the survey, in 1987, examined the economic fortune of parents only, in the period 5 to 8 years after marriage breakdown. The survey aimed to collect data from groups representative in demographic and legal process terms of cases passing through the Family Court. The "younger" group interviewed in both of the stages was representative of the largest number of cases passing through the Family Court. They had been married 5 to 14 years, divorced in 1981 or 1983 with two dependent children and it was the first marriage for both partners. The "older" group had been married at least 15 years, were divorced in 1981 and the wife was aged between 45 and 59 at the time of separation.

"The "older" group was chosen to explore the situation of a numerically smaller population of of women whose circumstances and potential economic vulnerability might require special provisions. Older women have been described as susceptible to economic adversity. Following marriage breakdown after a long union, during which they have usually withdrawn from the workforce for long periods, women have great difficulty

2: Based on the finding of the first survey that older women and parents were particularly disadvantaged following divorce.
Achieving economic independence, or security in their retirement. (Funder, 1986(a), p.17)

These studies were biased towards those of a higher socio-economic status, the Australian-born, English-speaking and higher-educated groups as well as those who were less mobile. (Funder, 1986(a), p.28-30) Other possibilities for bias include the fact that only records from the Melbourne registry of the Family Court were used to access records for the sample and only those younger couples divorcing with two dependent children were included in the sample. As shown on Graph 3.1, in 1991 only 23.2% of all divorces involved families with two children and 10.9% more than two children. In this sense couples divorcing with 2 children might over represent the longer term costs of divorce for the majority of cases currently divorcing. The sample was, however, constructed to represent the majority view of divorcees in the early 1980's³.

DIVORCE AND POVERTY

Studies generally have shown that poverty is both a cause and a consequence of divorce. Empirical evidence in the US and Britain has shown socio-economic bias in divorce, and in the absence of contrary data it is likely the case in Australia also. (Funder, 1986(a), p.28) Poorer families are more likely to divorce. (Espenshade, 1979, p.615) Sullivan, based on evidence in Britain from World War II to 1976 has also shown tenure bias in divorce rates. Those who began their married lives in local authority housing are more likely to experience marital breakdown than those who started off in an owner-occupied home, irrespective of age at marriage and other factors thought to be associated with the risk of marital breakdown. (Sullivan, 1986, p.37) Although it would be expected that low income would be correlated with public rental, to some extent it is surprising.

³ The younger group was selected as representative of the greater number of cases passing through the Family Court. For example, in 1981, 48% of divorces were granted to couples married 5 to 14 years, 9% of husbands and wives had not been previously married and, of these, 34% had two children. (Harrison, 1986(a), p.16.)
GRAPH 3.1: Divorces by no. of children aged under 18, Australia, 1981.

Source: ABS, 1992(c).
that public tenants in the short term would not be as economically advantaged as owner-occupiers.

Although it is not certain in Australia whether the rate of divorce varies inversely with socioeconomic status, it has been noted that mothers in one-parent families are in general less educated than mothers in two-parent families. (King, 1983, p.14) This is unlikely to be simply a result of selective remarriage, as overseas experience, discussed below, suggests that remarriage rates are also higher for females of lower socioeconomic status.

Poverty also results from divorce, especially where it is a pathway into social security recipiency. For many women, social security recipiency follows a change in marital status. (Montague, 1985, p.9) Australian data show a high level of reliance on social security at some time in the post-separation period regardless of socio-economic background, attachment to the workforce or past or present family circumstances. For the AIFS study the highest incidence of receipt was by mothers out of paid work at the time of separation (93%), women who were not involved in the decision to separate (88%) and those whose personal income at the time was less than the Supporting Parents Benefit rate (85%). Eighty one per cent of women with 10 or fewer years of education had received social security in the 5 to 8 years following separation and 79% of those who did not repartner. (Funder, 1993(b), p.104) The study indicates very unambiguously that women, rather than men, bear the burden of poverty following divorce. Issues of social security recipiency and economic well being will be further explored in Chapter 5.

Weitzman examined the social consequences of divorce, but only on children affected by their parents' divorce. She found that moves following divorce, often tied to reduced income availability, had implications of loss of continuity and stability. At the same time the "extreme financial burden" on their mother often meant a reduced quality of care for the
period immediately following divorce, without a commensurate increase by other family members. Demands on the mother also prevented establishment of a new social life for herself. (Weitzman, 1980-81, p.1263)

PROFILE OF THE CURRENTLY DIVORCING POPULATION

In 1991, there were 385,955 divorced women, or 5.8% of women aged 15 and over, in Australia. A further 201,645 women (3%) were separated. This compared to 25.8% of never married women, 55.4% of married women and 10.1% widowed. (ABS, 1993) The distribution of males by marital status differed in that there was a greater proportion of never married men (33.1%), fewer separated and divorced (2.7% and 4.8% respectively) and a lower proportion of widowed men (2.5%).

Graph 3.2 shows the distribution of marital status by age for women in 1991. It can be seen that the highest proportions of divorced women occurred in the age groups 35 to 54. 9.7% of women aged 35 to 44 remained divorced and 10.2% of women aged 45 to 54. The highest proportions of separated women were aged between 25 and 54.

Marital status in 1991, however, represents merely a snapshot. Women shown as divorced represent a wide variation in length of separation and subsequent divorce. Women included in 1991 in other marital categories may have been through the process of separation and divorce in the past. Women previously involved in de facto relationships may be self-classified as never married although in effect they could share similar problems to women classified as separated or divorced.

The length of time since separation and divorce is an important aspect of the economic impact on women. (AIFS, 1986 & 1993) Unfortunately, data is not available to classify divorcees by length of time since divorce.
GRAPH 3.2: Marital status by age, women
aged 15+ in Australia, 1981.

HOUSEHOLD COMPOSITION OF DIVORCED WOMEN

The distribution of divorced women by household type in 1986 is shown in Table 3.1. Similar detailed results from the 1991 census have not yet been released.

TABLE 3.1: Family composition of the divorced and separated, Australia, 1986

<table>
<thead>
<tr>
<th>Family type</th>
<th>Marital status</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Separated</td>
<td>Divorced</td>
<td>Total</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>m</td>
<td>f</td>
<td>m</td>
<td>f</td>
<td>m</td>
<td>f</td>
<td></td>
</tr>
<tr>
<td>Parent &amp; dep ch (%)</td>
<td>9351</td>
<td>57089</td>
<td>12293</td>
<td>76345</td>
<td>238163</td>
<td>412242</td>
<td></td>
</tr>
<tr>
<td>Couple (%)</td>
<td>6.6</td>
<td>34.0</td>
<td>4.9</td>
<td>24.5</td>
<td>3.1</td>
<td>5.3</td>
<td></td>
</tr>
<tr>
<td>Couple &amp; dep ch (%)</td>
<td>11191</td>
<td>8807</td>
<td>24351</td>
<td>20871</td>
<td>1252977</td>
<td>1254509</td>
<td></td>
</tr>
<tr>
<td>Related adults (%)</td>
<td>7.9</td>
<td>5.2</td>
<td>9.8</td>
<td>6.7</td>
<td>16.1</td>
<td>16.0</td>
<td></td>
</tr>
<tr>
<td>Parent, dc adult fm (%)</td>
<td>10545</td>
<td>11241</td>
<td>19419</td>
<td>22142</td>
<td>3003130</td>
<td>2948719</td>
<td></td>
</tr>
<tr>
<td></td>
<td>8.7</td>
<td>10.6</td>
<td>9.6</td>
<td>13.3</td>
<td>3.4</td>
<td>4.1</td>
<td></td>
</tr>
<tr>
<td>Couple adult fm (%)</td>
<td>3776</td>
<td>17051</td>
<td>5155</td>
<td>25914</td>
<td>122992</td>
<td>171859</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.7</td>
<td>10.2</td>
<td>2.1</td>
<td>8.3</td>
<td>1.6</td>
<td>2.2</td>
<td></td>
</tr>
<tr>
<td>Couple dc adult fm (%)</td>
<td>8167</td>
<td>5660</td>
<td>13388</td>
<td>10277</td>
<td>814651</td>
<td>704674</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5.8</td>
<td>3.4</td>
<td>5.4</td>
<td>3.3</td>
<td>10.5</td>
<td>9.0</td>
<td></td>
</tr>
<tr>
<td>Total family (%)</td>
<td>12285</td>
<td>17786</td>
<td>23792</td>
<td>41556</td>
<td>261670</td>
<td>324276</td>
<td></td>
</tr>
<tr>
<td></td>
<td>8.7</td>
<td>10.6</td>
<td>9.6</td>
<td>13.3</td>
<td>3.4</td>
<td>4.1</td>
<td></td>
</tr>
<tr>
<td>Non family (%)</td>
<td>10545</td>
<td>123990</td>
<td>106249</td>
<td>207607</td>
<td>6647690</td>
<td>6730502</td>
<td></td>
</tr>
<tr>
<td></td>
<td>43.0</td>
<td>73.9</td>
<td>42.8</td>
<td>66.7</td>
<td>85.6</td>
<td>85.9</td>
<td></td>
</tr>
<tr>
<td>Total (%)</td>
<td>141924</td>
<td>167859</td>
<td>248426</td>
<td>311340</td>
<td>7768312</td>
<td>7833842</td>
<td></td>
</tr>
<tr>
<td></td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>

Source: ABS, 1986 Census, microfiche Table CX0007

Table 3.1 shows that separated or divorced women were much more likely than men of the same status to be living as single-
parents. One quarter of divorced women and 34% of separated women were living alone with dependent children. A further 10.2% and 8.3% respectively lived as a single-parent sharing with other adult family members. In contrast only 5.3% of the total female population lived in a single parent-family. A further 26.1% of separated women and 33.3% of divorced women lived either alone or with others in a non-family household. Table 3.1 shows that separated or divorced men were more likely to have repartnered.

THE DEMOGRAPHY OF DIVORCE

Figures from the Australian Bureau of Statistics for divorces in 1991 (ABS, 1992(c), p.1) give a total of 45,630 divorces in that year. As noted in Chapter 1, after an initial rapid increase in divorce rates following changes to the Family Law Act, rates have fallen and remained relatively stable, although dropping slightly from the mid-1980's, and increasing in 1991.

The 45,630 divorces in 1991 compares to an average of 17,348 divorces per annum for the period 1971 to 1975. By 1976 to 1980, following changes to the Act, the number had increased to 45,220, boosted by 63,230 divorces in 1976 alone.

While the number of divorces can partly be attributed to population increase, the number of divorces in 1991 represents 263% of the annual average number of divorces, 1971 to 1975, and 679% of the 1956 to 1960 number, obviously not in proportion to population increase. The increased potential for divorce in the 1970's has been attributed to the unprecedented proportion of the population of the adult population marrying in the cult of domesticity which followed World War II. This cohort provided much of the potential for divorce in the 1970's. (Jupp 1980 in Funder and Harrison, 1993(c), p.17) The subsequent policy focus on the increased number of single-parent families as a consequence of divorce in the late 1970's and early 1980's is not surprising, particularly given changes to the eligibility for a Supporting Parents Benefit at the same
time which saw beneficiary numbers increase from 57,000 in 1977-78 to 182,000 in 1989-90. (Funder and Harrison, 1993(c), p.23) with consequent increases in costs. Evidence suggests that the public costs will continue given the high level of social security recipiency following divorce. About 40% of marriages contracted in the 1970’s and 1980’s are expected to end in divorce. (McDonald, 1983 in Funder and Harrison, 1993(c), p.23)

As noted in the introductory chapter, divorce has been most common for those aged 25 to 29. In 1991, a disproportionate increase in divorce for younger people occurred. For the first time the divorce rate for women aged less than 25 exceeded the rate for those aged 25 to 29. For males, divorce was still most common for those aged 25 to 29. In 1991 48% of women were aged under 35 at both separation and divorce. A further 33% of women were aged 35 to 44 at divorce. (ABS,1986,1987,1992(c))

FURTHER CHARACTERISTICS OF THE DIVORCED POPULATION

The median length of marriage before divorce has decreased since 1966 from 13.8 years to 10.3 years in 1991. The median duration of marriage prior to separation was 7.4 years, with 60% of marriages lasting less than 10 years prior to separation, so for most divorcees the period of separation prior to final dissolution lasted around 3 years. (ABS,1992(c))

Table 3.2 shows the proportion of marriages by length of marriage to final separation and divorce. Whilst almost half of marriages lasted less than 10 years to divorce, with the median age at divorce 38.4 for males and 35.5 for females, 10% of divorces (or 4654) involved those who had been married 25 years or more. The implications of divorce for women from these marriages who were less likely to have been involved in the movement of married women into the workforce and having few years and opportunities available to re-enter the workforce and a lower likelihood or remarriage, are likely to be quite different than for younger women. In addition to the operation
TABLE 3.2: Divorces. Percentage distribution and median duration (years) between marriage and final separation and divorce, Australia, 1991.

<table>
<thead>
<tr>
<th>Length of marriage To separation (years)</th>
<th>To divorce¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 5</td>
<td>37.7</td>
</tr>
<tr>
<td>5 to 9</td>
<td>22.5</td>
</tr>
<tr>
<td>10 to 14</td>
<td>14.4</td>
</tr>
<tr>
<td>15 to 19</td>
<td>12.0</td>
</tr>
<tr>
<td>20 to 29</td>
<td>11.1</td>
</tr>
<tr>
<td>30 and over</td>
<td>2.3</td>
</tr>
<tr>
<td>Total no²</td>
<td>45,630</td>
</tr>
<tr>
<td>Median (years)</td>
<td>7.4</td>
</tr>
</tbody>
</table>

¹ To date decree made absolute.
² Includes not stated

Source: ABS, 1992(c), Tables 13 and 15, p. 7, 8.
GRAPH 3.3: Years from marriage to separation and divorce, Australia, 1989

Source: Table 3.2
of the sexual division of labour within marriage, as discussed in the previous chapter, these women have experienced active discouragement to workforce participation. Of the 2114 women aged over 55 who were divorced in 1991, 55% had been married 30 years or more.

With the long term trend towards a reduced length of marriage prior to divorce, the number of divorces involving children has also decreased, from 66.5% in 1967 to 54% in 1991 (ABS, 1992(a), p.51) but the average number of children per divorce has remained constant at 1.9 since 1983. The distribution of divorces by number of children, and change over time, is shown in Graph 3.1. Of the 45% of divorces not involving children, one quarter involved marriages of over 20 years duration, where any children of the marriage would be more likely to be over 18 years and excluded from the data. So a total of one-third of divorces involve childless couples.

Fifty six per cent of divorces in 1991 occurred between couples both born in Australia. Just over 7,000 divorces (or 15.4%) involved women from non-English speaking backgrounds who were born overseas. (ABS, 1992(c)) These women are likely to experience particular problems on divorce, particularly if they have been in Australia a short time and are lacking in English language skills and support networks.

Figures for 1991 show that 16.3% of males and 15.4% of females divorcing that year had been divorced prior to their present marriage. While the median length of marriage, as stated above, was 10.3 years for all divorcees, this showed considerable variation by marital status at the date of marriage. For never married women, the median length of marriage was 11.2 years, compared to 7.7 years for previously divorced women. The proportion of previously divorced women involved in divorce is increasing in line with the pool of divorced women. In 1966 8.5% of divorces involved previously divorced women. By 1991 this had increased to 15.4%. (ABS, 1992(c))
REMARriage- trends and characteristics

Australian Bureau of Statistics data for 1991 show a median age at remarry of divorced persons of 39.7 years for males and 36.1 years for females, with similar times to remarry for men and women. Within 5 years of the dissolution of a previous marriage, 68.9% of males and 65.9% of females had remarried, with a median interval to remarriage of 2.8 years for males and 3.1 years for females. (ABS, 1992(d), p.2)

Results differ from those of the AIFS work on divorcing parents, which found that for the first 6 years after divorce males had a consistently higher rate of remarriage than females. This trend has been consistently confirmed elsewhere (Cass, 1991, p.2; Cotts Watkins, 1985, p.9; King, 1983, p.9) for the divorcing population as a whole. At the end of 6 years a total of 57% of male compared to 38% of female respondents to the AIFS study had remarried. Men also remarried more quickly than women. Twenty seven per cent of divorced men remarried within the first year of divorce and 39% within the first 2 years, compared to 15% and 25% (respectively) of women. As confirmed by other studies, remarriage rates were highest for the first few months after divorce. (Weston and Khoo, 1993, p.57-59)

As also confirmed by other studies, remarriage varies with age and socio-economic status. AIFS research conducted up to 6 years post-separation found that older women were much less likely to repartner than any other group. Their rate of repartnering was 15%, compared to 44% for older men. Younger men were more likely to have repartnered than younger women but the discrepancies were not as great as for the older men and women.

For those who were repartnered, one third were living together and two thirds remarried for all groups except younger women

4. Although this section examines a number of demographic indicators from a range of studies in terms of the rapidity of change in such characteristics, it is important to consider the time at which research data was collected and the country from which it originates.
who had been separated for less than 3 years, where the proportions were reversed. (McDonald, 1986(a), p.58-59)

As found elsewhere, it seems that for younger women, repartnering is inversely related to socio-economic status, a relationship which is not eroded by time. Younger women whose husbands had higher level occupations or women with higher level education themselves were less likely to repartner. Rates of repartnering were also higher for women who had separate incomes or controlled the household finances prior to separation, or who were the 'leavers' in the separation rather than the 'left'. (McDonald, 1986(a), p.60)

Interestingly a study by Glick in the United States found, contrary to the AIFS study, that remarriage rates were higher for women not in the workforce, especially those with preschool age children (in Symonds, 1982, p.4-5) perhaps indicating a need to remarry for economic reasons. The AIFS study has found that, particularly for mothers caring for children after divorce, there may be strong financial incentives to repartner as the only way of saving their children from financial deprivation.

Ambert has developed this point further, studying attitudinal differences between financially secure and financially insecure women in Canada towards remarriage. She found that financially secure women were less tied to the idea of remarriage as the "main mode of future life" but that it was "very difficult to establish if it is the financially insecure woman's lack of a financially sound base which makes her more in need of remarriage or if it is her personality configuration of dependency which does so". In contrast to the financially insecure woman, the financially secure woman has both resources and a sense of personal control which raise her self esteem and sense of autonomy. (Ambert, 1983, p.52)
For older men repartnering was positively associated with socioeconomic status (income and education) and having previously been married to a wife who did not work.

For older women, socioeconomic status does not appear to be associated with repartnering. Those repartnering were more likely to have had independent income or financial control of finances during marriage. (McDonald, 1986(a), p.60)

In all cases, those instigating the separation were more likely to have repartnered than those who were left. This was perhaps not surprising given the possible pre-existence of a new partner prior to separation and a greater preparedness for separation.

It also appears from overseas studies that the age and number of children affects women’s rates of remarriage or repartnering. (King, 1983, p.12; Glick and Lin, 1986, p.42-43) In Britain, Ekelar and Maclean found a greater likelihood of childless divorcees remarrying than those who had children (63% and 46% respectively). Although the authors consider that the higher rate of remarriage for the childless might be correlated with younger age, they point to the importance from an economic perspective, given the pre-eminence of remarriage in improving the economic position of mothers. (1984, p.219)

In Australia it appears, however, that age at divorce is a more critical factor than number of children. In 1982, while two-thirds of women aged under 30 at divorce had remarried regardless of the number of children, for older women remarriage decreased with the number of children, especially where two or more children were involved. (ABS, 1985, p.16-18)

For women who repartnered, it was most common for new partners to have a similar occupational status to their former husband. This conforms with the general view of marriage as enforcing norms and linking individuals of similar socioeconomic status and background. (Mauldin et al., 1990, p.204) Two-thirds of the
younger divorcees and over four-fifths of older divorcees formed relationships with previously married individuals. (McDonald, 1986(a), p.61)

The general question of repartnering and the policy implications of such is both emotive and vexed. A similarly vexed question is that of the apportionment of costs of spouse support and child-raising, particularly in the short term, between former partners and the State in the event of family breakdown. While the legitimation of female dependency has underpinned much housing, social and welfare policy formulation, increased rates of family breakdown and reformation have complicated the individual provision of financial support.

A study for the South Australian Housing Trust in the early 1980's was based on the premise that an examination of remarriage behaviour would identify those single-parents whose need was likely to be essentially short term and best provided for by a private housing subsidy rather than provision of public housing. (Symonds, 1982) Presumably other single parents would be catered for by re-integration into a nuclear family economy.

PHILOSOPHY OF FAMILY LAW - EFFECT ON DIVORCING POPULATION

"There are four different policy areas which intersect to supposedly help, but often hinder women who are divorcing: the housing system, the law, the income maintenance system and labour market policies." (Watson, 1988, p.74) Watson observes that "the rhetoric in each is contradictory" (p.74) and that no thought is given to the interaction of these policy areas.

The impact of the ideology and practice of family law on divorcing women has been considered by a number of feminist authors. The availability of housing and other resources from the marriage are subject to the ideology of family law. Despite
the fact that in 1982 only 30% of cases for matrimonial property division went to the Court and 4.7% of cases were judicially determined, (Hambly, 1984, p.11) it has been argued that decisions of the Court have an effect in out-of-Court settlements of the remaining 70%. Reported decisions of the Court guide registrars on the interpretation of law. (Scutt and Graham, 1984, p.40)

The level of legal process engaged is correlated to both socioeconomic status (Harrison, 1986(b), p.49) and length of marriage. (Hambly, 1984, p.11) Both higher socioeconomic groups and marriages of longer duration are more likely to have a greater amount of marital property to divide. Paradoxically, the level of uncertainty and dissatisfaction with the outcome of the proceedings also tends to increase with use of a higher order legal process.

It is often argued that the influence of family law is limited by the fact that many divorcing couples have little to divide, (Clive, 1984, p.197; Weitzman, 1980-81, p.1264) in fact some may only have debts. This particularly reflects the younger age and lower socioeconomic status of the divorcing population and will be increasingly the case given the trend towards divorce at younger ages.

The current legal system in Australia is discretionary and based on a system of 'no fault' divorce. Division of matrimonial property is open to judicial discretion based on assessment of contribution and need. While the advantages of such a system are flexibility and the potential for overcoming some of the income inequalities perpetrated through marriage and especially child-raising responsibilities, (Watson, 1988, p.97) the perceived disadvantages have also been widely discussed. Detractors point particularly to the record of family law in failing to realise potential to reduce inequalities in outcome between spouses. Sugarman and others, however have cautioned that as family law is not the sole cause
of inequalities between men and women, it cannot be expected to "rectify imbalances single handed". (Harrison, Funder and McDonald, 1993, p.199) The role of the divorcing spouse, as compared to the role of the state, in compensating for sexual inequalities perpetrated through marriage, education and the workforce is a contentious issue underlying much of this debate.

The disadvantages of the current discretionary system are the subjectivity of Court rulings, (Scutt and Graham, 1984, p.77) the unpredictability of outcome and expense, which advantages the party with the greater power or resources. (Harrison, 1986(a), p.10)

Sexism is alleged in the assessment by the Court of relative contributions towards the acquisition of matrimonial property and prospective need. The principles of contribution and need are given a different emphasis according to the facts presented, there is no requirement that use of discretion be judicially explained, (Harrison, 1986(a), p.7) and no useful standards for considering non-financial contributions. (Harrison, Funder and McDonald, 1993, p.192) Although the Act requires recognition of the contribution of a parent and homemaker, it is not required that the contribution be deemed equal to financial contributions. (Scutt, 1983, p.130) Findings from research by the AIJS indicate that both women and men have been socialised to undervalue the non financial contribution of women to the marriage, resulting in inadequate property allocation and income transfers. "It is perhaps an indication of how hidden and undervalued child-rearing is in our society that mothers did not see their role as providing an important contribution to the marriage." (Harrison, Funder and McDonald, 1993, p.197) Women are also held to be disadvantaged in a legal system administered by men (Ullrich, 1986, p.42) both for judicial and out-of -Court settlements where they may be subject to pressure and unable to afford costs to challenge the settlement. (Scutt and Graham, 1984, p.41)
Women's contributions and rights are seen by law as pertaining to basic assets such as the house, car and furniture, rather than more valuable assets such as businesses, shares farms and superannuation (Harrison Funder and McDonald, 1993, p.194), of which husbands gain a disproportionate share (Weitzman, 1980-81, p.1204). While "career assets" such as training and workforce experience accrue, usually to men over the period of the marriage (often aided by the wife's domestic labour) these assets, as well as other fringe benefits of employment are not easily divisible at divorce, but they have long term implications for the maintenance of inequality between former spouses.

In terms of value, "career assets" and earning capacity may be much more valuable than basic assets (Weitzman, 1980-81, p.1192). Because of the difficulty in measuring such assets they are not often included as matrimonial property, arguably to the disbenefit of women. In contrast, women carry the burden of lower income-earning potential because of absences from the workforce, domestic responsibility during marriage and structural inequalities in male and female income-earning potential. These issues will be discussed further in Chapter 5.

The "clean break" principle is advocated in Australian family law. That is, necessary continuing interaction between spouses should be limited by final determination wherever possible. A "clean break" is more difficult to achieve in cases where dependent children are involved, as on-going child-maintenance payments are required of the non-custodial parent. The "clean break" principle is also seen to obviate continuing dependency by one spouse, usually the wife, to allow for changing circumstances, often remarriage of her ex-husband.

The issue of the relative financial needs of a new family formed by repartnering and a former family is both complex and

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5. This will particularly disadvantage women divorcing in rural areas where suitable employment is also likely to be lacking. It may help explain the tendency, discussed in Chapter 4 for women to migrate to urban areas on divorce.
emotive. While repartnering for women is the fastest way to improve their economic situation after divorce, the perpetuation of women's economic dependancy on a male wage is seen by Smart as attributable to the operation of the law (for example, social security, taxation, pensions) and other social and economic policies (for example, provision of childcare, equal work and pay opportunities) which allow little alternative. (Smart, 1986, p.11)

Funder ratifies this view. The problem with the Family Law Act as she sees it, is its assumption of gender neutrality in both personal relationships and the economic arena. While the Family Law Act and similar law reforms in other Western countries were founded on a premise of individual autonomy and gender neutrality, in the absence of true gender equality in society, it has been found that "women, especially mothers, appear to bear the brunt of the costs of deregulated divorce" (Funder, 1993(a), p.4) contributing significantly to the so-called "feminisation of poverty".

While there is evidence to show that the needs of children may be influential in an enlarged share of property going to the custodial parent, "there is little evidence that any other need, in particular the need for income, plays a great role in the determination of property shares". There is some evidence, however, that repartnering on the part of women is considered as reflecting an absence of need6. (McDonald, 1986(c), p.192)

DISCRIMINATION AFFECTING DIVORCED WOMEN AND THEIR HOUSEHOLDS.

Discrimination by financial institutions.

Divorced women seeking access to housing are also subject to the philosophies and policies of financial institutions. Given the dominance of home ownership in Australia and the lack of

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6. In fact, women's property shares were significantly reduced if they repartnered, while men's shares were only reduced slightly. (McDonald, 1993(c), p.188)
real alternatives (see Chapter 1) financial institutions exercise a large degree of control within the Australian housing market.

Both indirect and direct forms of discrimination against women are exercised by financial institutions. Direct discrimination is defined as rules, policies or requirements which limit women's access to credit or impose unfavourable conditions, because of their sex or marital status. Indirect discrimination is defined as based on rules, requirements, policies or actions which appear gender-neutral but which in effect significantly reduce women's access to finance or mean that women do not obtain finance on terms as favourable as men. (NSW Anti Discrimination Board, 1986, p.6-7)

Direct discrimination exposed in the Anti-Discrimination Board report which is likely to be of particular concern to divorced women is the refusal of credit on the basis of a former husband's bad credit rating, and the assumption that a single woman has no need for access to finance or that she will prove to be financially incompetent. Cass comments on the the paradox that married women contribute to the credit-worthiness of married couples by both their participation in the paid labour force and their household work and childcare which free their husbands to act as principal wage earner, yet these very contributions are considered a handicap to the women's credit worthiness. (Cass, 1991, p.27-28) Women who had operate joint accounts with husbands during marriage are often denied ownership of the credit rating achieved as a couple, inhibiting their access to further credit on separation, while former husbands achieved a continuing credit record. (NSW ADB, 1986, p.56) These findings were confirmed by Watson in a survey in Canberra in 1985 (Watson, 1988, p.50-55) and by a Department of Housing phone-in in 1987 (Shortus 1987).

Direct discrimination also arises from patronising and discriminatory attitudes of loan officers as gatekeepers,
(Watson, 1988, p. 50-55) who often believe that "women are, or ought to be, dependent upon men and thus should have no autonomous standing in the world of finance". (NSW ADB, 1986, p. 47) Lenders also commonly exhibit a fear of the potential of pregnancy to disrupt loan payments, (Shalala and McGeorge, 1981, p. 39) and give preference to loans for couples. (NSW ADB, 1986)

A lack of information provided by financial institutions specifically targeted to those of non-English speaking backgrounds may constitute a form of indirect discrimination. Although identification of direct racial discrimination by lending authorities is an infrequent complaint, some evidence suggests that people of non-English speaking background are lacking in basic information about obtaining housing finance, the operation of the housing market and low cost options. (Shortus, 1987, p. 8) This could represent a particular problem for divorcing women of non-English speaking background, especially given the tendency for husbands to make major decisions in marriage, such as those related to housing.

Indirect discrimination arises predominantly as a result of creditworthiness being assessed on the basis of a labour force pattern which is more typical for men than women, that is, a permanent full-time income of sufficient size to service a loan. (NSW ADB, 1986) This discrimination exists despite research from the United States which suggests that although women have lower economic status than men, they are good credit risks. (NSW ADB, 1986, p. 81) Cass endorses this view, based on evidence from a Victorian study of low-cost consumer loans. "There is growing evidence of low-income people's (and especially low-income women's) caution in relation to indebtedness and credit, and their consistency and reliability in making repayments." (Chalmers and Prosser in Cass, 1991, p. 28) Cass asserts that the observation based on consumer loans is likely to also hold for repayment of housing loans.
The structure of traditional lending arrangements acts as a constraint to women's access to finance because the high real levels of repayment in the early years of a traditional credit foncier loan artificially raise the level of income needed to service the loan. The practice of using current income to determine the ability to service the loan over a 20 to 30 year term is also not rational, particularly for single mothers, for example, whose social security recipiency may apply for only a small segment of the loan period. (Nippard and Zika in Watson, 1988, p.47)

Low-income women who are successful in obtaining a loan will be committed to repaying a higher proportion of income than higher income earners. (Yates, in Cass, 1991, p.28) As discussed in Chapter 1, price-based rationing following deregulation has actually moved borrowing constraints further up the income scale. The only counter to this trend for low-income households who are unable to pay an increased proportion of income in repayments is to buy lower priced housing, which is likely to require a greater need for maintenance or repair, requiring skills and income that many women lack, or a less advantageous location for access to employment and services.

Access to statutory home purchase schemes

Of perhaps greater concern is the bias towards traditional families in the policies of statutory authorities assisting movement into home ownership. Priority for single women, for example, in policy current in NSW in the mid-1980’s recognised their priority need only as mothers, not individuals. (Watson, 1988, p.48)

The needs of single households after relationship breakdown were not recognised in schemes where concessionary loans were given on a once only basis. If women, as part of a couple, were able to obtain concessionary finance then their needs on

7. in which women after divorce are heavily represented.
leaving the relationship are more likely to be more pressing, particularly when children are involved. To be of sufficiently low income to obtain a concessionary loan the couple are unlikely to have generated significant marital property for distribution, to offset the additional costs following marital breakdown.

Access to public rental housing

Public housing has not been immune to criticisms of bias in providing for varying household types. Although bias has been historically based, institutional mores are slow to change. Public housing both in Australia and in a number of other countries has been criticised for directly discriminating against non-traditional households. For example, until 1983 in NSW single people without children were not eligible for public housing. (Forsyth, 1985, p.1) It has also been criticised for a paternalistic and discriminatory attitude exhibited in selecting a "deserving" client group. (Jones, 1980, p.267; Berry, 1981, p.11; McDowell, 1983, p.64; Roberts, 1991, p.124)

"We have forgotten the poor. Unfortunately State housing authorities for good reasons find the truly poor, the so-called multi problem families, a nuisance. They do not pay rent, they are dirty, they demoralise their neighbours. So they never get into State housing, or if they get in they are evicted." (Mendelsohn in Carter, 1980, p.106)

In Britain there is evidence post-War of allocation of "deserving" groups to newer, more prestigious, pleasant and well-located public housing estates. The policy was blatant enough to evince tenant recognition of such a system of allocation.

"We were told that after the estate had been occupied for twenty years they could put anyone in, know what I mean?... You know like black people, Greek people. Up until then I think they were very selective of their
tenants". (Public housing tenant, quoted in Roberts, 1991, p.124)

Unfortunately as public housing policies have become ostensibly less discriminatory and more liberal in their approach, funding cutbacks and changing political priorities have handicapped realisation of the benefits implicit in such a change. (Roberts, 1991, p.151)

Access to private rental housing

Discrimination is exercised by real estate agents and landlords as gatekeepers of access to private rental housing. Anecdotal evidence suggests that in this situation, women as parents are discriminated against. Single women make the best tenants, the cleanest so long as their are no kids.... some owners won't have kids, Lebanese, unemployed or pets." (Watson and Coleman, 1986, p.24)

Indirect discrimination may pertain to separating women who seek private rental housing, because of the requirement for payment of expensive bonds and connection fees prior to occupation.

Conclusion

This chapter has examined trends in, and characteristics of divorce. It appears that, given the projected incidence of divorce amongst recent marriages, concerns surrounding the societal and personal management of what constitutes at a personal level a major life trauma will not be short-lived. At a societal level, divorce constitutes, particularly in the short term, a source of new household formation, with resulting needs for servicing and often income maintenance. It appears that, socially, a history of intolerance to a 'deviant' household such as that formed by divorce is still perpetuated.

Although recognisable trends are evident in the demographics of divorce, divorcees represent the full social strata, indicating
the potential for a wide range of resulting circumstances and problems. Although divorce has historically been biased towards the young, a trend which is becoming more apparent in recent times, a significant number of divorces still represent the dissolution of marriages of long duration. While an increasing number of divorces do not involve children, the majority of divorces still do.

Sixty per cent of marriages ending in divorce last less than 10 years to separation and almost half less than 10 years to divorce. The incidence and rate of remarriage attests to the resilience of many divorcees, and perhaps, as some studies have suggested, the strong financial incentives for many women, especially mothers, to repartner. A number of studies have indicated that variables associated with remarriage vary by gender and age, with overall men more likely to repartner and to repartner more quickly than women. Older women exhibit the most conservative repartnering patterns.

At any point in time, women who are separated or who remain divorced are likely to be living as single parent households or in non-family households, both non-traditional in housing terms.

Although the operation of a discretionary system of Family Law in Australia suggests the potential for redress of economic disadvantages sustained through divorce, in practice this has proved not to be the case. The law delivers sexism in process and outcome, to the detriment of divorcing women.

Several elements of discrimination are likely to effect divorced women in their access to housing after divorce, and the form of discrimination varies by tenure. Policies of financial institutions affect the access of divorced women to housing finance for owner occupation. A number of studies have documented the gender-discriminatory policies, both direct and indirect exercised by financial institutions. Divorced women
are likely to be concurrently affected by policies which discriminate against low-income earners.

For a number of reasons, explained in part by the intransigence and inertia/conservatism of housing policy, divorcing women are likely to be discriminated against by statutory loan authorities and, especially in the past, by public housing authorities. Unfortunately the ability of public housing to assist non-traditional households has diminished in line with the growing welfare orientation and depletion of government priority to public housing.

The next chapter will examine the housing situation of women when their marriage breaks down.