

# House of Representatives Standing Committee on Social and Legal Affairs

## Parliamentary Inquiry into the Child Support Program

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The authors of this submission work at the Australian Demographic and Social Research Institute (ADSRI) at the Australian National University (ANU). Both are pleased to have the opportunity to respond to the Standing Committee on Social & Legal Affairs Inquiry into the Child Support Program.

ADSRI was established in 2007 at the ANU. It is an interdisciplinary research institute that applies quantitative and qualitative approaches to evidence-based policy issues in Australia and its region. Its activities are coordinated through seven research groups:

- Economic and demographic modelling
- Family dynamics and policy
- Population, health and development
- International migration
- Group on ageing, longevity and mortality
- Digital economy and society
- Civil society, citizenship and third sector

ADSRI's mission is to conduct and promote demographic and social research, and training of the highest quality with an emphasis on evidence-based policy research. One of ADSRI's core aims is to inform policy makers and the broader public about major social and demographic issues facing Australia and its region.

For the past six years, the authors have been investigating the impacts of the child support reforms of 2006–08. This major evaluation study, titled the *Child Support Reform Study (CSRS)*, draws on a large representative sample of separated parents registered with the Child Support Agency in 2006 and thereafter. The findings from the study have direct relevance to the House of Representatives Standing Committee on Social and Legal Affairs Inquiry into the Child Support Program. Our submission thus draws heavily on findings from the CSRS, as well as drawing more broadly on past and current work by the authors in the area of children and families, including aspects of family law and child support policy.

One author (Smyth) was a Member of the Ministerial Taskforce on Child Support, and has been researching the areas of child support and post-separation parenting for almost two decades. He is currently an Associate Professor, and an Australian Research Council Future Fellow investigating high conflict shared-time families. The other author (Rodgers) is an internationally renowned scholar who has been investigating the relationship between family separation, other adversity and long-term social and psychological development for over three decades. Rodgers is currently Professor of Family Health & Wellbeing, and a National Health and Medical Research Council Fellow.

The research featured in this submission was funded by Australian Research Council (Linkage Project 0989558), with additional support from the Australian Government Department of Social Services (DSS) and the Australian Government Department of Human Services – Child Support Program (DHS-CSP). Both DSS and DHS are Partner Organisations involved in this research; the authors of this submission (Smyth & Rodgers) are the Chief Investigators. The views expressed in this submission might not reflect those of any affiliated organisations involved in this research.

## Executive Summary

The authors of this submission work at the Australian Demographic and Social Research Institute (ADSRI) at the Australian National University (ANU), and are pleased to have the opportunity to respond to the Standing Committee on Social & Legal Affairs Inquiry into the Child Support Program.

We welcome the Committee's particular interest in 'ensuring that children in high conflict families are best provided for under the child support scheme', and urge that strong support continue to be given to the 'best interests of the child' as a paramount consideration, even though this consideration remains implicit in the Committee's Terms of Reference.

For the past six years both authors have been the Chief Investigators of the *Child Support Reform Study* (CSRS), a large evaluation of the child support reforms funded by the Australian Research Council (Grant No. LP0989558). Findings from this study form the backbone of our submission.

This submission has six main sections. A summary of the key points in each section is set out below. Although we respond directly to the Terms of Reference in Section IV, we have not structured this submission around these references because our research findings and the relevant literature cut across a number of areas covered.

### I. Love and Money: The emotional context

- The financial practices of couples remains one of the most personal and private facets of society.
- Disputes about how money is spent can put enormous strain on and even destroy relationships and families.
- While the family is generally thought of as a haven far removed from the workings of a market economy, suggests American sociologist Marcia Millman, it 'often edges into an economy of exchange' in which many of the hidden qualities of the market, such as coercion, brinkmanship, competition, tally sheets, and conditional exchanges, come into play.
- According to Millman, love and money form the two core 'pre-occupations' of modern society.
- An 'intricate economy of love and money' exists in the family; relationship breakdown often illuminates this economy. Child support is a case in point.

### II. Policy context

- A mix of technical complexity, raw emotion, and disparate competing interests makes child support one of the most contested areas of public policy.
- For many separated parents, child support continues to act as a 'lightning rod' for much pent-up anger, grief and disappointment surrounding relationship breakdown (including court outcomes) and the loss of everyday family life.
- Resident and non-resident parents continue to differ markedly in their criticism of the Australian Child Support Scheme. The most common complaints by payers (mostly fathers), especially those who have new families to support, are that they are paying too much, they shouldn't have to pay child support when they can't see their children, and that child support is essentially a form of alimony. By contrast, the most common complaints by

parents eligible for child support (mostly mothers) are that payments do not cover the costs of children, payments do not occur or are irregular, old debts are not pursued, and the system can be manipulated to minimize or avoid child support obligations altogether.

- An important question for the current inquiry is: Are new problems being ‘experienced by payers or payees of child support [that] impact on the majority of parents and other carers involved in the system’ beyond the perennial chestnut issues that have dogged the Scheme since its inception.

### **III. The impacts of the child support changes**

- Several key findings have emerged from the ANU Study. We set out these findings for the five areas studied thus far: (a) strategic bargaining over child support and parenting time; (b) shared-time parenting trends; (c) pre- and post-reform financial living standards; (d) child support compliance; and (e) ‘his’ and ‘her’ divorce.

#### *Strategic bargaining over child support and parenting time*

- In Australia, there is much anecdotal evidence that separated parents frequently structure their parenting arrangements for financial gain from the child support and family benefits systems.
- We found that separated parents had little knowledge of the rules about the number of nights required for a reduction in child support (i.e., shared-parenting time adjustments) or when Family Tax Benefit could be split.
- Thus any strategic bargaining over child support and parenting time is likely to be occurring in the context of misinformation or a knowledge vacuum.
- The area of policy knowledge is important because knowledge gaps can reduce or negate the effectiveness of a policy, program or package of reform.

#### *Shared-time parenting trends*

- In Australia, the child support changes sought to resonate with the family law changes of 2006 by encouraging shared parenting.
- But recent data suggest that changing the Family Law Act and the child support system to encourage equal (or near-equal) shared-time arrangements did not lead to more families entering shared-time arrangements.
- Rather, such arrangements appear to have plateaued at around 16% of children of recently separated parents since the introduction of the family law amendments and new child support scheme.
- There was an initial spike in shared-time cases among recently separated families after the new child support formula was introduced in 2008 but this statistical blip among new cases disappeared one year post-reform.

#### *Pre- and post-reform financial living standards*

- The child support reforms generally led to lower child support payments to separated mothers. Some of these reductions are likely to have been offset by increased FTB. Payments decreased, on average, by \$20–27 per week after the reforms but then increased slightly two years later. Three years after the reforms, fathers reported paying slightly less child support than they were paying under the old formula.

- Consistent with most studies of the economic consequences of divorce, separated mothers were more likely to be worse off financially than separated fathers – both pre- and post-reform.
- Prior to the child support reforms, 20% of separated mothers experienced income disadvantage (i.e., had household incomes below 60% of the median), compared with 26% of separated mothers after the reforms.
- By contrast, the level of income disadvantage experienced by separated fathers (15–17%) remained relatively static pre- and post-reform (i.e., between 2008 and 2011).
- Separated fathers believed their arrangements for child support were slightly fairer under the new formula than under the old formula, whereas mothers believed child support was slightly less fair under the new formula. But by three-years post-reform, separated mothers and fathers held similar views of fairness. Perceptions of fairness by separated mothers, on average, were not especially high at any point by separated mothers or fathers.
- Changes to the child support formula appeared to have little impact over time on separated mothers' subjective financial wellbeing and their experience of financial hardship. By contrast, following the child support reforms, the clear overall trend for separated fathers was that they perceived their financial circumstances to be improving over time, and their experience of financial hardship declined by 12–18 month follow-up.
- There was an apparent mismatch between separated parents' objective financial circumstances and financial hardship. Despite separated fathers being better off financially than separated mothers (as measured by equivalized household income), they were slightly more likely than separated mothers to report being 'poor' or 'very poor' before the new formula was introduced. This mismatch disappeared post-reform.

#### *Child support compliance*

- Despite a major investment by government post-reform to ensure that child support is paid in full and on time, preliminary (unpublished) data from the Child Support Reform Study suggest that the child support changes have not led to any significant increases in child support compliance.
- Of course, changing a formula may be easier than changing (compliance) behaviour, particularly where separated parents are stuck in high levels of acrimony.

#### *'His' and 'Her' divorce*

- Our data suggest that it is not unusual for separated parents from the same relationship to report very different views about their relationship ('perceptual discrepancies') and different information about their parenting arrangements ('factual discrepancies' relating to, for example, the number of nights that children spend with each parent).
- These different perceptions have important implications for child support: payers (mostly fathers) and payees (mostly mothers) seem to have very different understandings of what counts as 'child support' and what constitutes 'compliance'.
- These different accounting systems and competing perceptions may well foster – or indeed reflect – different perceptions of fairness.

## IV. Responses to the Terms of Reference

1. *Methods used by Child Support to collect payments in arrears and manage overpayments*
  - Compliance is a tricky area of child support policy.
  - On the one hand, it's important that, where ever possible, 'children should enjoy the benefit of a similar proportion of parental income to that which they would have enjoyed if their parents lived together' (i.e., the 'continuity of expenditure' principle).
  - On the other hand, if governments pursue compliance at all costs, money can become a wedge between parents, and act to undermine cooperative parenting post-separation.
  - Larger and more fundamental policy questions sit underneath the issue of compliance: How should 'compliance' be defined? Is there a relationship between different compliance activities and child and family wellbeing? If so, what is that relationship? What's the appropriate role for government in the enforcement of compliance?
  
2. *Whether the child support system is flexible enough to accommodate the changing circumstances of families*
  - Child support is necessarily based on utilitarian principles – that is, 'greatest good for the greater number'.
  - An ongoing tension for all schemes that use administrative (formulaic) assessment is the extent to which they permit departure from the standard formulae.
  - With around 1.4 million separated parents and 1.2 million children across Australia involved in the Child Support Program, there are obvious limits to the extent that the Program can be flexible enough to accommodate the changing circumstances of many families.
  - Those making Change of Assessment (CoA) applications are likely to involve some of the most difficult and complex cases in the Program's caseload (e.g., travel costs in relation to relocation disputes, changes in a child's education, etc).
  
3. *The alignment of the child support and family assistance frameworks*
  - An upshot of the shift towards shared-time arrangements is that the exact time splits of children's living arrangements are becoming increasingly fuzzy for some families.
  - This, along with tendency for some parents from the same former union to report different amounts of time with the same children, can create problems for administrative systems that rely on the provision of accurate information (e.g., a Letter of Assessment cannot be generated by the DHS-CSP until parents agree on the amount of time children are in the care of each parent).
  
4. *Linkages between Family Court decisions and Child Support's policies and processes*
  - One issue likely to be raised in the course of the inquiry is that of the apparent inequity of being able to enforce child support or child maintenance orders but not parenting orders.
  - This has been – and continues to be – a thorny issue for many countries around the world.

5. *How the scheme could provide better outcomes for high conflict families.*
  - Many separated parents get along after separation and are not in ‘high conflict’. The idea that ‘custody wars’ are the norm after divorce misrepresents the reality for many families.
  - This is an important area not just because children caught up and used in parental conflict suffer but also because high conflict cases can ‘escalate at a huge cost to our judicial system and our society in terms of time, money and emotional distress for all involved.’
6. *Assessing the methodology for calculating payments and the adequacy of current compliance and enforcement powers for the management of child support payments*
  - The fundamental problem for child support policy is that it comprises a set of interlocking conundrums related to balancing the complex and competing needs of children, resident parents, non-resident parents, and the State. Put simply, striking the right balance between adequacy of financial support for children, on the one hand, and fairness for mothers, fathers, and the State on the other, is no easy task.
  - Assessing the methodology for calculating payments is an extremely ambitious endeavour.
7. *The effectiveness of mediation and counselling arrangements as part of family assistance frameworks*
  - Family law in Australia has increasingly highlighted the importance of former partners being assisted to make their own arrangements with respect to how they continue to parent their children.
  - But responsible and fulfilling post-separation parenting also requires responsible and workable financial arrangements.
  - We, along with others, wonder whether there might be scope to provide services to assist separated parents with the capacity and the desire to discuss child support matters directly with each other, where appropriate.
8. *Ensuring that children in high conflict families are best provided for under the child support scheme*
  - The Child Support Program is in a strong position to identify and assist high conflict families.

## **V. Improving the evidence base**

- Family law is an area in which anecdote often reigns supreme. This is because (a) it is easy to relate to personal stories and (b) empirical data are frequently lacking on pressing policy questions.
- Policy makers should be alive to the risk of anecdotal evidence shaping policy for a minority rather than for the majority, especially where the rationale behind policy decisions involves a complex set of issues that do not appear to be well understood.
- There is a surprising lack of published research in Australia on the operation of the Child Support Program since the reforms of 2006–08. Several sources of longitudinal or time-series data are nonetheless available. Administrative data also constitute an important source of information, although these data are currently under-utilized for research and monitoring purposes.



- Australia has invested a large amount of money and effort into the collection of data for evaluating the family law and child support reforms.
- The Child Support Reform Study was designed to monitor the impacts of the child support changes, and constitutes an excellent source of data for future policy analysis and refinement.
- In the current tight fiscal environment, it makes much sense to make the full use of existing data before embarking on new data collections.

## **VI. Conclusions**

- It is a complex matter to say whether the present child support system is performing well, and exactly what changes or refinements are needed to improve the Child Support Program. Apart from anecdotal evidence from advocacy groups, and complaints to ministers, there is not a lot of detailed empirical data available to inform our understanding of the operation of the Child Support Program, and whether it is indeed working in the best interests of children.
- Disentangling the impacts of the child support reforms from the Welfare-to-Work changes and the Global Financial Crisis stimulus package is extremely difficult.
- As recommended by the Ministerial Taskforce on Child Support: the formula should continue to be monitored to ensure that it keeps pace with social, economic and legislative change.

## Submission to the Parliamentary Inquiry into the Child Support Program

For the past six years, the authors have been investigating the impacts of the child support reforms of 2006–08.<sup>1</sup> This major evaluation study, titled the *Child Support Reform Study* (CSRS), draws on a large representative sample of separated parents registered with the Child Support Agency in 2006 and thereafter. The study was funded by Australian Research Council (Linkage Project 0989558), with additional support from the Australian Government Department of Social Services (DSS) and the Australian Government Department of Human Services – Child Support Program (DHS-CSP). Both DSS and DHS are Partner Organisations involved in this research; the authors of this submission (Smyth & Rodgers) are the Chief Investigators. The views expressed in this submission might not reflect those of any affiliated organisations involved in this research.

In this submission, we (a) briefly note the emotional and policy contexts in which the child support changes occurred (Sections I and II, respectively); (b) set out some of the study's key findings thus far (Section III), (c) respond to the Terms of Reference (Section IV), and (d) briefly reflect on the evidence base currently available to shed light on the inquiry's foci (Section V). Although we respond directly to the Terms of Reference in Section IV, we have not structured this submission around these references because our research findings and the relevant literature cut across a number of areas covered.

### **I. Love & Money: The emotional context**

The financial practices of couples remains one of the most personal and private facets of society.<sup>2</sup> Indeed the way that each of us uses our money is generally regarded as our own business.<sup>3</sup>

Disputes about how money is spent can put enormous strain on and even destroy relationships and families.<sup>4</sup> A nationwide survey in 2010, for example, found that around half (47%) 'of all Australians admit to arguing with their partner over money'.<sup>5</sup> Money matters – especially following parental separation<sup>6</sup> – can come between otherwise

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<sup>1</sup> The study began in early 2008, and is due to conclude in October 2014. Appendix A contains a brief overview of the study.

<sup>2</sup> Pritchard, R. (1999). *How money comes between us: Common family problems, creative solutions*, Tandem Press: Auckland.

<sup>3</sup> Moloney, L., Smyth, B. & Fraser, K. (2010). Beyond the formula: Where can parents go to discuss child support together?, *Journal of Family Studies*, 16(1), 33–47.

<sup>4</sup> Millman, M. (1991). *Warm hearts & cold cash: the intimate dynamics of families and money*, The Free Press: New York; Wolcott, I. & Hughes, J. (1999). *Towards understanding the reasons for divorce*, Working Paper 20, AIFS: Melbourne.

<sup>5</sup> Westpac Bank Corporation, (2010). *Media releases: Money a major cause of conflict in relationships*, Westpac, Sydney, available at: <http://www.westpac.com.au/about-westpac/media/media-releases/2010/8-March-2010>; see also Commonwealth of Australia (2009). *Preliminary Report: Survey on the Impact on Families of the Economic Downturn*, Department of Families, Housing, Community Service and Indigenous Affairs, Canberra; Glenn, F., Mitcheson, J. & Coleman, L. (2010). Families: financial crisis, 83 *Community Practitioner* 36.

<sup>6</sup> As noted by Fitzgibbon: '[f]amily finances appear in a different light when families fracture in dispute, separation, or divorce. Under those circumstances, the assets and income, which formerly were devoted to the projects of familial solidarity, become the object of competing claims': see Fitzgibbon, S. (2010). Family finances: A review of papers from the 13<sup>th</sup> World Conference of the International Society of Family Law, 44 *Family Law Quarterly* 109. As noted by Ganong and Coleman, in re-married couples, in particular, money

caring and competent parents, with potentially serious, long term consequences for the children.<sup>7</sup>

The way that money is used by and distributed within families is an important part of family dynamics.<sup>8</sup> While the family is generally thought of as a haven far removed from the workings of a market economy, according to Millman, it ‘often edges into an economy of exchange’ – albeit with a softer underbelly – in which many of the hidden qualities of the market, such as coercion, brinkmanship, competition, tally sheets, and conditional exchanges, come into play.<sup>9</sup> One of Millman’s fundamental insights is that money is often used as a surrogate measure of love. She reminds us that money is tangible, concrete, measurable, objective, definite, and precise, whereas love is ambiguous, unmeasurable, and often ephemeral. As a consequence of these diametrically contrasting qualities, money is frequently used to gauge relationships. Money has a way of clarifying personal relationships, and can be a symbol for many things beyond its value as cash.<sup>10</sup> It can signify trust, desire, love, control, power, commitment, responsibility, and ownership. For instance, after relationship breakdown, money can be a symbol of continuing love for a child when love no longer exists between former partners.<sup>11</sup>

For Millman, love and money form the two core ‘pre-occupations’ of modern society.<sup>12</sup> Both are tightly intertwined because money ‘inevitably seeps’ into all close relationships.<sup>13</sup> An ‘intricate economy of love and money’ exists in the family, writes Millman.<sup>14</sup> Relationship breakdown often illuminates this economy. Child support is a case in point.

## II. Policy context

Not surprisingly perhaps given the complex relationship between love and money, child support policy is an area fraught with high personal emotion for many separating parents and family members. This area of policy is typically tempered by a litany of stakeholders, interest groups, perspectives, anecdotes, and competing interpretations of what’s going on. For many separated parents, child support continues to act as a ‘lightning rod’ for much pent-up anger, grief and disappointment surrounding relationship breakdown

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is often a major source of conflict; see Ganong, L. & Coleman, M. (1989). Preparing for remarriage: Anticipating the issues, seeking solutions, *Family Relations*, 38, 28.

<sup>7</sup> Bell, A., Kazimirski, A. & La Valle, I. (2006). *An investigation of CSA Maintenance Direct Payments: Qualitative study* (Research Report No. 327), The National Centre for Social Research on behalf of the Department for Work and Pensions: Leeds, at 98; Burns, A. (1980). *Breaking Up: Separation and divorce in Australia*, Nelson: Melbourne; Moloney, L., Smyth, B. & Fraser, K. (2010). Beyond the formula: Where can parents go to discuss child support together?, 16 *Journal of Family Studies* 33–47.

<sup>8</sup> See, for example, Mason’s discussion of the use of money to manipulate others; Mason, J.W. (1992). Meaning of Money: A financial planning and counseling perspective, *American Behavioral Scientist*, 35, 771. Financial management within families is one area that has attracted substantial empirical work. See, for example: Edwards, M. (1982). Financial Arrangements made by Husbands and Wives: Findings of a survey, *Australian & New Zealand Journal of Statistics*, 18, 320.

<sup>9</sup> Millman, M. (1991). *Warm hearts & cold cash: the intimate dynamics of families and money*, Free Press: New York, at 9.

<sup>10</sup> Ibid; see also: Doyle, K.O. (1992). Introduction: Money and the Behavioral Sciences, *American Behavioral Scientist*, 35, 641; Zelizer, V. (1994). *The social meaning of money*, Basic Books: New York.

<sup>11</sup> Simpson, B. (1997). On gifts, payments and disputes: Divorce and changing family structures in contemporary Britain, *Journal of the Royal Anthropological Institute*, 3, 731; see also Bradshaw, J., Stimson, C., Skinner, C. & Williams, J. (1999). *Absent fathers?* Routledge: London; Natalier, K. & Hewitt, B. (2010). ‘It’s not just about the money’: Non-resident fathers’ perspective on paying child support, *Sociology*, 44, 489.

<sup>12</sup> Millman, M. (1991). *Warm hearts & cold cash: the intimate dynamics of families and money*, Free Press: New York.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid, at 10.

(including court outcomes) and the loss of everyday family life.<sup>15</sup> Value judgments about what constitutes ‘fairness’, highly technical legislation and rules, and intricate interactions between child support and other policies (particularly family payments) add additional layers of complexity. It is this mix of technical complexity, raw emotion, and disparate competing interests that makes child support one of the most contested areas of public policy.

Resident and non-resident parents continue to differ markedly in their criticism of the Australian Child Support Scheme. The most common complaints by payers (mostly fathers), especially those who have new families to support, are that they are paying too much, they shouldn’t have to pay child support when they can’t see their children, and that child support is essentially a form of alimony. By contrast, the most common complaints by parents eligible for child support (mostly mothers) are that payments do not cover the costs of children, payments do not occur or are irregular, old debts are not pursued, and the system can be manipulated to minimize or avoid child support obligations altogether. These (somewhat gendered) competing views are likely to be grounded in several realities for separated parents: (a) the money that supported one family is usually insufficient to meet the costs of two newly formed households, one of which often includes children for much of the time; (b) many separated parents in the child support system are comparatively not well off; (c) the costs of supporting children and those of the parent with whom children live for the majority of time cannot easily be distinguished; and (d) differentiating ‘capacity to pay’ from ‘commitment to pay’ is not always straight-forward. An important question for the current inquiry is: Are new problems being ‘experienced by payers or payees of child support [that] impact on the majority of parents and other carers involved in the system’ beyond the perennial chestnut issues that have dogged the Scheme since its inception.

The fundamental problem for child support policy is that it comprises a set of interlocking conundrums related to balancing the complex and competing needs of children, resident parents, non-resident parents, and the State. Put simply, striking the right balance between adequacy of financial support for children, on the one hand, and fairness for mothers, fathers, and the State on the other, is no easy task.<sup>16</sup> Tweaking one aspect of child support policy in pursuit of ‘adequacy’ and/or ‘equity’ often inadvertently undermines some other policy element. This means that ‘quick (policy) fixes’ are often not possible, and that more fundamental systemic approaches to child support policy refinement are usually required.

Over the past two decades, much of the policy refinement in Australia and elsewhere has centred on equity issues through the inclusion or refinement of ‘special factors’ – for example, financial adjustments for shared-time parenting, second family responsibilities, and low or high income – and the broadening of provisions where variations can be made to address complex or unique circumstances.<sup>17</sup> These refinements have sought to make formulaic assessment flexible enough to take account of the ever-increasing complexity of families – but at a cost of increasing policy complexity. The Australian changes of 2006 are a case in point.

Since the Scheme first began in 1988/89, Australian society has changed in many ways: the Australian population has grown, as has the number of separated parents;

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<sup>15</sup> This insight was provided two decades ago by the Joint Select Committee on Child Support: see Joint Select Committee on Certain Family Issues (1994). *The Operation and Effectiveness of the Child Support Scheme*, Australian Government Publishing Service, Canberra. This statement still holds true today.

<sup>16</sup> Blumberg, G. G. (1999). Balancing the interests: The American Law Institute’s treatment of child support, *Family Law Quarterly*, 33, 39–110.

<sup>17</sup> Venohr, J.C. & Williams, R.G. (1999). The implementation and periodic review of state child support guidelines, *Family Law Quarterly*, 33, 7–38.

cohabitation is on the rise; the changing nature of family life and patterns of women's and men's workforce participation has meant that the parenting roles, expectations and responsibilities of mothers and fathers are in a state of flux; and modern family life is becoming more complex, as evidenced by diverse family forms and post-separation parenting arrangements.

In a bid to 'modernize' the Child Support Scheme, and flowing out of broader family law reform encouraging shared parenting,<sup>18</sup> sweeping changes recommended by a Ministerial Taskforce<sup>19</sup> were implemented between 2006 and 2008. The total reform package became fully operational on 1 July 2008, featuring a markedly different and more complex system for the calculation of child support.<sup>20</sup> Key differences between the old and new schemes include: (a) replacing the original percentage-of-obligor-income model with an income-shares approach (whereby the incomes of both parents are now taken into account and treated the same way); (b) changing the number of nights at which child support liability is reduced (i.e., shared parenting-time formula adjustments), and FTB can be split between parents; and (c) the use of contemporary research on the costs of children in the new formula.

### III. The impacts of the changes

To what extent have the child support changes of 2008 impacted on children and families? Before setting out some of the key findings from the ANU Child Support Reform Study, an important caveat needs to be noted.

At the time the child support reforms were introduced, Welfare-to-Work reforms were being rolled out in a separate but adjunct social policy arena – with both child support and WTW changes occurring on the back of the (unexpected) global financial crisis. This complex mix of moving parts and countervailing forces presents a formidable landscape in which to explore and understand post-separation financial living standards after the child support changes. On the one hand, early modelling of the child support and WTW changes suggest that many sole parents (most of whom are mothers) were likely to be adversely affected by each policy separately and in tandem. On the other hand, any adverse financial impacts of these policies were likely to be offset in the short-term by 'generous lump-sum cash handouts'<sup>21</sup> as part of Australia's Stimulus Package. This is thus a far more complex policy landscape than has faced prior Australian research exploring policy impacts on separated families.

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<sup>18</sup> Commonwealth of Australia (2003). *Every Picture Tells a Story: Report on the Inquiry into Child Custody Arrangements in the Event of Family Separation*. Standing Committee on Family and Community Affairs, Canberra, ACT.

<sup>19</sup> One of the authors (Smyth) was a member of the Ministerial Taskforce.

<sup>20</sup> The new Scheme is based on an *income-shares* model, whereby the Child Support Agency takes into account the incomes of *both* parents in making a child support assessment. Parents' combined incomes are applied to a Cost-of-Children table, and the relevant amount – which is influenced by the number and age of children, and parents' combined income – is then divided between the parents according to their incomes. The non-resident parent pays his or her relative share to the resident parent; it is assumed that the resident parent will pay his or her share in-kind by virtue of being the parent with primary care. The age of children is now also an important part of the child support formula. Prior to the introduction of this approach on 1 July 2008, a simpler 'percentage-of-obligor' model was in operation in which non-resident parents paid a *set* percentage of their income depending on the number of biological/adopted children they were obliged to support.

<sup>21</sup> We borrow this phrase from Redmond, Patulny and Whiteford; see: Redmond, G., Patulny, R. & Whiteford, P. The Global Financial Crisis and Child Poverty: The Case of Australia 2006–2010, *Social Policy and Administration* 47(6), 709–728, at 710.

### **Key findings from the ANU Child Support Reform Study**

Several key findings have emerged from the ANU Study. We set out these findings for the five areas studied thus far: (a) strategic bargaining over child support and parenting time; (b) shared-time parenting trends; (c) pre- and post-reform financial living standards; (d) child support compliance; and (e) ‘his’ and ‘her’ divorce.

It is important to note at the outset that the study is based on a large representative (random) sample of separated parents registered with the Child Support Agency in 2006 and thereafter.<sup>22</sup> It includes over 7,000 mothers and fathers from a broad range of circumstances from around Australia – including rural and urban dwellers, and those from varying educational and socio-economic circumstances (see Appendix A for more detail on the study’s design and methodology).

#### *(a) Strategic bargaining over child support and parenting time*

In Australia, there is much anecdotal evidence that separated parents frequently structure their parenting arrangements for financial gain from the child support and family benefits systems. Men’s groups, for example, often assert that separated mothers deny fathers overnight stays with children to maximize mothers’ child support and social security benefits. By contrast, women’s groups frequently claim that separated fathers want more time with children to reduce child support liability. There is no doubt that some parents bargain over money and parenting-time to make ends meet, while others do so to maximize their own or their children’s interests – financial and/or emotional – in the context of a highly acrimonious inter-parental relationship. But widespread *strategic* bargaining presupposes that separated parents who bargain over child support and parenting time have some knowledge of the child support and family benefits rules.

We found that separated parents’ level of knowledge of parenting time rules was very low. Specifically, separated parents had little knowledge of the rules about the number of nights required for a reduction in child support (i.e., shared-parenting time adjustments) or when Family Tax Benefit could be split.<sup>23</sup> This was true both pre- and post-reform. What surprised us most was that a sizeable group of parents thought they had accurate knowledge but this self-perceived knowledge was found to be erroneous: parents who thought they knew the rules were more likely to be wrong than right. Thus any strategic bargaining over child support and parenting time is likely to be occurring in the context of misinformation or a knowledge vacuum. The area of policy knowledge is

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<sup>22</sup> Australia’s child support scheme encompasses around 1.4 million separated parents and 1.2 million children. A small but sizeable group (somewhere between 5% and 20%) of all separated families is estimated to conduct their own child support arrangements outside of the Scheme. This group is likely to differ in important ways to those who use the Child Support Agency to assess and/or collect child support. For instance, parents who ‘self-administer’ their child support are more likely to have cooperative arrangements and greater financial resources than parents registered with the CSA.

<sup>23</sup> Under the revised formula, ‘regular care’ (where children spend 14%–34% of time in the care of the non-resident parent – e.g., at least one night a week) is now recognised in the child support formula by reducing payments to help with the infrastructure costs of regular overnight stays; ‘shared care’ adjustments now begin at 35% of nights. (Under the old Scheme, parenting-time formula adjustments did not apply until children were in the care of each parent for at least 30% of nights.) In relation to family benefits where parents share the care of their children, the threshold for FTB splitting has been aligned with the 35% parenting-time adjustment to make the child support and family benefits systems consistent. (Under the old Scheme, if a non-resident parent had a child in his or her care for at least 10% of the time, FTB could be pro-rated for each per cent increase in care above 10%.) But under the revised Scheme, a non-resident parent can only claim a pro-rated portion of FTB where each parent has the children in their care for at least 35% of the time.

important because knowledge gaps can reduce or negate the effectiveness of a policy, program or package of reform.<sup>24</sup>

*(b) Shared-time parenting trends*

Parenting time is frequently raised as an important issue in discussions about child support and post-separation family finances.

In many countries, shared-time parenting – where children spend equal or near-equal amounts of time with each parent (known in the USA as ‘joint physical custody’) – is emerging as a new family form following divorce or separation, and this has implications for child support. In the United States, around 20% of post-divorce parenting arrangements involve shared-time parenting (this estimate is as high as 32% in some states, such as Wisconsin).<sup>25</sup> Estimates range between 11% and 22% in Australia, Canada, the United Kingdom, Denmark, Norway, and the Netherlands, compared with 33% in Sweden and Belgium.

The growing popularity of shared-time parenting seems to reflect the convergence of several mutually-reinforcing social trends, including: a marked increase in women’s participation in the labour force, with ‘tag-team parenting’ a practical response to this; greater acceptance of the importance of the role of fatherhood; a growing appreciation that children generally benefit from an ongoing meaningful relationship with both parents after separation; and divorce laws that increasingly ‘lean ... in the direction of joint custody’.<sup>26</sup> The recent development – and greater enforcement – of child support laws may also have contributed to the new paradigm of ‘involved fathers’.

In Australia, the child support changes sought to resonate with the family law changes of 2006 by supporting shared parenting. (The introduction of the ‘regular care’ parenting time adjustment is a clear example of this). But recent data from the ANU Child Support Reform Study indicate that changing the Family Law Act and the child support system to encourage equal (or near-equal) shared-time arrangements did not lead to more families entering shared-time arrangements. Rather, such arrangements appear to have plateaued at around 16% of children of recently separated parents since the introduction of the family law amendments and new child support scheme (see Figure 1 overleaf). There was an initial spike in shared-time cases among recently separated families after the new child support formula was introduced in 2008 but this statistical blip among new cases disappeared one year post-reform.

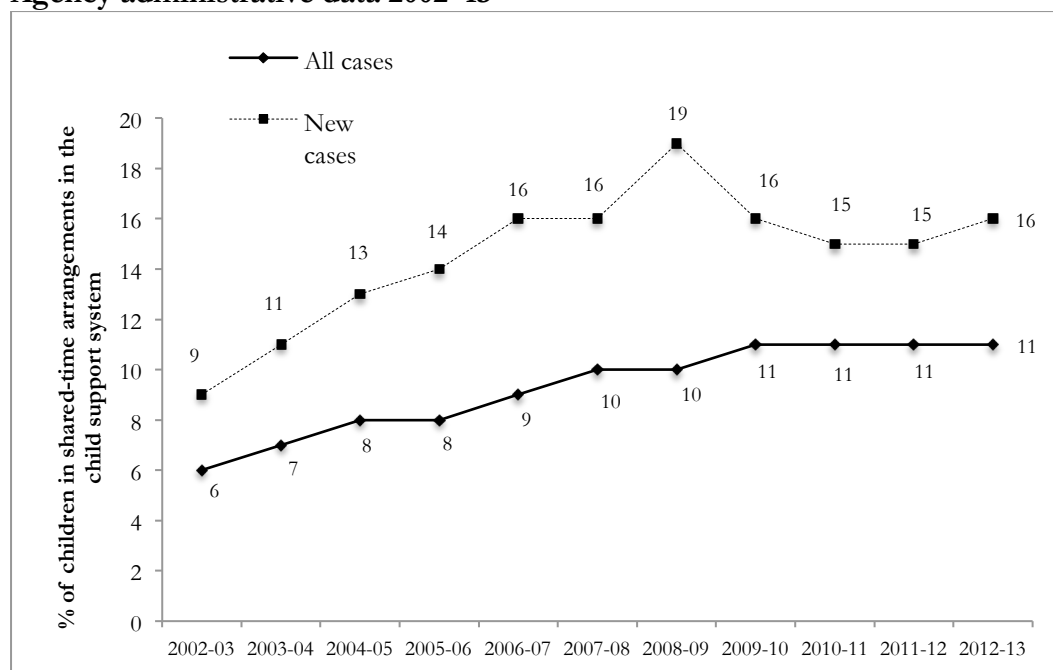
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<sup>24</sup> Meyer, D.R., Cancian, M. & Nam, K. (2007). Welfare and child support program knowledge gaps reduce program effectiveness, *Journal of Policy Analysis and Management* 26(3), 575–597; see also Gidengil, E. & Stolle, D. (2012). What do women know about government services and benefits, *Canadian Public Policy*, 38, 31.

<sup>25</sup> Melli, M.S. & Brown, P.R. (2008). *Exploring a new family form – the shared time family*, *International Journal of Law, Policy & the Family*, 22, 231–269, at 259.

<sup>26</sup> Bartlett, K.T. (2002). U.S. custody law and trends in the context of the ALI Principles of the law of family dissolution, *Virginia Journal of Social Policy & the Law* 10, at 23.

**Figure 1: Percentage of children in a shared-time arrangement – Child Support Agency administrative data 2002–13**



Source: Customized tables supplied to the Australian National University by DHS-CSP.

Moreover, changing the law or the Child Support Scheme to encourage shared-time parenting did not lead to a shift in the demography of shared-time families towards high conflict. To sum up: the family law and child support changes appear to have ‘*caught*’ the wave of shared parenting rather than ‘*caused it*’.<sup>27</sup>

One of the concerns we have about a myopic focus on *equal* or *substantial and significant* shared-time (ie the *mathematization* of parenting time) is that parents are often not encouraged to discuss how the money will work in these arrangements. Of course, where both parents have equal care, and equal incomes, and children have few transitions between households each fortnight, month or year, not much may need to be discussed. But where children have complex and/or multiple transitions between households, and/or parents have quite different personal incomes, children’s financial support on a day-to-day basis (e.g., clothes, shoes, school excursions, swimming lessons, medical/dental costs, school needs, etc.) is likely to be more complex than adherence to an annual *Letter of Assessment*. Moreover, while shared-time arrangements tend to be made by separated parents who respect each other as parents and cooperate and who can avoid or contain conflict when they communicate, who can compromise, and who have arrangements that are child-focused and flexible, shared-time parenting can also occur in the context of, or indeed may be the product of, high parental conflict (where shared-time is a ‘*compromise solution for warring parents*’). The latter group of families is likely to need the involvement of government – in the form of the Child Support Program – to help sort out their child support arrangements. Indeed, aside from offering a degree of predictability and certainty about payments with respect to amount, regularity, and the timing of payments, the Scheme was introduced to improve the working relationship between parents by reducing the stress and fear often associated with ‘*bargaining*’ over money.<sup>28</sup>

<sup>27</sup> This turn of phrase belongs to Michael Green.

<sup>28</sup> Carberry, F. (1992). The Child Support Scheme: An evaluation of its personal impact, *Social Security Journal*, 43–46.



*(c) Pre- and post-reform financial living standards*

Parental separation is both a leading cause and correlate of child poverty. The Child Support Scheme seeks to ensure that children continue to be supported financially should their parents separate or never live together. Money matters. But child support is not just about money. Perceptions of fairness are fundamental to the success of any child support system because perceived inequities can undermine compliance.

In Australia, as elsewhere, most studies of the economic consequences of divorce have found that mothers (and their children) are worse off financially than fathers following divorce.<sup>29</sup> In particular, sole-parent families headed by mothers, and older divorced women living alone, typically experience a marked decline in financial living standards.<sup>30</sup> However, the *household* income of women in Australia has been shown to recover, on average, within six years of separation, largely because of the way in which government income support protects the income of separated mothers, and increases over the past decade or so in the ‘real value’ of these payments to families with children.<sup>31</sup> It is unclear whether the latter finding will still hold, of course, in the light of proposed budget changes to family benefits.<sup>32</sup>

Other Australian research paints a slightly more complex picture. Kelly and Harding<sup>33</sup> found that both women and men experienced a drop in living standards after divorce: women often become ‘asset rich but income poor’, gaining the matrimonial home but struggling with the day-to-day costs of raising children.<sup>34</sup> By contrast, men typically lose the family home and take on greater debt to get by.<sup>35</sup>

Have the financial living standards of separated mothers, fathers, and their children changed following the introduction of the revised child support formula on 1 July 2008? If so, how? And have perceptions of fairness about the Scheme changed? These are important policy questions.

Recent data from the ANU Child Support Reform Study suggest that the new Scheme generally did not lead to dramatic changes in post-separation financial living standards. Specifically, the child support reforms generally led to lower child support payments to separated mothers. Some of these reductions are likely to have been offset by increased FTB. Payments decreased, on average, by \$20–27 per week after the reforms but then increased slightly two years later. Three years after the reforms, fathers reported paying slightly less child support than they were paying under the old formula.

Second, and related to the previous finding, separated fathers believed their

<sup>29</sup> See, e.g., Bianchi, S.M., Subaiya, L. & Kahn, J.R. (1999). The gender gap in the economic well-being of non-resident fathers and custodial mothers, *Demography* 36, 195; de Vaus, D., Gray, M., Qu, L. & Stanton, D. (2009). The financial consequences of divorce for later life, in P A Kemp, K Van den Bosch and L Smith (eds.), *Social Protection in an Ageing World*, International Studies on Social Security – Volume 13, intersentia, Antwerp, p 257; Smyth, B. & Weston, R. (2000), *Financial living standards after divorce: A recent snapshot*, Research Paper No. 23, AIFS, Melbourne; R Weston, R. (1986). Money isn’t everything, in P McDonald (ed.), *Settling up: Property and income distribution on divorce in Australia*, Prentice-Hall and Australian Institute of Family Studies, Melbourne, 279; Weston, R. (1993). Income circumstances of parents and children: A longitudinal view, in K Funder, M Harrison and R Weston (eds), *Settling down: Pathways of parents after divorce*, Australian Institute of Family Studies, Melbourne, 135.

<sup>30</sup> See, e.g., Smyth, B. & Weston, R. (2000), *Financial living standards after divorce: A recent snapshot*, Research Paper No. 23, AIFS, Melbourne.

<sup>31</sup> de Vaus, D., Gray, M., Qu, L. & Stanton, D. (2014). The economic consequences of divorce in Australia *International Journal of Law, Policy and the Family*, 28(1), 26–47.

<sup>32</sup> See, for example: Australian Council of Social Services (2014). *A Budget that divides the nation: ACOSS 2014-15 Budget analysis*.

<sup>33</sup> Kelly, S. & Harding, A. (2005). *Love can hurt, divorce will cost: Financial impact of divorce in Australia*, AMP-NATSEM Income and Wealth Report Issue 10, April, AMP, Canberra.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

arrangements for child support were slightly fairer under the new formula than under the old formula, whereas mothers believed child support was slightly less fair under the new formula. But by three-years post-reform, separated mothers and fathers held similar views of fairness: mothers and fathers both gave an average rating of 4.7 on a 0-10 scale (with average scores ranging from 4.3–5.0), which does not depict an especially high level of perceived fairness out of 10 (where 0 = ‘Totally Unfair’, and 10 = ‘Totally Fair’). Perceptions of fairness by separated mothers, on average, were not especially high at any point by separated mothers or fathers.

Third, consistent with most studies of the economic consequences of divorce,<sup>36</sup> separated mothers were more likely to be worse off financially than separated fathers – both pre- and post-reform.

Fourth, the level of income disadvantage experienced by separated fathers (15–17%) remained relatively static pre- and post-reform (2008–2011). By contrast, the prevalence of income disadvantage among separated mothers increased after the introduction of the new formula in 2008 (pre-reform: 20%; one year post-reform: 26%, three years post-reform 24%). Separated mothers were poorer than separated fathers at all three waves (pre-reform: 20% vs 15%;  $p < .01$ ; post-reform: 26% vs 15%;  $p < .01$  and 24% vs 17%;  $p < .05$ ).

Fifth, changes to the child support formula appeared to have little impact over time on separated mothers’ subjective financial wellbeing and their experience of financial hardship. By contrast, following the child support reforms, the clear overall trend for separated fathers was that they perceived their financial circumstances to be improving over time, and their experience of financial hardship declined by 12–18 month follow-up. Earning capacity is one of the most important personal resources on separation, and men’s usually higher earning capacity might thus allow them to recover faster than women from the initial economic fallout of separation.

Finally, there was an apparent mismatch between separated parents’ objective financial circumstances and financial hardship. Despite separated fathers being better off financially than separated mothers (as measured by equalized household income<sup>37</sup>), they were slightly more likely than separated mothers to report being ‘poor’ or ‘very poor’ before the new formula was introduced. This mismatch disappeared post-reform. It is unclear to what extent perceived inequities in the original formula drove this perception, along with the drop in living standards and increased debt for men that typically accompanies separation.

To sum up: while the new Scheme initially led to lower child support payments to separated mothers and their children, within three years child support payments almost returned to their pre-reform level. Thus, consistent with most studies of the economic consequences of divorce, separated mothers were more likely to be worse off financially than separated fathers pre- and post-reform. Yet pre-reform, fathers were more likely than mothers to report financial hardship. Over time, separated fathers’ and mothers’ perceptions of fairness and subjective financial wellbeing improved and converged. So too did their experience of financial hardship.

#### *(d) Child support compliance*

A working hypothesis of the Ministerial Taskforce on Child Support was that addressing formula-related inequities for some groups of separated parents would improve perceptions of fairness, which would in turn result in improvements in compliance. Of

<sup>36</sup> See, e.g., Smyth, B. & Weston, R. (2000), *Financial living standards after divorce: A recent snapshot*, Research Paper No. 23, AIFS, Melbourne.

<sup>37</sup> *Equalized household income* is a measure of the combined incomes of household members, taking into account the size and composition of each household.

course, changing a formula may be easier than changing (compliance) behavior, particularly where separated parents are stuck in high levels of acrimony. The ANU data are germane on the issue of compliance.

Despite a major investment by government post-reform to ensure that child support is paid in full and on time, preliminary (unpublished) data from the Child Support Reform Study suggest that the child support changes have not led to any significant increases in child support compliance. Specifically, pre-reform, 83% of male payers and 55% of female payees reported that child support was paid in full and on time.<sup>38</sup> Similar rates of compliance were found post-reform for these groups of payers and payees (male payers: 84% one year post-reform; 85% three years post-reform; female payees: 53% one year post-reform; 54% three years post-reform).<sup>39</sup>

Compliance research rarely examines whether changes in compliance are largely due to increases in voluntary payments or due to stronger enforcement (such as routine income withholding and interception of tax refunds, which typically limit non-compliance). The ANU study explored this issue by comparing compliance rates between Private Collect cases (where child support is directly transferred between parents without government involvement) and Agency Collect cases (where the DHS-CSP does the collection on behalf of the children and the State). Compliance among Private Collect cases was found to be generally higher than among Agency Collect cases.<sup>40</sup> That said, the child support reforms did not appear to lead to any significant increases in child support compliance among Private Collect or Agency Collect cases.

Finally, it is noteworthy that, prior to the reforms, around one in ten separated mothers and fathers (12% and 9%, respectively) reported having ‘other’ (less formal) arrangements in place instead of regular child support payments that they saw as fair.

*(e) ‘His’ and ‘her’ divorce?*

As the American Sociologist Jessie Bernard showed three decades ago, two realities co-exist in every marriage, *his* and *hers*, and both unique (gendered) experiences and perspectives warrant attention.<sup>41</sup> Might separate realities extend to, or indeed be further enhanced by, parental separation? We believe so.

Differential reports are common to social research, particularly in the area of parental separation.<sup>42</sup> Non-resident parents (mostly fathers), for example, tend to report higher levels of parenting time, greater child support compliance, and more denial of

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<sup>38</sup> Differences between mothers’ and fathers’ reports have been well documented. These gender differences occur even for mothers and fathers from the *same* former relationship, with fathers more likely than their former partners to report that child support is paid in full and on time.

<sup>39</sup> These data are based on a balanced panel of 1,668 separated parents, interviewed at three points in time: 2008, 2010, and 2011.

<sup>40</sup> Male payers: Agency Collect cases = 79–83% between 2008 and 2011, compared with Private Collect cases = 86–89% for the same period; female payees: Agency Collect cases = 42–48% between 2008 and 2011, compared with Private Collect cases = 66–69% for the same period.

<sup>41</sup> Bernard, J. (1972). *The future of marriage*, World Publishing Company, New York. See also: Gager, C.T. & Sanchez, L. (2003). Two as one? Couples’ perceptions of time spent together, marital quality, and the risk of divorce, *Journal of Family Issues* 24(1), 21–50; McCarthy, J., Holland, J. & Gillies, V. (2003). Multiple perspectives on the family lives of young people: Methodological and theoretical issues in case study research, *International Journal of Social Research Methodology* 6(1), 1–23; Thomson, E. & Williams, R. (1982). Beyond wives’ family sociology: A method for analyzing couple data, *Journal of Marriage and the Family*, 44(4), 999–1008.

<sup>42</sup> Fehlbeg, B. & Smyth, B. (2000). Child support and parent-child contact, *Family Matters* 57, 20–25.

contact by their former partners than resident parents (mostly mothers).<sup>43</sup> But without ex-couple data, it is difficult to disentangle differential reports from independent samples of men and women obtained in surveys because different biases can exist in each sample.

One of the unique features of the ANU Child Support Reform Study is that the large random sample contains a large group of ex-couple dyads (i.e., parents from the same former relationship). This means that it is possible to see whether differences are largely due to different perceptions *within* a relationship rather than an artifact of sampling issues.

Anecdotally, we know that men and women tend to report different experiences of the separation process, and tend to hold different perceptual frames. Many separated fathers report a ‘triple whammy effect’ on separation: (1) What happened? Why did she want out? (2) She leaves me but gets to keep the kids. Why should I be punished because she wanted out? (3) She leaves me, gets the kids, and then I have to pay for the privilege of these losses? How is any of this fair? By contrast, separated mothers often report a different type of triple whammy: (1) Why didn’t he listen? Why couldn’t he hear me? [Sub-text: It’s all his fault. I tried to tell him I wasn’t happy. He deserves to pay.] (2) Why can’t he keep our parenting separate from our old (intimate) relationship? (3) The power’s all his – he can come and go when he likes . . . if I don’t keep the peace, he’ll cut and stop seeing and paying (sometimes called the ‘silent contract’). A mosaic of vulnerabilities runs through these perceptions: How will the kids and I get by? What-if the car, fridge or washing machine breaks down? the roof leaks? etc?

Indeed it’s not unusual for separated parents from the same relationship to report very different views about their relationship (‘perceptual discrepancies’) and different information about their parenting arrangements (‘factual discrepancies’ relating to, for example, the number of nights that children spend with each parent). These different perceptions have important implications for child support: payers (mostly fathers) and payees (mostly mothers) seem to have very different understandings of what counts as ‘child support’ and what constitutes ‘compliance’. Payees, for example, often see non-periodic (e.g., the purchase of shoes or clothes) support as part of the ‘package’ or as something discretionary in the margins. They tend not to report receiving non-periodic support or if they do, tend to report fewer child-related expense items and lower amounts of money than reported by their ex-partners. In marked contrast, payers often appear to see non-periodic support as an add-on or an extra. These different accounting systems and competing perceptions may well foster – or indeed reflect – different perceptions of fairness.

More detailed information about the above findings is available in the various publications from the Child Support Reform Study (see Section VII). These publications are available to the Standing Committee on request.

#### **IV. Responses to the Terms of Reference**

The Terms of Reference of the Inquiry are:

‘The Committee will inquire and report on the following:

- methods used by Child Support to collect payments in arrears and manage overpayments;
- whether the child support system is flexible enough to accommodate the changing circumstances of families;

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<sup>43</sup> Ibid; Braver, S.B., Fitzpatrick, P.J. & Bay, R.C. (1991). Noncustodial parents’ report of child support payments, *Family Relations* 40, 180–185; Seltzer, J.A. & Brandreth, Y. (1994). What fathers say about involvement with children after separation, *Journal of Family Issues* 15(1), 49–77.

- the alignment of the child support and family assistance frameworks;
- linkages between Family Court decisions and Child Support's policies and processes; and
- how the scheme could provide better outcomes for high conflict families.

As part of this inquiry, the Committee has a particular interest in:

- assessing the methodology for calculating payments and the adequacy of current compliance and enforcement powers for the management of child support payments;
- the effectiveness of mediation and counselling arrangements as part of family assistance frameworks; and
- ensuring that children in high conflict families are best provided for under the child support scheme.

In carrying out this review, the Committee should assess whether any problems experienced by payers or payees of child support impact on the majority of parents and other carers involved in the system, or a minority, and make recommendations accordingly (e.g. there may be a case for specialised processes and supports for some parents meeting certain criteria).<sup>7</sup>

In this section, we comment briefly on each of the Terms of Reference.

### **1. Methods used by Child Support to collect payments in arrears and manage overpayments**

Our understanding is that the Child Support Program uses a compliance enforcement pyramid to pursue outstanding debts. Informal cooperative solutions sit at the base of this pyramid; sanctions become increasingly severe in a 'tit for tat' manner as the compliance responses ascend the pyramid.<sup>44</sup> Early intervention is feature of the Child Support Program compliance strategy. It is noteworthy that Australian enforcement methods are far less draconian than those used in many US states (e.g., imprisonment; loss of driver's license; website naming and shaming).

We are not well placed to comment on the range and appropriateness of methods used by the Australian Child Support Program to collect payments in arrears and manage overpayments. It is appropriate, however, for us to comment on our data, and to flag potential lines of inquiry for research. For instance, we have data on payee's preparedness to waiver outstanding debts under certain conditions. Those data may be of policy interest. So too would the predictors of non-compliance and whether some groups are less compliant than others groups and the reason(s) for this.

As noted above, data from the Child Support Reform Study suggest that compliance rates appear to have changed very little since the introduction of major reforms to the Child Support Scheme between 2006 and 2008.

But compliance is a tricky area of child support policy. On the one hand, it's important that, where ever possible, 'children should enjoy the benefit of a similar proportion of parental income to that which they would have enjoyed if their parents lived together' (i.e., the 'continuity of expenditure' principle). On the other hand, if governments pursue compliance at all costs, money can become a wedge between parents, and act to undermine cooperative parenting post-separation.

Larger and more fundamental policy questions sit underneath the issue of compliance:<sup>45</sup> How should 'compliance' be defined? Is there a relationship between

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<sup>44</sup> See Ayres, I & Braithwaite, J. (1992) *Responsive Regulation: Transcending the deregulation debate*. New York: Oxford University Press; Yeung, K. *Securing compliance: A principled approach*; Hart Publishing, Oxford, at 161.

<sup>45</sup> These ideas belong to our US colleague, Professor Thomas J Oldham, and were developed with Smyth while Oldham was a visitor at the Australian Demographic and Social Research Institute, ANU in April 2009. These ideas are part of future collaborative theoretical work by Oldham and Smyth on compliance.

different compliance activities and child and family wellbeing? If so, what is that relationship? What's the appropriate role for government in the enforcement of compliance?

## **2. Whether the child support system is flexible enough to accommodate the changing circumstances of families**

Child support is necessarily based on utilitarian principles – that is, ‘greatest good for the greater number’. An ongoing tension for all schemes that use administrative (formulaic) assessment is the extent to which they permit departure from the standard formulae. With around 1.4 million separated parents and 1.2 million children across Australia involved in the Child Support Program, there are obvious limits to the extent that the Program can be flexible enough to accommodate the changing circumstances of many families.

The ‘Change of Assessment’ (CoA) process ‘provides a discretionary means of addressing a parent’s individual special circumstances, where an existing formula assessment does not produce a result that a parent considers to be fair’.<sup>46</sup> Is there enough flexibility in the 10 CoA reasons to accommodate ‘special circumstances’? Our personal view is ‘yes’. But if the question: ‘Is the CoA process working well?’ then our answer is that we would want to see some data. (Research questions might include: To what extent have CoA applications been changing over time? Are some CoA reasons more prevalent than others? Are some more problematic? Should the focus be on these?)

Some off-the-bat thoughts: Those making CoA applications are likely to involve some of the most difficult and complex cases in the Program’s caseload (eg travel costs in relation to relocation disputes, changes in a child’s education, etc). Over time, what was once a ‘quick-and-dirty’ no-cost process aimed at giving the Scheme some flexibility in a small number of special circumstances – thus circumventing the need to go to court – has become a much more detailed, formal, procedurally complex, time intensive process. (Some might go so far as to say that the current CoA process is the Rolls Royce decision making quasi-judicial process given that it’s a free major investigation triggered by a form, and allows for multiple full merit review opportunities, the outcomes from which are likely to differ because of the nature of discretion.)

Discretion necessarily increases the likelihood that one party will feel the outcome is unfair. While reducing objections and improving response times has obvious political benefits, surely government would want to ensure that than any changes to CoA processes would not lead to other unintended consequences for families, children and the work of the Child Support Program.

In our view, anything that might make the CoA process less ‘adversarial’, ‘combative’ and ‘intrusive’ is obviously desirable. It is well documented from a number of areas that individuals can cope with ‘unfavourable’ outcomes if the process feels fair (i.e., procedural justice over distributive justice).

## **3. The alignment of the child support and family assistance frameworks**

Over the past several decades, the changing nature of work and family has meant that parenting roles, expectations and responsibilities are in transition. These changes have led to a softening of the boundaries around the care of children, with the previous model of ‘sole custody’ (usually to the mother) giving way to shared

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<sup>46</sup> Commonwealth of Australia. (2005). *In the best interests of children: Reforming the Child Support Scheme – Report of the Ministerial Taskforce on Child Support – Full report*. Australian Government Publishing Service: Canberra, at 193.

parenting after separation. In many countries, shared-time parenting – where children spend equal or near-equal amounts of time with each parent – is emerging as a new family form following parental separation. But an upshot of the shift towards shared-time arrangements is that the exact time splits of children’s living arrangements are becoming increasingly fuzzy for some families. This, along with tendency for some parents from the same former union to report different amounts of time with the same children, can create problems for administrative systems that rely on the provision of accurate information (e.g., a Letter of Assessment cannot be generated by the DHS-CSP until parents agree on the amount of time children are in the care of each parent).

#### **4. Linkages between Family Court decisions and Child Support’s policies and processes**

This Reference is quite broad. One issue likely to be raised in the course of the inquiry is that of the apparent inequity of being able to enforce child support or child maintenance orders but not parenting orders. This has been – and continues to be – a thorny issue for many countries around the world. The Family Law Council wrote a report on *Child Contact Orders: Enforcement and Penalties* in 1998, and it’s not clear that much ground has been made since Council’s report.

Three – somewhat obvious – points need to be made. First, legislating tangible commodities is clearly easier than legislating cooperative relationships (see next item). Second, the fundamental problem for parenting time enforcement initiatives is that punishing a parent inevitably means punishing children. Third, there are two sides to every story, emotionally-bonded relationships are complex. High conflict situations, and high conflict personalities, require substantial forensic and therapeutic resources. The Australian family law system is one of the most coordinated, developed and integrated systems in the world but there are financial limits to the extent that Courts have the forensic resources to deal with some of the hardest and most complex cases.

#### **5. How the scheme could provide better outcomes for high conflict families.**

It is important to note that many separated parents get along after separation and are not in ‘high conflict’. The idea that ‘custody wars’ are the norm after divorce misrepresents the reality for many families. The ‘good divorce’ or ‘civilized divorce’ is possible, and does occur.

The Longitudinal Study of Separated Families conducted by the Australian Institute of Family Studies recently found that just under two thirds of recently separated parents (64% of separated fathers, 62% of separated mothers) described their relationship with their former partner over the past 12 months as ‘friendly’ or ‘cooperative’.<sup>47</sup> Around 13–14% of parents reported ‘lots of conflict’, while another 7% of females and 3% of males reported a ‘fearful’ relationship. Similar rates of conflict and fear were found in the Child Support Reform Study (lots of conflict: 17% of females, 18% of males; fearful: 10% of females, 6% of males).

What constitutes ‘high conflict’? One way to define and operationalise ‘high conflict’ is to refer to *litigating* parents (that is, family law courts litigants). Another definition is ex-couples

whose relationships are characterized by ... [a] high degree of anger, hostility and distrust, incidents of verbal and/or physical abuse, high rate of custody litigation, and ongoing difficulty in communicating about and

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<sup>47</sup> Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L. & the Family Law Evaluation Team (2009). *Evaluation of the 2006 family law reforms*, AIFS: Melbourne, at 31.

cooperating over the care of their children.<sup>48</sup>

There is much we could say about high conflict families. Indeed one of the authors (Smyth) is currently on an Australian Research Council Future Fellowship to investigate the high conflict post-divorce shared-time family. This line of inquiry moves beyond the concept of ‘conflict’ and explores the notion of ‘pathological hate’ – that is, those who engage in the ‘tango of loving hate’.<sup>49</sup> Our data suggest that while around 18% of separated parents report ‘lots of conflict’, another 10% report being stuck in entrenched conflict over time (3% of the sample reported ‘lots of conflict’ for the entire four years of the data collection period). We suspect that something deeper and more extreme than just conflict is at play here. One or both parents, for example, might have a ‘high conflict personality’ – where *personality drives the conflict* rather than specific parenting or financial issues.<sup>50</sup> Mental health issues, substance abuse, safety concerns, parenting capacity issues, and so forth might also underpin the conflict. And in some cases, ‘pathological hate’ might characterize some the parental dynamics.

This is an important area not just because children caught up and used in parental conflict suffer but also because high conflict cases can ‘escalate at a huge cost to our judicial system and our society in terms of time, money and emotional distress for all involved’.<sup>51</sup>

## **6. Assessing the methodology for calculating payments and the adequacy of current compliance and enforcement powers for the management of child support payments**

The fundamental problem for child support policy is that it comprises a set of interlocking conundrums related to balancing the complex and competing needs of children, resident parents, non-resident parents, and the State. Put simply, striking the right balance between adequacy of financial support for children, on the one hand, and fairness for mothers, fathers, and the State on the other, is no easy task.<sup>52</sup> Tweaking one aspect of child support policy in pursuit of ‘adequacy’ and/or ‘equity’ often inadvertently undermines some other policy element. This means that ‘quick (policy) fixes’ are often not possible, and that more fundamental systemic approaches to child support policy refinement are usually required.

Over the past two decades, much of the policy refinement in Australia and elsewhere has centred on equity issues through the inclusion or refinement of ‘special factors’ – for example, financial adjustments for shared-time parenting, second family responsibilities, and low or high income – and the broadening of provisions where variations can be made to address complex or unique circumstances.<sup>53</sup> These refinements have sought to make formulaic assessment flexible enough to take account of the ever-

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<sup>48</sup> Levite, Z. (2005). A tango of loving hate: Couple dynamics in High conflict divorce, Submitted in partial fulfillment of the Degree of Doctor of Philosophy, Smith College School for Social Work Northampton, MA 01063, UMI Number: 3152225, at 1; Levite draws on the ground breaking work of Johnston, J.R. & Campbell, L.E.G. (1988). *Impasses of divorce: The dynamics and resolution of family conflict*, Free Press: NY; Johnston, J.R. & Roseby, V. (1997) *In the Name of the Child: A developmental approach to understanding and helping children of conflicted and violent divorce*, Free Press: NY.

<sup>49</sup> Id, at title page.

<sup>50</sup> Eddy, B. (2008) *High conflict people in legal disputes*, Janis: San Diego.

<sup>51</sup> Id, at 14.

<sup>52</sup> Blumberg, G. G. (1999). Balancing the interests: The American Law Institute’s treatment of child support, *Family Law Quarterly*, 33, 39–110.

<sup>53</sup> Venohr, J.C. & Williams, R.G. (1999). The implementation and periodic review of state child support guidelines, *Family Law Quarterly*, 33, 7–38.



increasing complexity of families – but at a cost of increasing policy complexity. The Australian changes of 2006 are a case in point.

Since the Scheme first began in 1988/89, Australian society has changed in many ways: the Australian population has grown, as has the number of separated parents; cohabitation is on the rise; the changing nature of family life and patterns of women's and men's workforce participation has meant that the parenting roles, expectations and responsibilities of mothers and fathers are in a state of flux; and modern family life is becoming more complex, as evidenced by diverse family forms and post-separation parenting arrangements.

In a bid to 'modernize' the Child Support Scheme, and flowing out of broader family law reform encouraging shared parenting,<sup>54</sup> sweeping changes recommended by a Ministerial Taskforce were implemented between 2006 and 2008. The total reform package became fully operational on 1 July 2008, featuring a markedly different and more complex system for the calculation of child support.<sup>55</sup> Key differences between the old and new schemes include: (a) replacing the original percentage-of-obligor-income model with an income-shares approach (whereby the incomes of both parents are now taken into account and treated the same way); (b) changing the number of nights at which child support liability is reduced (i.e., shared parenting-time formula adjustments), and FTB can be split between parents; and (c) the use of contemporary research on the costs of children in the new formula.

Assessing the methodology for calculating payments is an extremely ambitious endeavour. It took the Ministerial Taskforce with the support of the then Department of Families and Community Services (FaCS; now DSS) several months to develop the methodology for developing the costs of children, and several months to build a model to explore the distributional impacts of different approaches.

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<sup>54</sup> Commonwealth of Australia (2003), *Every Picture Tells a Story: Report on the Inquiry into Child Custody Arrangements in the Event of Family Separation*. Standing Committee on Family and Community Affairs, Canberra, ACT.

<sup>55</sup> The new Scheme is based on an *income-shares* model, whereby the Child Support Agency takes into account the incomes of *both* parents in making a child support assessment. Parents' combined incomes are applied to a Cost-of-Children table, and the relevant amount – which is influenced by the number and age of children, and parents' combined income – is then divided between the parents according to their incomes. The non-resident parent pays his or her relative share to the resident parent; it is assumed that the resident parent will pay his or her share in-kind by virtue of being the parent with primary care. The age of children is now also an important part of the child support formula. Prior to the introduction of this approach on 1 July 2008, a simpler 'percentage-of-obligor' model was in operation in which non-resident parents paid a *set* percentage of their income depending on the number of biological/adopted children they were obliged to support.

## **7. The effectiveness of mediation and counselling arrangements as part of family assistance frameworks**

As noted by the Ministerial Taskforce on Child Support:

It is a fundamental axiom of family law that the best arrangements are those that the parties negotiate for themselves .... Child support, however, is the one area of family law where there has not been much of a focus on negotiated arrangements and dispute resolution. The child support formula is applied in the great majority of cases. This is not necessarily because parents do not want to make their own agreements about child support.<sup>56</sup>

Yet there appears to have been sparse interest in how separated couples discuss and directly negotiate child support. With its emphasis on mandatory mediation, family law in Australia has increasingly highlighted the importance of former partners being assisted to make their own arrangements with respect to how they continue to parent their children.<sup>57</sup> But responsible and fulfilling post-separation parenting also requires responsible and workable financial arrangements. The family law system, however, generally has not provided opportunities to assist separated parents discuss child support matters directly with each other.

Elsewhere some colleagues and one of the authors (Smyth) have argued that:

[I]n an increasingly complex landscape of diverse family forms and parenting arrangements, some families are likely to benefit from facilitated joint discussion to achieve workable financial solutions – solutions that may or may not go beyond the new child support formula.<sup>58</sup>

Similar arguments have been made in relation to financial matters more broadly.<sup>59</sup>

In summary, we, along with others, wonder whether there might be scope to provide services to assist separated parents to discuss child support matters directly with each other, where appropriate.

## **8 Ensuring that children in high conflict families are best provided for under the child support scheme.**

High conflict families were discussed above under Reference 5. Here we simply make the point that the Child Support Program is in a strong position to identify and assist high conflict families. The Program is often the first point at which separated parents make contact with the family law system. This is because of the requirement for separating parents applying for government income support to take ‘reasonable steps to obtain child support’ (i.e., the Maintenance Action Test) – which typically involves lodgement of a case with the DHS-CSP. Unlike most other parts of the family law system, the Child Support Program generally has an ongoing relationship with parents until children turn 18 years.

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<sup>56</sup> Commonwealth of Australia. (2005). *In the best interests of children: Reforming the Child Support Scheme – Report of the Ministerial Taskforce on Child Support – Full report*. Australian Government Publishing Service: Canberra, at 207.

<sup>57</sup> Moloney, L., Smyth, B. & Fraser, K. (2010). Beyond the formula: Where can parents go to discuss child support together?, *Journal of Family Studies*, 16(1), 33–47.

<sup>58</sup> Id, 45–46.

<sup>59</sup> Fehlberg, B. Smyth, B. & Fraser, K. (2010). Compulsory pre-filing FDR for financial disputes: putting the cart before the horse? *Journal of Family Studies*, 16, 197–208.

In addition, while ‘violence’ is not the same as ‘high conflict’, we believe the same opportunities exist for helping families deal with safety concerns. The recent Australian Law Reform Commission report on *Violence and Commonwealth Laws* (particularly Part D on child support) sets out the key issues to be considered here.

## V. Improving the evidence base

In Australia, as in many other Western countries, family law is an area in which anecdote often reigns supreme. This is because (a) it is easy to relate to personal stories and (b) empirical data are frequently lacking on pressing policy questions. While not discounting the validity of individuals’ experiences and the importance of involving the broader community in the policy process, policy makers should be alive to the risk of anecdotal evidence shaping policy for a minority rather than for the majority – especially where the rationale behind policy decisions involves a complex set of issues that do not appear to be well understood.

Advocacy group members can be especially vocal in the policy process. In the US context, fathers’ groups typically portray ‘men as victims of vindictive wives and sexist courts’, while mothers’ groups commonly portray ‘women and children as victims of abusive husbands and biased courts’.<sup>60</sup> According to Coltrane and Hickman, both groups draw on ‘compelling’ ‘horror stories’ to support their claims: mothers’ groups tell of disinterested ‘deadbeat dads’ dodging child support liabilities, while fathers’ groups tell stories of responsible (but dead broke) fathers being denied contact with children by ‘extortionist wives’.<sup>61</sup> Similar themes – characterized by the rhetoric of ‘rights’ and ‘entitlement’ by fathers’ groups, and ‘needs’, ‘loss or endangerment’ by mothers’ groups – emerged in the previous Inquiry into Child Custody Arrangements in the Event of Family Separation, and are likely to emerge again in the current inquiry.

In particular, the use of an anonymous online questionnaire accessed via a public web-link as a means of collecting information about the operation of the child support program is likely to yield many compelling personal stories from aggrieved separated parents (mothers and fathers) and their family and friends. While this method of data collection is an inexpensive way of giving a large number of people a chance to have input and to be heard, it is unlikely to provide a representative snapshot of views. Moreover the quality of the data is unclear: the survey allows multiple submissions from the same computer; the survey questions cover a disparate range of topics, and at times are ambiguous; there are limited opportunities to refuse to answer a question or to say ‘Don’t know’ or ‘Not applicable’; and there is little filtering or tailoring of questions to the respondent, and, as a result, anyone can complete the survey even with no knowledge of the Child Support Program.<sup>62</sup> Finally, we have one other concern: no ethical clearances appear to have been sought from a Human Ethics Research Committee, even though the survey itself or some of the questions are likely to lead to distress in some participants, and no mechanisms are offered for participants to seek help if they need it (e.g., a Toll-free 1800 number, or email contact for a referral list etc.). We appreciate that ethical and scientifically rigorous research can be expensive and time-consuming, and thus is not well suited to policy or political expediency. At the same time, the need for impartial evidence in the area of child support is critical.

There is a surprising lack of published research in Australia on the operation of the Child Support Program since the reforms of 2006–08. Several sources of longitudinal or time-series data are nonetheless available, including:

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<sup>60</sup> Coltrane, S. & Hickman, N. (1992). The rhetoric of rights and needs: Moral discourse in the reform of child custody and child support laws, *Social Problems*, 39(4), 400–420.

<sup>61</sup> Id., at 410–11.

<sup>62</sup> A key requirement of online research is that the claimed identity of respondents be validated.

- (a) the Longitudinal Study of Australian Children (LSAC),
- (b) the Household Income and Labour Dynamics in Australia (HILDA) Survey;
- (c) the AIFS Longitudinal Study of Separated Families; and
- (d) the ABS Family Characteristics Survey.

Administrative data also constitute an important source of information on the operation of the Program. These data are currently under-utilized for research and monitoring purposes.

The above data sources can provide reliable basic information about the amount of child support paid and the extent to which payments are regular and occur. However, the information is basic because child support is not the main focus of these surveys.

By contrast, the ANU Child Support Reform Study was designed to assess the impacts of the child support reforms and has quite extensive, detailed information on child support. The study collected information from 5,000 separated parents just before the new formula was introduced on 1 July 2008 (baseline data); a large number of these parents were then re-interviewed one year and three years later (i.e., longitudinal data). Two additional samples were also interviewed one and three-years post-reform (yielding sequential data for different cohorts of separated families). While other factors or explanations can never be ruled out, the study's pre-/post-reform longitudinal design allows the impacts of the reforms to be assessed.

Australia has invested a large amount of money and effort into the collection of data for evaluating the family law and child support reforms. We encourage government to make use of existing data sources (both survey and administrative data) to improve the evidence base on the operation of the Child Support Program. In the current tight fiscal environment, it makes much sense to make the full use of existing data before embarking on new data collections.

## VI. Conclusion

It is a complex matter to say whether the present child support system is performing well, and exactly what changes or refinements are needed to improve the Child Support Program. Apart from anecdotal evidence from advocacy groups, and complaints to ministers and the Commonwealth Ombudsman, there is not a lot of detailed empirical data available to inform our understanding of the operation of the Child Support Program, and whether it is indeed working in the best interests of children.

The child support reforms of 2008, and the ways in which child support and Family Benefits interact, are extremely complex; evaluating their combined impact is not easy. To complicate matters, disentangling the impacts of the child support reforms from the Welfare-to-Work changes and the Global Financial Crisis stimulus package is extremely difficult. Government, policy makers, practitioners, researchers, or families could not have anticipated the complexity of the policy terrain at the time of the last round of major changes to the child support system.

The Child Support Scheme must surely be one of the most reviewed and evaluated programs in the history of Australian Government. It has been the subject of major external evaluations, and extensively reviewed by the Joint Select Committee on Certain Family Law Issues in 1994 and the Ministerial Taskforce on Child Support in 2005.<sup>63</sup>

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<sup>63</sup> See, for example: Child Support Consultative Group (1989). *The Child Support Scheme: Progress of Stage One*, Australian Government Publishing Service: Canberra; Child Support Evaluation Advisory Group (1992). *Child Support in Australia: Final Report of the Evaluation of the Child Support Scheme*, Australian Government Publishing Service: Canberra; Child Support Evaluation Advisory Group (1990). *The Child Support Scheme: Adequacy of child support and coverage of the sole parent pensioner population*, Australian Government Publishing

As noted by the Ministerial Taskforce:

Previous reviews of the Child Support Scheme have commented on the lack of relevant research. The Taskforce had available to it independent and comprehensive Australian research on which to base recommendations. However, many issues still remain unexplored, particularly given the fast pace of social change. Work needs to continue in this area.

The Taskforce's Recommendation 29 remains germane:

The Department of Family and Community Services [now DSS] should undertake or commission periodic updates to research on:

- a) the costs of children;
- b) the circumstances of payers and payees;
- c) the interaction of the Child Support Scheme with related policy on tax, income support, family payments, and family law;
- d) the impact of the Scheme (in combination with effective marginal tax rates) on workforce participation;
- e) compliance amongst CSA collect and private collect payers; and
- f) community perceptions of the fairness and effectiveness of the Scheme, and of the way it is administered.

And one of Taskforce's key conclusions remains particularly relevant today:

At the heart of the currency of the child support system is its capacity to respond to social change. Equally, it must respond to legislative change. Alterations to social security, tax or other legislation impacting on social policy may change the operation of the formula, creating undesired outcomes .... The formula must be monitored to ensure it keeps pace with these changes.

Much has changed in the policy and economic landscape since the child support reforms were introduced. Those reforms were certainly formulated, and responded to by Government, in very different economic times. The Child Support Reform Study has started to shed light on how the child support reforms within this changing landscape have impacted Australian separated parents and their children.

We wish the Standing Committee every success with its work and would be happy to meet in person to discuss any of the material raised in our submission, particularly in relation to findings from the Child Support Reform Study.

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Service: Canberra; Harrison, M., Snider, G. & Merlo, R. (1990). *Who Pays for the Children: Parent and Employer Experiences of Stage One of Australia's Child Support Scheme*, Australian Institute of Family Studies: Melbourne; Harrison, M., Snider, G., Merlo, R. & Lucceshi, V. (1991). *Paying for the Children: Parent and Employer Experiences of Stage One of Australia's Child Support Scheme*, Australian Institute of Family Studies: Melbourne; Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act (1992). *The Family Law Act 1975: Aspects of its Operation and Interpretation*, Australian Government Publishing Service: Canberra; Joint Select Committee on Certain Family Issues (1994). *The Operation and Effectiveness of the Child Support Scheme*, Australian Government Publishing Service: Canberra.

## VII. Relevant publications from the Child Support Reform Study

- Smyth, B., Chisholm, R., Rodgers, B. & Son, V. (in press), Legislating for shared-time parenting: Insights from Australia? *Journal of Law and Contemporary Problems*, 77.
- Smyth, B., Rodgers, B., Allen, L. & Son, V. (2012). Post-separation patterns of children's overnight stays with each parent: A recent snapshot, *Journal of Family Studies*, 18(2-3), 202-221.
- Smyth, B., Rodgers, B., Son, V., Allen, L. & Vnuk, M. (2012). Separated parents' knowledge of how changes in parenting-time can affect child support payments and Family Tax Benefit splitting in Australia: A pre-/post-reform comparison, *Australian Journal of Family Law*, 26(3), 181-213.
- Smyth, B. & Rodgers, B. (2011). Strategic bargaining over child support and parenting time: A critical review of the literature, *Australian Journal of Family Law*, 25(3), 210-235.
- Smyth, B. & Henman, P. (2010). The distributional and financial impacts of the new Australian Child Support Scheme: A 'before and day-after reform' comparison of assessed liability, *Journal of Family Studies*, 16(1), 5-32.
- Fehlberg, B. Smyth, B. & Fraser, K. (2010). Compulsory pre-filing FDR for financial disputes: putting the cart before the horse? *Journal of Family Studies*, 16, 197-208.
- Moloney, L., Smyth, B. & Fraser, K. (2010). Beyond the formula: Where can parents go to discuss child support together? *Journal of Family Studies*, 16(1), 33-47.

## Appendix A. Brief summary of the Child Support Reform Study

This Child Support Reform Study is a large study incorporating longitudinal and sequential data collections designed to evaluate the impacts of the Australian child support reforms of 2006–08.

### Sample selection

Large random samples were drawn from the Child Support Agency administrative caseload, which currently represents the best available sampling frame of separated parents with a dependent child in Australia.<sup>64</sup> An initial longitudinal random sample was selected from separated parents registered with the Child Support Agency before the change in formula for calculating child support came into effect on 1 July 2008. This sample was stratified by (a) time since separation (*existing clients* separated prior to 1 July 2006 vs those *recently separated* in the second half of 2006<sup>65</sup>); (b) level of care (sole care vs shared-time<sup>66</sup>); and (c) method of collection (DHS-CSP Collect vs Private Collect). This *pre-reform baseline (Time 0) sample* yielded 5,046 separated parents (2,809 mothers, 2,237 fathers) who were interviewed using computer-assisted telephone interviews (CATI) of about 25 minutes duration.<sup>67</sup> Between 20–24 months later (Time 1; 2009–10), 3,958 of these respondents were re-interviewed; and of these respondents, 2,927 (1,671 mothers, 1,256 fathers) were interviewed once again after a further 18–25 months later (Time 2; 2011). These timelines are depicted in Figure 2 overleaf.

A second cross-sectional sample of recently separated parents was similarly selected at Time 1 drawn from those on the DHS-CSP register that had separated in the second half of 2008 (i.e., post-reform). Successful CATI interviews were achieved for 1,000 parents from this *Time 1 Supplementary Sample* (553 mothers, 447 fathers). This sample was also followed up for re-interview at Time 2 when 799 respondents (427 mothers, 372 fathers) were re-interviewed in 2011, three years post-reform.<sup>68</sup>

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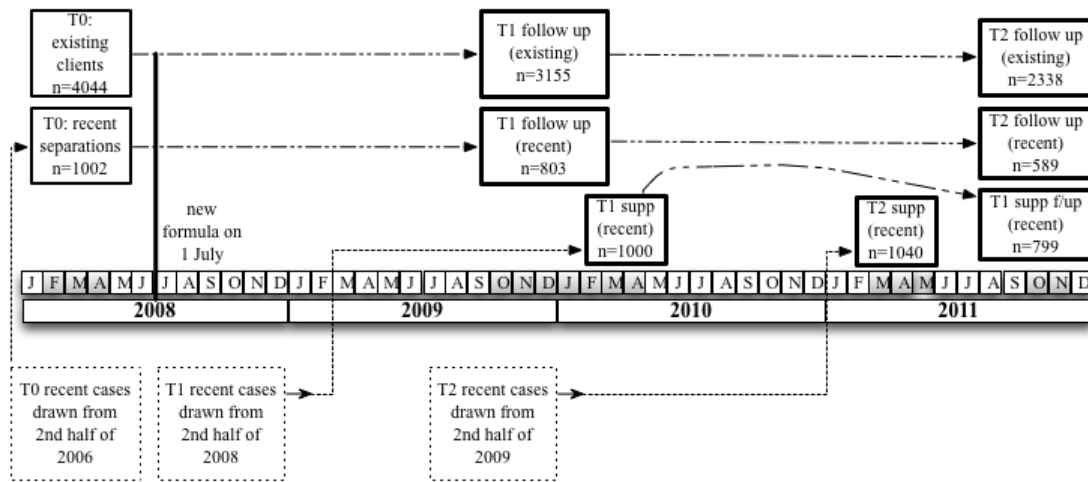
<sup>64</sup> A small but sizeable group (somewhere between 5% and 20%) of all separated families is estimated to conduct their own child support arrangements outside of the Scheme.

<sup>65</sup> To match the supplementary samples, 1,000 recently separated respondents were sampled compared with 4,000 existing clients.

<sup>66</sup> ‘Shared-time’ cases and ‘recent separation’ cases were oversampled to ensure that there were a sufficient number of cases to make analysis of these groups statistically robust. In this article, ‘shared-time’ refers to parenting arrangements where children spent at least 30% of nights in the care of each parent. This threshold was used because the survey was conducted before 1 July 2008, after which the ‘shared care’ threshold changed to at least 35% of nights. For sample selection, information was based on DHS–CSP records just prior to the start of the fieldwork. These data may not have reflected respondents’ actual arrangements at interview.

<sup>67</sup> Respondents without a sufficient command of English were excluded. Other exclusions included: respondents aged under 18 years, respondents who were grandparent carers or non-parental guardians, and respondents registered on the Restricted Access to Personal Information (RACS) list primarily because of safety concerns.

<sup>68</sup> Response rates ranged between 64% and 67%. Time 0 interviews began on 21 February 2008, and ended on 26 April 2008; Time 0 follow-up interviews began on 28 October 2009, and ended on 13 February 2010 (with a break between 14 December and 12 January); Time 1 Supplementary sample interviews began on 20 March 2010, and ended on 16 April 2010; Time 1 Supplementary sample follow-up interviews began on 29 September 2011, and ended on 26 November 2011.



**Figure 2. Research design, sample sizes and timelines**

The Australian child support reforms in many ways constitute a ‘natural experiment’ insofar as changes in family dynamics, parenting arrangements, and financial living standards, for example, that occur soon after the reforms might plausibly be linked to those reforms. Of course, other factors or explanations can never be ruled out.<sup>69</sup> The present study’s cross-sequential design is well suited to exploring natural experiments because longitudinal data allow changes over time to be examined, while cross-sequential data allow potential policy effects to be identified.

**Survey content**

The CATI interview schedule comprised eight key sections: (a) Family type and relationship history; (b) Children’s living arrangements and parent–child contact; (c) Legal process; (d) Child support; (e) Agreements, negotiations and strategic bargaining; (f) Family dynamics; (g) Parenting and family wellbeing; and (h) Demographic information.

<sup>69</sup> ‘Natural experiments’ are serendipitous real-world situations in which a significant policy shift affecting a distinct subpopulation occurs, and any changes that follow can be plausibly attributed to this shift on the basis of (a) longitudinal or sequential time series data collected prior to and following a policy event; or (b) comparative work that makes use of variation in the timing of different reforms.