

Consistent with its legislative responsibility to investigate factors affecting the wellbeing of children and families, the Australian Institute of Family Studies has maintained a keen interest in the development and evaluation of Australia's Child Support Scheme. This article sets out some of the conceptual challenges that are likely to confront any legislative reform to overhaul the Scheme, as recommended by the recent parliamentary inquiry into child custody arrangements after parental separation.

Child support policy in Australia *Back to basics?*



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Child support continues to attract considerable policy interest in most developed countries. In Australia, the Child Support Scheme has been under increasing pressure on several fronts – most notably arising from perceptions of formula-related inequities regarding first and second family responsibilities, the financial costs of contact to non-resident parents, and ongoing enforcement and debt recovery issues.

As part of its inquiry into joint physical “custody”, the Standing Committee on Family and Community Affairs recently concluded that the Scheme “has serious flaws and produces inequities for a high number of payees and payers” (Commonwealth of Australia 2003: 174-175). It recommended that a Ministerial Taskforce be established, the aim of which would be to conduct a comprehensive re-evaluation of the Scheme. This re-evaluation would be the first major review in almost a decade, and its importance should not be understated.

This article sets out some of the challenges that are likely to confront the proposed Taskforce, and argues that clarity as to the values and objectives of the Scheme needs to underpin any reform process if the Scheme’s conceptual basis is to remain sound.

Background

The Child Support Scheme was introduced in the late 1980s to address the problem that, following separation, most non-resident parents (mostly fathers) were providing little, if any, financial support to their children, even where court orders had been made, with consequent high levels of child poverty and high costs to the public purse. Central to the Scheme is the administrative assessment of child support liability via the application of the child support formula. This formula is expressed as a percentage of the non-resident parent’s gross taxable income (after a “self-support” component has been deducted) and is based on the number of dependent children under the daily care of the other parent – with provision for special circumstances. The Scheme removed the need for parents to have recourse to court-based discretionary assessment, which typically produced low child maintenance amounts that did not adjust for inflation. In sum, many resident parents had difficulty collecting child support themselves, thus making it incumbent on the state to do so on behalf of children.

The fundamental shift brought about by the Scheme was that the registration of a child support liability with the Child Support Agency converts “a personal obligation into a debt owed to the Commonwealth” (Harrison 1994: 178), collected by the Child Support Agency. Through the elimination of the need for private enforcement action, the Scheme sought to improve the working relationship between parents by reducing the stress and fear often associated with “bargaining” over money (Carberry 1992). It also sought to offer a degree of predictability and certainty about payments with respect to amount, regularity, and the timing of payments.

By and large, the Scheme appears to have achieved its aims (see, for example, Funder 1997) but changes in Australian society over the past decade (discussed below) have added new layers of complexity and challenges to the Scheme’s workings. Old chestnuts of contention (such as whether liability should be based on net or gross income, and whether exempt income levels should be different for payers and payees) also still dog the Scheme (see Commonwealth of Australia 2003: 134-139).

Backbone of the Scheme

The Scheme was designed to ensure that (a) children of separated or divorced parents receive adequate financial support; (b) both parents contribute to the cost of supporting their children according to their respective capacities to do so; and (c) government expenditure is restricted to the minimum necessary to attain these objectives (JSC 1994). The design of the Scheme also seeks to avoid work disincentives for parents, and to be “simple, flexible, efficient” and non-intrusive in its operation (CSEAG 1992: 67-68).

The backbone of the Scheme comprises a number of carefully considered philosophical tenets.

First, each natural (or adoptive) parent has a duty to support his or her own children financially. That is to say, this responsibility should not be foisted onto other adults or government. The income of new partners should thus not be included in the determination of liability – as is the case in some states in North America.

Second, the Scheme is predicated on the view that children whose parents have separated should themselves have a standard of living which reflects that of both their parents, not just the one with whom they usually live. This does not mean that children will necessarily have the same standard of living that they had prior to parental separation, since parents’ economic resources are likely to be eroded as a consequence of one household splitting into two.

Third, the Scheme (implicitly) rests on the assumption that it can only work if the amounts assessed as “owed” seem reasonable to separated parents themselves (that is, the percentages calculated for one versus two, three or more children). Without this degree of reasonableness, perceived inequities are likely to threaten the viability of the Scheme.

Fourth, payment of child support should occur regardless of whether parent–child contact is possible, and vice versa. In other words, no contingent link should ever be made between child support payments and parent–child contact because such a link is unlikely to be in children’s best interests. (In reality, child support and contact often go hand-in-hand. As noted by Smyth, Sheehan and Fehlberg (2001), fathers who pay child support also tend to spend time with their children; fathers who do not see their children tend not to pay child support.)

Fifth, where parents enter into new relationships and have new family responsibilities, children of their past relationship (that is, “first children”) are given special policy consideration (JSC 1994). This is because family dynamics are such that (new) children in a household typically receive the lion’s share of income flowing into that household while children living elsewhere may be “out-of-sight; out-of-mind”. As suggested by Takas (1991) in the USA context, multiple family situations present one of the greatest challenges to child support policy. Scholars such as Minow (1998) and Garfinkel et al. (1998) have given serious thought to child support obligations in the context of new dependent children and suggest that no easy solution exists.

These then are some of the fundamental philosophical tenets of the Child Support Scheme. Balancing these values against economic imperatives is likely to be no easy

task for those charged with overhauling the Scheme – especially amid the complex legislative and policy terrain of government income support and income tax.

Backlash: From personal concerns to public issues

The Scheme continues to act as a “lightning rod” for much pent-up anger, grief and disappointment surrounding relationship breakdown and the loss of everyday family life (JSC 1994: 11). Resident and non-resident parents nonetheless differ markedly in their criticism of the Scheme. The most common complaint by parents who pay child support (mostly fathers – especially those who have new families to support) is that they are paying too much; so much so that there are reports of work disincentives operating (the so-called “stuff-it” option whereby fathers reportedly quit their jobs because they feel that they are better off financially if they do so). By contrast, the most common complaint by parents eligible for child support (mostly mothers) is that payments do not occur, old debts are not pursued, or that the system can be manipulated in order to minimise or avoid child support obligations altogether.

In recent years, these different perceptions have been given voice through the emergence of a number of grass-roots fathers’ or mothers’ pressure groups that have, to borrow Coltrane and Hickman’s (1992: 400) phrase, sought to cast “personal troubles as pressing social problems”. Based on USA experience, Coltrane and Hickman suggest that fathers’ groups typically portray “men as victims of vindictive wives and sexist courts” (p. 407), while mothers’ groups commonly portray “women and children as victims of abusive husbands and biased courts” (p. 408). Both groups, suggest Coltrane and Hickman, draw on “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” (p. 410-411). Some pressure groups in Australia make similar claims – as evidenced in a number of submissions to the recent parliamentary inquiry.

While not discounting the validity of certain individuals’ experiences in these groups, policy makers should be alive to the risk of anecdotal evidence shaping policy for a minority rather than for the majority. Loud voices can distort reality – the louder the voice, the greater the potential distortion. The need for impartial evidence in the area of child support is thus critical.

Backing-up: The need for evidence

Good policy needs good data to inform it but good data are hard to come by. Little published data exist in Australia in the area of child support. The power of anecdotal evidence, as noted above, in this research vacuum is therefore not surprising.

In its examination into the operation and effectiveness of the Child Support Scheme, the 1994 Joint Select Committee on Certain Family Law Issues (JSC 1994) recommended that ongoing, regular, independent evaluations of the Scheme be conducted. The proposed establishment of a Ministerial Taskforce to investigate child support issues responds to this call.

A “big picture” evaluation of the Scheme is long overdue. The Scheme is now operating in a more complex legislative and policy environment than when it was first implemented,

which includes the introduction of the Goods and Services Tax (GST), Family Tax Benefit, Parenting Payment (Single), and the Youth Allowance – some of which replaced less targeted provisions. The complex inter-relationships between these policy initiatives and child support make it hard to assess how the Scheme is faring.

In addition, modern family life and indeed families themselves are becoming increasingly complex. The changing nature of family life and patterns of women's and men's workforce participation have meant that the parenting roles, expectations and responsibilities of mothers and fathers are in transition. This has led to a softening of the boundaries around the care of children (Fuligni and Brooks-Gunn 2004), and has prompted re-evaluation of the previously accepted post-divorce (maternal) "sole custody" model of parenting and a move towards encouraging co-parenting after separation. The recent push towards 50/50 shared care attests to this shift. The 50/50 care debate has implications for child support policy since more equal patterns of care typically result in less child support being paid.

A key challenge for the Scheme centres on its ability to respond to social and economic change, and to make the necessary adjustments where appropriate. The Scheme was originally conceptualised as a dynamic and responsive entity, at the heart of which should be a solid evidence-base to guide and monitor the impact of any change (see, for example, Fogarty 1992).

On the need for germane data, Australia appears to be on the cusp of gaining access to several powerful datasets for the investigation of child support issues. The fourth wave of data collection for the *Household, Income, and Labour Dynamics in Australia* (HILDA) survey commences later this year. This longitudinal dataset has comprehensive income and work data available, as well as information on child support for separated families. The Australian Bureau of Statistics will soon be releasing the *Family Characteristics Survey 2003*. This dataset will have parallel child support information to that collected from a previous survey conducted in 1997 (ABS 1998).

In addition, fieldwork has recently commenced for the first wave of *Growing Up in Australia*, a longitudinal study of Australian children, which, as Sanson et al. point out elsewhere in this edition of *Family Matters*, will yield increasingly rich data over time for investigating child support. The Australian Institute of Family Studies has also recently collected comprehensive child support data from a national random sample as part of its *Caring for Children after Separation* study. Finally, the Child Support Agency's own administrative datasets will also be an important source of information to help inform the proposed Taskforce's investigation. These datasets, individually and together, are likely to shed light on a range of issues currently challenging child support policy and practice.

One largely neglected issue in need of investigation is that of the financial costs of contact to non-resident parents. There has been some pressure to reduce child support payable by non-resident parents who have contact with their children for between 10 and 30 per cent of nights per year (Fehlberg and Smyth 2000). This idea took legislative form in the Child Support Legislation Amendment Bill No 2 2000 but was subsequently defeated in the Senate. At the time, data were lacking on the potential impact that this initiative would have had on the relative financial position

of resident parents and their children. Nonetheless, some interesting work by Henman and Mitchell (2001) and Woods (1999) on the financial costs of contact to non-resident parents flags the importance of this emerging issue for child support policy.

More recently, the Standing Committee on Family and Community Affairs (Commonwealth of Australia 2003) recommended that non-resident parents with more than 10 per cent care of their children receive a new parenting payment to help towards the costs of caring for children – flagging the possibility that the state may take on an increased role in providing financial support for children. Currently, these parents are entitled to a pro rata proportion of the Family Tax Benefit (FTB) B payment available to the resident parent.

The Committee also recommended that any direct link between child support and parent-child contact be eliminated by removing the 110-night "substantial care" threshold. This threshold currently acts to reduce child support liability for non-resident parents with substantial care. Other care thresholds would nonetheless remain, such as the thresholds used by the Child Support Agency to delineate "shared care" [146+ nights per year] and "major care" [220+ nights per year].

This recommendation appears to be a response to the Committee's belief that shared care thresholds (at least at the 110+ night mark) play a pivotal role in shaping parent-child contact after separation. Anecdotal evidence to the Committee indicated that financial matters can influence patterns of care. While removing certain thresholds might help to minimise any nexus between child support and contact, it is unclear what guidelines parents who are working towards shared care would use to work out how to juggle their economic resources across two households. Thus one unintended consequence of eliminating this perceived barrier to sharing the care of children is to create ambiguity about how sharing the care of children works at a financial level.

On this issue, there is currently not much Australian or overseas data on the costs of caring for children by resident and non-resident parents with different timeshare arrangements (see, for, example, Henman and Mitchell 2001). In North America, Melli (1992) has suggested that no significant shift in costs occurs until the care of children is shared at the 40-50 per cent mark. If the Australian Scheme is to remain at the vanguard of child support policy, empirical work on the costs to resident and non-resident parents of caring for children after separation is needed. The often close but complex links between child support and contact mean that both will need to be considered in the context of any policy reform.

More fundamental to the Scheme's operation perhaps is the need for data on the effectiveness of the Scheme for children's wellbeing, and on the respective financial "balance points" for each parent. Parents' perceptions of fairness are tied to these balance points. There is some evidence (Harding and Szukalska 2000; Smyth and Weston 2000) that the Scheme does indeed make a positive difference to children's lives. However, other pockets of data (for example, McHugh 1999) suggest that the current levels of private financial support to children may still not go far enough, and that many children still receive little or no financial support (ABS 1998).

Backtrack

One issue that was flagged by the Standing Committee to be explored by the proposed Taskforce cuts to the heart of the Australian Scheme: the way in which the child support percentages for the number of eligible children are derived. Ideas about shifting the formula from a “per cent of income” model (which focuses on both parents’ income and the number of children to be supported) to a model that seeks to take account of the direct costs of children were floated during the recent inquiry. Shifting the Scheme’s conceptual framework would represent a marked shift in philosophy, and would require substantial modelling of the cost of raising children in *separated* families. Reliable data on such costs currently do not exist.

Regardless of the direction that policy takes on the issue of formula guidelines, it seems clear that the proposed Taskforce will need to be able to adopt a lucid line of reasoning as well as be creative and persistent in its search for data that can inform the issues at hand. While the datasets listed earlier hold much promise for informing the debate, they are relatively new, complex, and under-developed in terms of a community of users with sufficient expertise and experience with child support issues. They also were not designed to address specific policy issues on which the Taskforce may focus. Accordingly, any analyses or economic modelling are unlikely to be straightforward or fast.

It should also be noted that in some places, the Standing Committee rejected earlier thinking that helped to shape the Scheme. For instance, the Committee stated that it rejected “the notion of the primacy of the children of the first family” (para 6.70, p. 139). On the basis of perceived fairness, it also rejected the idea that the level of exempt income for payers and payees should be different despite a clear articulation of the need for this difference by one of the early child support advisory groups (CSEAG 1992). While it is important that the Scheme and its philosophical underpinnings be examined closely in the context of changing social circumstances, caution may be warranted in ensuring that piecemeal change does not result in any adverse unintended consequences.

Back to children

Child support aims to benefit children. Any re-evaluation of the Scheme should thus start, stay with, and end with children’s needs. Indeed it was not so long ago that children of divorced parents in Australia received very little, if any, financial support from their non-resident parent. It is important to remind ourselves of this amid the criticism that the Scheme continues to attract. This is not to say that the Scheme is perfect. No public policy ever is – especially policy that applies to so many parents and children in such differing circumstances and at a time, for some, of immense suffering, confusion and pain.

The complexity of the Scheme and of the personal situations that it applies to suggest that any reform needs to (a) be considered carefully, (b) be informed by a solid evidence base, and (c) be based on a set of clearly articulated values and objectives. Without these things, much good work can be undone quickly.

The Standing Committee on Family and Community Affairs recommended that the re-evaluation of the Scheme be completed within a six-month time frame. The importance and complexity of this task, however, suggests that patience and rigour may be more critical than speed.

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