

6 Conclusion

The Australian Institute of Family Studies' *Attitudes to Child Support Study* sought to map perceptions of fairness by charting attitudes to child support in Australia. The study is predicated on the belief that community perceptions, values and expectations (particularly those of separated parents) need to be understood as part of the evolving nature of child support policy. Policies that are not perceived as "fair" – regardless of how well or poorly informed these judgements are – can create a great deal of angst and tension. As pointed out by Lerner (1980), people need to feel that the world is a "just" place.

There are, of course, dangers in placing too much emphasis on community attitudes in policy development, particularly in relation to child support. To begin with, attitudes can be shaped by self- or group-interest, stereotypes, or hearsay. Second, the Australian Child Support Scheme is complex and involves a myriad of interlocking principles that may not be well understood – even by those with first-hand experience of it. Third, the measurement of attitudes is highly influenced by question order and wording; even slight differences can influence the nature of responses. Fourth, crude approaches to gauging public attitudes, including the method adopted by the present study, are likely to elicit views that are not well considered. Fifth, it is difficult to capture the complexity of families in assessing attitudes (as in the case where parents share the care of children or have complex parenting arrangements). In the present study, attention was restricted to the breadwinning/paying model, with no consideration of the many invisible ways that children are supported through unpaid work.

Notwithstanding these potential shortcomings, attitudinal research is clearly a valuable component of policy development. Attitudes are a lens to understanding a community's sense of fairness. A perceived lack of fairness may suggest a need either to change policy or to make the rationale behind it more transparent and well known.

Key findings

Consistent with much of the public debate around the Scheme, non-resident fathers believed that the Scheme was not working well and was unfair. Resident mothers were evenly divided about the Scheme's functioning and fairness; an argument could be made either way for whether they perceived their glass to be "half full" or "half empty".

Broad principles

Respondents were asked a number of questions about the broad principles underpinning the Child Support Scheme. While these principles received much support, differences sometimes emerged for one or more groups.

Most respondents in all groups maintained that:

- child support should always be paid, regardless of the gender or financial circumstances of the non-resident parent;
- both parents' incomes should be taken into account in setting child support liability;

- payments should be based on net rather than gross income;
- there should be an upper limit on the amount of support payable by high-earning fathers;
- the age of children should be taken into account; and
- children with a disability should continue to receive child support after they turn 18 years.

Although a majority of respondents in all groups held the above views, resident mothers were: (a) the least likely to agree that children's ages and both parents' incomes should be taken into account; and (b) the most likely to maintain that child support should be paid not only to children over 18 who either had a disability, but also to those who were full-time students.

On the other hand, non-resident fathers were: (a) the most likely to support the notion of a ceiling placed on child support liability for high income payers; and (b) the least likely to maintain that low income parents (male or female) should have to pay child support, and that children over 18 years old should receive financial support. But most non-resident fathers were in favour of supporting children with a disability.

There was a consistent majority view for three of the four groups on several issues. Most groups were inclined to believe that:

- helping children should be the main priority of the scheme – but non-resident fathers tended to support either the objective of helping children, or “fairness to parents”, or both (with helping children being the more common response);
- child support should be based on the non-resident father's capacity to pay (that is, “fathers who earn more should pay more”) rather than on the “basic costs” of children – but non-resident fathers were fairly evenly divided on this issue; and
- parents alone should hold the main responsibility for the financial support of the children – but resident mothers were evenly divided between this view and the view that the main responsibility should rest with parents together with the government (a trend that was related to the disproportionate number of resident mothers and children reliant on government support).

Women and men differed markedly on the extent to which they thought that fathers would pay child support without government intervention: women (especially resident mothers) believed government involvement was necessary; men (especially non-resident fathers) did not.

Finally, a mixed pattern of results emerged about whether resident mothers on government income support should be able to keep some or all of their child support payments. Overall, little more than half the respondents in any group argued in favour of one of these alternatives, although most opted for the non-resident mothers keeping some or all payments, rather than not keeping any.

New partners, second families

While there was some inconsistency, most groups were inclined to believe that:

- where a resident mother remarries, continuation of child support should depend on the new partner's financial situation – but resident mothers were divided on this issue;
- where a non-resident father repartners and has stepchildren, child support liability should not be reduced – but non-resident fathers were slightly more likely to argue in favour of some rather than no reduction; and

- where a non-resident father has a child born of a new relationship, child support liability should not be reduced – but most non-resident fathers disagreed.

Parent–child contact

There was much agreement across the groups on two issues related to parent–child contact. Most respondents in all groups believed that:

- a non-resident parent’s (father or mother) lack of interest in maintaining contact with children should have no bearing on the duty to support children financially; and
- overnight stays should be taken into account in the calculation of child support.

Nevertheless, non-resident fathers were less likely than other groups to agree that fathers who lacked interest in having contact should pay support. They were also more inclined to believe that overnight stays should be taken into account, while resident mothers were the least supportive of this proposition. In addition, most non-separated women and men, and particularly resident fathers, believed that child support should be reduced where a father has to set-up new housing for his children to stay overnight – but most resident mothers disagreed with this proposition.

Non-resident fathers tended to differ from one or more groups on scenarios that alluded to potential obstruction of parent–child contact:

- non-resident fathers were inclined to believe that non-resident parents (male or female) should not have to pay child support if the resident parent is preventing contact – but other groups tended to be fairly evenly divided on this issue;
- most groups argued that, where a resident mother moves interstate, child support payments should still continue – but only half the non-resident fathers agreed; and
- most non-resident fathers maintained that child support should not be paid if the resident mother moved overseas – but resident mothers and non-separated women were more inclined to say support payments should continue, while the non-separated men were evenly divided on this issue.

There was thus some support for the idea that “seeing” and “paying” should be linked (the so-called “contact–child support nexus”), but only in cases where physical barriers were perceived to have been instigated by mothers.⁴⁹ Other possibilities also exist (for example, in the case of relocation overseas, some respondents might assume that the mother must be wealthy and therefore not need child support if she can afford to move overseas).

Some reflections

Like other areas of family law, child support is an area riddled with competing interests. Views about its fairness thus depend on whose interests are being considered. What might lie underneath the different perceptions of separated women and men?

The reality is that without asking respondents whom they had in mind when they made their assessment of what might be “fair”, any ideas on what might be happening here is conjecture. Yet, because of the apparent systematic differences in the nature of responses of resident mothers and non-resident fathers, not to offer any ideas would be to miss an opportunity to build bridges across some of the different perspectives – a pursuit which may ultimately help parents to build

49 The reciprocal, where non-resident fathers moved, was not explored.

cooperative parenting arrangements after separation.⁵⁰ To this end, the following reflections are offered.

The justice–identity literature is a fruitful area from which to draw ideas to make sense of the differences across groups in attitudes to child support (especially in relation to the non-resident fathers’ views, which often differed to the other groups – including non-separated men). In essence, an abstraction of this literature suggests that women and men typically have different roles, experiences, and ways in the world – especially after separation – which may produce different perceptions of justice.

Building on the work of Minow (1997), Clayton and Opatow (2003) suggest that:

Identity becomes more salient when it is fluid, such as when individuals or groups undergo geographical or social change and experience psychological and political shifts in their understanding of who they are and their entitlement to social resources. (p. 300)

Identity affects why people care about justice . . . [It] also affects the operational definition of justice by determining whose justice matters, and for whom justice is relevant. In turn, our perceptions of justice and just treatment can influence the identity attributed to the recipient of that treatment, be it ourselves or another. (p. 301)

Identity (individual, group or community) is thus likely to influence perceptions of justice; and, likewise, the experience and perception of justice can influence identity. It is a two-way street. What are the implications of this line of thought for attitudes to child support?

Relationship breakdown is a potentially life-changing personal event that can exert a powerful shift in individual and group identity, for both men and women. To begin with, women initiate separation more often than men (Harrison 1986; Hughes 2000), and there is much evidence to suggest that those who see themselves as “leavers” often fare better in terms of emotional wellbeing than those who believe they have been “left” (Bickerdike and Littlefield 2000; Weston 1986). In Australia, Jordan (1988; 1996: 57-58) found that men appear to be generally “unaware of and unprepared for separation”. As a consequence, they often carry unresolved feelings of grief and hurt for many years after the initial marital separation.

Against this emotional backdrop of hurt and rejection, many non-resident fathers want to play an active role in their children’s lives but struggle to do so in the face of numerous emotional and practical obstacles (Braver and O’Connell 1998; Greif 1995, Hawthorne 2005; Kruk 1993).⁵¹ These obstacles include: dealing with the loss of daily interactions with children and familiar family activities; the pain of brief, superficial contact “visits” with children; role ambiguity (“Am I a real parent?”); significant loss of financial resources in the aftermath of separation; finding adequate

50 The four groups examined are gender-based and the less common resident father and non-resident mother groups are not shown. Thus there is no way of teasing out the often-complex interplay between gender and the residence status of parents. In other work (Smyth & Weston 2004), it was the residence status of parents rather than gender that appeared to exert the more powerful effect on attitudes. In other words, it was the presence or absence of children in a respondent’s household that is likely to reflect the view they hold on issues around post-separation parenting.

51 The majority of fathers in Jordan’s study expressed an “intense attachment and interest as fathers”, pointing to the importance of fatherhood to men (Jordan 1996: 56). Many fathers’ love for their children, and the loss of daily contact with children, can be devastating and appears to have a deep emotional impact on them post-separation (see, for example, Jordan 1996; McMurray & Blackmore 1993; Weston 1986a).

housing that can provide a home for caring for children; and maintaining a connection with children in the face of parental conflict, physical distance, possible new family responsibilities, and children's peer, school and extra-curricula activities.

This series of apparent disenfranchisements, individually and in combination, leads many non-resident fathers to believe that they are, as Kruk (1993: 87) puts it, "judicially, culturally, and legislatively disadvantaged on the basis of gender" (see also Braver and O'Connell 1998). Issues of "fairness" to themselves as parents are thus likely to loom large in the minds of non-resident fathers.⁵²

Clayton and Opatow (2003) suggest that concerns about one's own identity can be the primary motive for concern with unfair treatment and processes.

In the context of environmental issues, they point out that "people can be more willing to accept negative outcomes when they view procedures that lead to these outcomes as fair, respectful and allowing voice" (p. 303). How people are treated can affect their perceptions of the fairness of an outcome.

But non-resident fathers are not alone in the experience of loss and hurt. Children can suffer because they are poor, have lost seeing a parent daily, or are caught in the middle of their parents' conflict. Resident mothers can also suffer, emotionally, socially and financially.⁵³ For example, sole-parent families headed by mothers can experience a drastic fall in financial living standards, while the situation for men can be more varied (see Braver 1999; Finnie 1993; Jarvis and Jenkins 1997; Kelly and Harding 2005; Peterson 1996; Pulkingham 1995; Smock, Manning and Gupta 1999; Smyth and Weston 2000).

Mothers typically take the major responsibility for raising children. In doing so, their job advancement is often put on hold and thus compromised, while their husband's career continues to be enhanced. Indeed, men have been shown to be advantaged in terms of career progression if they have a family (Bianchi, Subaiya and Kahn 1999; Nock 1998). Given the needs of children, and men's usually higher earning capacity, this traditional division of responsibilities typically makes them economically vulnerable – a vulnerability that is hidden by the marriage.

Thus, the experience of separation for women is likely to impose a set of sensitivities about what is emotionally and financially "fair" – especially in relation to the need for children to receive ongoing support. But it may be that resident mothers' perceptions of fairness are more multi-layered than those of non-resident fathers'. Women may have a higher degree of "collective awareness" than men, as suggested by Brickman, Bolger, Goode and Schul (1981) and, as a consequence, be inclined to see things from multiple perspectives when weighing up "fairness".⁵⁴ Their responses to questions about child support may encompass both personal and social considerations. Yet the views of non-separated men tended to be similar to those of non-separated women.

Of course, it could be that in a climate of scarce (emotional and financial) resources after separation, men's and women's attitudes to child support tend to reflect self- or group-interest. A voluminous literature suggests that people who are hurting are particularly likely to be self-focused (for example, Pennebaker

52 This may also partly explain the rapid rise in grass roots "fathers' rights" groups around the world, in which "personal troubles" are unified and reinforced by group concerns (see Coltrane & Hickman 1992; Flood 2003).

53 Domestic violence and concerns for their children's safety can also loom large for some women (see, for example, McInnes 2004).

54 According to Gilligan (1982), women are also more inclined than men to assess fairness from the perspective of a network of relationships and to focus on an "ethic of care" (fostering harmonious relationships and taking responsibility for others).

1982; Sloan in press). Why, then, were the patterns of responses of resident mothers more similar to those of non-separated men and women?

While the Child Support Agency (1997) reports that enforcement issues are highly salient to resident parents, the Institute's *Attitudes to Child Support Study* focused almost exclusively on issues with which non-resident parents (mostly fathers) have expressed a great deal of concern: the factors that should be taken into account in determining child support liability, including parent-child contact and second families. It may well be that attitudes towards those circumstances that "hurt" the most are particularly likely to generate attitudes based more on self-interest or the interests of groups undergoing similar experiences, than the interests of all groups affected. In other words, it may be that the issues examined in this survey were more likely to trigger responses reflecting self- and group-interests in non-resident fathers than in resident mothers.

But perhaps social reality is a little more complex than this, as suggested by justice-identity theory. The fundamental insight of this theory is that how we see ourselves in the world can shape what we think is "fair", and vice versa.

Research on the interface between justice and identity holds much promise for helping to improve our understanding of the differences in the attitudes of resident mothers and non-resident fathers to child support. Insights about micro-justice orientations (which focus on the self and subgroup) and macro-justice orientations (which focus on the broader community), and their inter-relation, are fertile ground for child support research to pursue.

Implications for policy, practice and research

At least four implications for policy, practice and research flow out of the above findings.

The need for education

The inherent complexity of child support policy, with its basis in family econometrics, and its complex inter-relations with government income support, tax law and family law, make it somewhat impenetrable – even for experts.

Some of the findings of the *Attitudes to Child Support Study* presented here suggest that parts of the Scheme as they stand appear to run counter to public opinion about how it should operate. The tendency for respondents to believe that, where a resident mother remarries, continuation of child support should depend on the new partner's financial situation, is one such example. Under the current provisions of the Scheme, a new partner's income does not affect child support liability.

There is likely to be much value in separated parents being informed about the basic principles and rationale underpinning the Scheme, and how these principles are operationalised. A set of responses to *Frequently Asked Questions* may help in this regard: "Why should I pay?" "Why should I have to pay when I can't see my child?" "Why should I have to take reasonable action to obtain child support?" "Why is the Scheme based on gross and not net income?" And so forth.

Of course, some areas of broad discontent may suggest that an aspect of policy may itself need to be changed.

The need for a more therapeutic process

Marlow (1985: 5) has argued that separation is first and foremost a "personal event" and "only secondarily a legal event". Marlow maintains that legal answers do not exist to personal questions. This has relevance for child support policy.

The divorce mediation literature suggests that there is a need to provide for both the emotional and legal needs of clients. Respondents' comments in Chapter 5 point to the need for the child support system and broader family law to offer a more therapeutic approach to parents who are separating.

As noted earlier, there is emerging evidence that concerns about one's own identity can be the primary motive for concern about unfair treatment and processes, and the way that people are treated can affect their perceptions of the fairness of an outcome. Respectful processes can go some way to helping people deal with outcomes perceived as "bad". This points to the potential importance of the way in which the Child Support Agency and other parts of the family law system interact with separated parents. There are clear signs that much change is in progress across the family law system at present in a bid to improve "procedural" and "interactional" justice. The Child Support Agency is itself involved in a number of groundbreaking initiatives (O'Hanlon 2005). However, the soon-to-be established network of Family Relationship Centres is arguably one of the clearest signs of a shift to therapeutic process – although their role in relation to child support issues remains unclear. This issue is now briefly discussed.

The work of Family Relationship Centres

As a visible single entry point, the network of community-based Family Relationship Centres would help guide families towards child-focused, conflict resolution processes in a way that takes account of local needs. Families would receive support in a variety of ways, including information and advice, assistance in the development of parenting plans, three hours of free dispute resolution, and referrals (Prime Minister, Commonwealth of Australia 2004).

Some of the comments presented in Chapter 5 suggest that mediation, and no doubt similar services at future Family Relationship Centres, would be seen by some clients as offering an alternative to using a child support formula. It should be noted that financial counselling (not the same as mediation) is currently offered by a number of community-based family service organisations and might also become a feature of Family Relationship Centres.

These services are able to assist separating couples to understand the rationale that underpins property distribution and child support. They provide information rather than advice – an especially important service for former partners struggling to adjust financially to the demands of helping to maintain two households. At best, these services attempt to help create an atmosphere within which former partners come to appreciate the dilemmas associated with the diminished living standards that may be facing both of them. A key aim is to set the scene for mediation and/or for the acceptance of the principles that inform financial arrangements post-separation.

But what is meant by mediation in this context?

For some years, family law mediators have accepted that they cannot be strictly neutral with regard to the content of matters discussed by separating couples. For example, they are enjoined to assist couples to act in the best interests of children by remaining child-focused in their discussions about parenting. With respect to financial arrangements, they also begin from the principles outlined in the legislation. A strength of mediation is that within these guidelines arrangements can be agreed upon that meet the particular needs of a family or a child.

With respect to child support, a standard formulaic assessment would normally be the starting point, in both financial counselling and mediation, for clarifying the various

balance points in terms of adequacy and equity issues. Any proposal to move away from the formula – as suggested by a number of respondents in the present study – would need to consider carefully the capacity of both parents to represent themselves.

Where the State requires some reimbursement of government income support, the capacity to mediate an arrangement outside the formula would clearly be limited. In all cases, parents would need to be made fully aware, usually via the seeking of independent advice, of the consequences of pursuing non-standard arrangements. Service providers, too, recognise that child support policy is an inherently technical area that requires high levels of knowledge about family finances, government income support, and post-separation financial living standards and patterns of parenting.

At the same time, there is a very different way of considering the child support issue. One of the key aims behind the introduction of the Child Support Scheme – particularly administrative assessment and collection – was to improve the working relationship between parents by reducing the strain of “bargaining” over money. This was meant to be achieved through the conversion of a private obligation into a debt owed to the government (Harrison 1994).

These different ways of approaching the question of child support raise a dilemma that will require a policy-based resolution. It may be that the default position remains the application of the formula, but that under specified conditions, a combination of financial counselling and/or mediation services would be seen as potentially useful for some separating couples (as is already provided by some services).

The need for research

It is hoped that the Institute’s *Attitudes to Child Support Study* will stimulate further research in Australia on attitudes to child support. Any work that can shed light on why respondents supported certain propositions and not others is likely to attract much interest from policy makers, practitioners, and parents themselves. An examination of any possible links between property division and child support on the one hand, and perceptions of fairness, on the other, is also likely to be useful.

More importantly perhaps, there is hardly any information in Australia on children’s views about the child support that they do or do not receive. There is much irony in this given that the Scheme aims to ensure that the best interests of children remain paramount. Children’s views are likely to call some parents – particularly those enmeshed in conflict – back to reality. Poverty has an ugly face, especially for children. Sadly, heightened distress and conflict between parents can generate such a strong self-focus that some parents will be oblivious to their own children’s experiences.

A “tangled terrain”?

Many of the key issues raised by this study are not new. Indeed, that most of these issues have changed little since the Scheme’s inception some 15 years ago attests to the difficulties of balancing the diverse desires and needs of all family members and the State in relation to the financial support of children after parental separation. In this respect, child support shadows broader family law issues as a “confused and tangled terrain of conflicting ideas and tendencies”, as described by Dewar (2000: 60).

It is hoped that the voices of those who are caught in this terrain, as presented here, urge those charged with reforming child support policy in Australia to do what they can to improve the perceived fit between adequacy and equity issues, be this through education, policy refinement, or both.