The gendered framing of Australia’s child support reforms

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Abstract

In Australia, as in other jurisdictions, child support has become a political hot topic, and one with the potential to deepen and challenge socio-legal understandings of masculinity, autonomy and the legal construction of the ‘father figure’. However, to date sociological work on child support reform in Australia has focused on describing manifest outcomes, with far less emphasis on analysing the latent framing of child support as a policy issue. In this paper we adopted Bacchi’s (1999) concept of framing to analyse the connections and disconnections between recommendations made in the child support section of the 2003 Inquiry into Child Custody, the subsequent 2005 Ministerial Taskforce report responding to those recommendations, and the resultant 2006-08 legislative child support amendments. The framing of child support reflected more than a response to men’s rights activists’ claims that the previous child support scheme asked men to pay too much and was not fair. It reinforces the socio-legal construction of men as autonomous and financially and emotionally self-reliant subjects who control their lives and finances. Child support is represented as less a financial question and more a question of masculinity and identity in changing family structures and relations.

Keywords: Child support, law reform, masculinities, divorce
Introduction

In this paper, we explore the gendered framing of Australia’s child support reforms through a focus on the connections and disconnections between recommendations made in the 2003 Inquiry into Child Custody (House of Representatives Standing Committee on Family and Community Affairs (HRSCFCA), 2003), the 2005 Ministerial Taskforce on Child Support (MTSC) report responding to those recommendations, and the government’s reply (Australian Government, 2005) including the resultant 2006-08 legislative child support amendments. Specifically, we seek to make explicit previously unexamined and uncontested assumptions that have informed recent Australian child support reform.

Socio-legal studies have emphasised the political legitimacy of men’s rights discourses in family law (Kaye & Tolmie, 1998) in the context of a social, legal and cultural contestation around masculinities (Collier, 2010). However child support remains an under-studied area in the Australian context with only 20 empirical studies conducted in the last decade ((Cook, Mckenzie, & Knight, in press) and only one that examined the impact of the 2006 reforms (Smyth & Henman, 2010). Further, there is an absence of work that traces how claims, such as those regarding men’s financial interests, are transformed into law.

Following Bacchi (1999) we argue that the representation of the ‘problem’, in this instance a seemingly inequitable Child Support Scheme, is as important as the final policy because the discursive shaping of the issue holds within it the possible State responses. We argue the problem was presented not as inequity arising from the amount and regularity of child support payments but the potential of the State to undermine men’s financial autonomy. This reflects the socio-legal construction of men as subjects who have control and authority over their lives and finances, autonomous in the domestic and political realms (Collier, 2010). In the process, the legitimacy of men’s financial claims was buttressed at the expense of women’s. In short, we argue financial autonomy is gendered. Our position is referenced to
the vast majority (approximately 87%) of child support payers being men and payees being women (Child Support Agency (CSA), 2010), and that in political and media discourse ‘payers’ is taken as synonymous with ‘fathers’ (Kaye and Tolmie 1998). We acknowledge, however, that both men and women are represented in each group.

Our analysis concentrates on the trajectories of sub-points of Recommendation 25 from the child support section of the 2003 Inquiry report (HRSCFCA, 2003). Bacchi (1999) contends that there is no social process that sits outside the construction of social problems, but in light of the word limits placed on this paper we limit our analysis to the interrelationships between the three aforementioned key documents. We examine which recommendations were taken up in the policy (realised), and those that were amended, abandoned or rejected during the policy-making process (Table 1).
Table 1: Recommendation trajectories and their beneficiaries

<table>
<thead>
<tr>
<th>RECOMMENDATION</th>
<th>TRAJECTORY</th>
<th>WHO STOOD TO BENEFIT?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Increasing the minimum liability from $260 to $520 per year</td>
<td>Amended</td>
<td>Payee</td>
</tr>
<tr>
<td>2. Amending CSA enforcement powers:</td>
<td>Abandoned</td>
<td>Payee</td>
</tr>
<tr>
<td>• Notified of insurance settlements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Collect from realised compulsory preserved superannuation</td>
<td></td>
<td></td>
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<tr>
<td>• Access joint accounts</td>
<td></td>
<td></td>
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<tr>
<td>• Use credit references to obtain information</td>
<td></td>
<td></td>
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<tr>
<td>• Determine transfer of assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Access lump sum payments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Collect child support from non-salary and wage earners</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Cancel drivers/ other licences</td>
<td>Rejected</td>
<td>Payee</td>
</tr>
<tr>
<td>4. Reducing the cap on payer parent’s assessable income</td>
<td>Realised</td>
<td>Payer</td>
</tr>
<tr>
<td>5. Eliminating the link between contact and child support liabilities</td>
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<td>6. Amending the calculation of child support on overtime and second jobs</td>
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<td>7. Increasing prescribed non-agency payments from 25% to 30%</td>
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</tbody>
</table>
Findings

Amended recommendations

The centrality of men’s financial interests is evident in the re-framing of the ‘problem’ of minimum payments over the recommendation’s trajectory. In 2003, the Inquiry recommended the minimum payment of $5 per week be raised to $10. The appropriate amount was evaluated in terms of whether payers had the capacity to pay, whether it ensured parents had the obligation to support their child, and whether the amount provided a real benefit to children (HRSCFCA, 2003) The Inquiry concluded “the amount of $260 per year is too low to provide a meaningful contribution to the cost of raising a child” but referenced this concern to men’s financial interests: “in considering higher amounts, the Committee would not wish to create hardship for any low income or unemployed person who was unemployed through no fault of their own” (HRSCFCA, 2003, p. 139).

In their response to the Inquiry’s recommendation (Australian Government, 2005), the then Liberal Government requested that the 2005 Taskforce provide advice, among other things, on increasing the minimum child support liability. However, all references to a “meaningful benefit to children” were omitted from the Taskforce’s discussion and the 2005 recommendations focused exclusively on “concerns that the minimum remain affordable to very low income parents, who may be receiving only income support payments” (MTCS, 2005, p. 169). The $10 per week minimum was amended downwards in light of this concern, although the Taskforce did provide a discussion of related issues including fixed payments for payers not on income support with minimum liabilities and the apportionment of multiple minimum payments across payee families.

Ultimately, minimum payments were indexed which raised minimum payments from $5 a week to approximately $6.15. The importance of men’s financial interests was implicitly
reinforced through the justification that “the payment was not linked to any index when it was introduced, with the consequence that inflation since 1999 has eroded the value of the [minimum] payment” (MTCS, 2005, p. 167). The implication was that men paid more but were not worse off in real terms. Amounts became referenced to macro-economic patterns, which excluded the State’s role in determining the amount of money to be transferred out of the payer’s household. The financial needs of those who might also benefit (minimally) – children and their carers – were removed from the policy frame: no reference was made to the adequacy of the amount, which the Taskforce described earlier in their report as of ‘token’ value (MTCS, 2005, p. 53). Thus, the question is one of payer’s financial interests, and the response sidelines the impact of State policy on these.

**Abandoned recommendations**

The centrality of men’s financial autonomy and the problematising of State intervention are evident in the seven 2003 recommendations that were abandoned prior to the 2006 reforms. These abandoned recommendations are comprised exclusively of measures to improve child support enforcement. The terms of reference for the Ministerial Taskforce provided no scope to examine the CSA’s enforcement capabilities with respect to compulsory insurance notification, collection from superannuation, access to joint accounts, accessing information from credit agencies, transfer of assets and accessing lump sum payments (Australian Government, 2005). They were written out of the frame as they were not in anyway addressed.

The Taskforce’s inability to examine the Inquiry’s initial enforcement recommendations disguised the significant levels of non- and partial payment. In 2003 the Inquiry cited the CSA’s figures that only 28% of minimum liability payees reported always receiving payments on time while 40% reported receiving no payments at all (Wolffs &
Shallcross, 2000). In 2005, the Taskforce provided estimates that approximately 60% of payers were compliant. However, they noted that CSA figures regarded private payers (those whose liabilities were not collected by the CSA) as being 100% compliant. As the Taskforce noted, but was not able to pursue, “this approach does not provide a clear picture of actual compliance rates” (MTCS, 2005, p. 85).

In 2003, the CSA’s ‘responsibility’ for debt recovery was presented as necessary to ensure that payee parents received this “important part of their household income” (p. 166) to reduce the “ongoing risk of financial hardship or poverty of single mothers” (p. 167). Between 2003 and 2005 initial framing changed dramatically, removing the focus from women’s financial hardship to the public sphere by emphasising “public confidence in the Scheme” and reducing “sources of discontent” (p. 175) as “proper enforcement of child support obligations in relation to all child support is essential for [the Scheme’s] popular acceptance” (p. 177). The discontented parties responsible were then identified as self-employed non-resident parents and payers with arrears who were in receipt of government payments. The emphasis placed by the Taskforce on the ‘public confidence in the Scheme’ rather than the accumulation of CSA debt focused on “the inequities between the way the Scheme applies to PAYG wage earners compared to the self employed or business people” (MTCS, 2005, p. 177).

For payers in receipt of government payments, the Taskforce noted that many types of benefits could not at that time be intercepted to recover debt, including veterans’ entitlements, superannuation funds (as recommended for interception in 2003), lump sum payments and parliamentary pensions. Ultimately, resources that were recommended for garnisheeing, and enacted in law, were those in which the State already had a direct and explicit role in men’s finances, via the transfer of state support (Department of Veterans’ Affairs and Centrelink pensions).
Taken together with the removal of ‘enforcement’ from the 2005 terms of reference, the rejection of drivers’ licence enforcement sanctions (described below), and the dismissal of payee parents’ concerns that debts were being written off, these instances provide evidence of the framing of child support issues as primarily about men’s financial control— a framing which is in marked contrast to surveillance and collection in other areas of government such as income support payments (Henman & Marston, 2008). These recommendations provide evidence of the privileging of some men over most women. The needs of men who conform to traditional and privileged representations of masculinity regarding financial autonomy and control (Collier, 2010) are prioritised over those of financially dependent men and separated women who supplant their dependence on a male breadwinner with dependence on the State.

One ‘enforcement’ recommendation from the 2003 Inquiry was taken up by the 2005 Taskforce. This recommendation called for greater CSA garnishee powers to collect child support from non-salary and non-wage earners. While specific changes were not outlined in 2003, the 2005 Taskforce recommended that the CSA’s powers be broadened to “make ongoing deductions from bank accounts to align enforcement measures for non salary and wage earners” (p. 26). Despite child support debts accrued by non wage earners being highlighted as a major concern in both reports, this recommendation was not subsequently taken up in legislation, although the government’s response included $164 million to improve compliance and a range of enforcement activities. The result of this investment has, however, yet to be seen with the pervasiveness of child support non-compliance highlighted in the 2010-2011 federal budget papers (Commonwealth of Australia, 2011) and a recent inquiry into family violence and Commonwealth law (Australian Law Reform Commission, 2011).
Rejected recommendations

The only recommendation made in 2003 (as first put forward in the 1994 Joint Select Committee on Certain Family Law Issues) that was explicitly rejected in 2005 was the suggestion to cancel the drivers or other licences of payers with outstanding child support liabilities. The Taskforce claimed that the reference group “counseled against this particular enforcement option, as it may impair a payer’s earning capacity and therefore be self-defeating in terms of ongoing collection” and “might reduce parents’ capacity to earn income” (MTSC, 2005, p. 178). The logic of this argument was based on the premise that a payer’s reduced capacity to earn an income superseded a payer’s reduced income due to the payer’s non-compliance. Again, the potential implications for payees were ignored, and direct State intervention in men’s financial outcomes (in this instance, wage earning) was removed from the frame.

Realised recommendations

Limiting the impact of child support obligations on men’s income was also evident in the adopted recommendations, although less consistently so. In total, four of the 2003 recommendations were taken up by the 2005 Taskforce and later enacted in legislation. These recommendations proposed (i) a reduction in the ‘cap’ on maximum child support payments, (ii) the elimination of links between child support and contact, (iii) changing the way child support is calculated for income from first and second jobs, and (iv) raising the limit of non-cash payments from 25% to 30%.

The evidence for these payment calculation recommendations was presented in the 2003 Inquiry as issues of ‘fairness’. For example, the Inquiry stated, “on the basis of fairness the level [of the income cap] should be lowered” (p. 143); and in terms of the relationships between child support and contact: “Whilst the legal position is that child support and contact
are not connected, … the connections are practical and real and are seen as having unfair consequences for them [payers]” (p. 143). Similarly, the evidence presented regarding overtime and second jobs was presented in a section of the report entitled ‘Fairness to both parents – variations’ (p. 151). However, framing of the individual amendments and the outcomes highlight a definition of fairness that is referenced to men’s financial interests and autonomy; represented as not paying more than the cost of children. Conversely, the unfairness of the more common scenario, of payees receiving less than the cost of children, was removed from the frame.

The fourth realised recommendation addressed the “common lack of confidence amongst paying parents that the child support paid is actually benefiting the children” (p. 159) and paying parents’ view that “child support was being used by the resident parent for their own personal needs” (p. 158). To this end, the 2003 Committee recommended that payers be able to contribute 30% of their child support liability “for prescribed purposes” (p. 159), as the Committee considered payers’ lack of confidence “as impacting on how the obligation to financially support the child is viewed and accepted by the non-resident parent” (p. 158). While the Committee suggested that the implication of an increase in prescribed payments on the cash flow of low-income resident parents be considered, no such analysis was undertaken. Strikingly, the 2005 Taskforce provided no evidence for or against the recommended reform in their 274 page report. The financial interests of men spoke for themselves. This framing again places primary importance on men’s financial autonomy and legitimates men’s dominance over the financial affairs of women.

**Conclusion**

The framing of child support as primarily an issue of men’s financial autonomy stands in contrast with the initial concerns over non-resident fathers’ limited financial contributions
and child poverty that informed the institutionalisation of child support (Fehlberg & Mclean, 2009). Indeed, this framing removed such policy considerations despite continuing poverty amongst resident mothers and data that indicated a high proportion of payers were not meeting their full liabilities (Losoncz, 2006).

We continue to see political claims and theoretical debates over the position of men in families and related law. Our analysis highlights the discursive construction of a traditional and privileged masculinity within the legal and policy fields. However, it also speaks to socio-legal critiques that emphasise the existence – and at times subordination – of alternative masculinities (Collier & Sheldon, 2008). For example, payers whose finances were subject to state control (through pensions and income support) were at times subject to changes that further decreased their financial autonomy while at other times their interests were explicitly recognised. Throughout, the financial autonomy and wellbeing of women and children were largely excluded from the frame and through this exclusion masculine authority within families was discursively and empirically buttressed, even when family relationships extend across households and might otherwise be expected to hold alternative gendered power relationships.

There is further work to be done on the framing of child support, given the extensive political and public debate, and the resultant impacts upon the financial position of parents (Smyth & Henman, 2010). The analysis reported in this paper has focused only the relationship between the 2003 Inquiry, the 2005 Taskforce and subsequent legislative changes – we have not addressed any new recommendations initiated by the 2005 Taskforce. But in the adoption of these original recommendations, the financial autonomy and control of fathers was buttressed – and commonly at the expense of their children.

References


