

Submission on the Child Support Amendment Bill 2011

To the Social Services Committee

by

Associate Professor Nicola Gavey
Department of Psychology
The University of Auckland
Private Bag 92019
n.gavey@auckland.ac.nz

Dr Vivienne Elizabeth
Department of Sociology
The University of Auckland
Private Bag 92019
v.elizabeth@auckland.ac.nz

Associate Professor Julia Tolmie
Faculty of Law
The University of Auckland
Private Bag 92019
j.tolmie@auckland.ac.nz

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We oppose this Bill.

As academics representing three disciplines – law, sociology and psychology – we have been collaborating for the past 7 years on research on women’s experiences of disputes over child custody. Child support is a key issue in the context of post-separation parenting and child custody and care issues.

Our views are supported by this research, which has given us in-depth case knowledge concerning the reality of post-separation mothering in situations of conflict, as well as knowledge of relevant international social science literature.

This Bill is framed as an attempt to address a stated perception that current law and policy are out of date and inequitable. Changes introduced in the Bill are premised on the claim that “patterns of parenting have changed since the introduction of the scheme, and it is now more common for both parents to be actively involved in raising their children” (pp. 1-2). Fathers’ Rights groups have lobbied strongly on these issues. Those representing the interests of non-custodial fathers have claimed that the current law on child support places an unfair and unreasonable burden on liable parents (who are most commonly fathers).

We argue that both the construction of the problem that the Bill seeks to address, and the solutions it offers, are weighted strongly in liable fathers’ interests. We suggest that both are based on untested assumptions and misconceptions about the nature of contemporary parenting in general, and in conflictual post-separation circumstances in particular, such as those likely to be covered by Inland Revenue Department administered child support collection.

We contend that the changes proposed for the formula assessment of child support liability will lead to serious injustice and disadvantage for children supported by IRD administered child support payments. We highlight three points:

(1) The Bill is based on misconceptions about the nature of real change in families and idealised, untested assumptions about how actual changes translate to real patterns of care and support (including financial support).

In support of the Bill it is claimed, as noted above, that “patterns of parenting have changed since the introduction of the scheme, and it is now more common for both parents to be actively involved in raising their children” (pp. 1-2). We are concerned about the lack of evidence provided in support of this claim. If there are data showing increased nominal levels of shared care they need to be available for scrutiny. No recognition is built into the Bill that nominally shared care may not always result in care that is genuinely shared. Care and responsibility for a child are difficult to quantify, but they must be understood as actions and dispositions that endure beyond calculations of time spent with children. Our research and that of others¹ shows that it is common for mothers in nominal shared care arrangements to effectively remain full time mothers (taking primary and ongoing responsibility for overseeing, organising, and anticipating needs related to children’s health, development, and education, extracurricular activities, and their social and extended family relationships, even during time that the children are not in their physical presence).

¹ See for example: Lacroix, C. (2006). Freedom, desire and power: Gender processes and presumptions of shared care and responsibility after parental separation. *Women’s Studies International Forum*, 29(2), 184-196.

Overall, we believe that this Bill is based on misconceptions and exaggerations in regard to the real level of social change that has occurred in patterns of parenting. While many of us aspire to a world in which women and men would contribute equally to the care of children, the reality is that parenting remains a highly gendered activity both prior to and post separation.² Research consistently shows that in practice mothers still are both expected to, and do, take on the primary duty of care for children (in terms of both emotional and practical labour). Hence our reference in other parts of the submission to mothers as primary parents.

We would also point out that the justification for the Bill, in terms of the current scheme being “out of date” (p. 1), rests on exaggeration of other changes since the early 1990s. The IRD Discussion Document preceding this Bill implied that there has been a significant level of social change since 1992 when the current scheme was introduced. In support of this it was noted that women’s participation in the workforce has increased. Department of Labour statistics cited showed that women’s participation in the labour force was 54.3 percent in 1992 compared to 62.5 percent in 2009.³ While this is clearly an upwards trend, it is questionable whether this increase represents such a profound social change as to explain a different logic underpinning the design of the current scheme.

(2) The Bill inevitably negatively impacts on the financial wellbeing of children and will increase rates of child poverty.

The redefinition of shared care within the Bill, and the factoring in of the primary caregiver’s income in the formula assessment of child support payments both indicate that the Bill is strongly shaped by sympathy toward paying parents. Both of these changed criteria will reduce the level of child support that many fathers are required to pay. The effect of this will be a reduced household income in the child’s home with their primary caregiver. This is likely to lead to significant disadvantages for children, impacting on their basic wellbeing and their opportunities for wider development. It is also likely to increase rates of child poverty.

Economic security, which is jeopardised by this Bill, has also been found to be significantly related to “children’s positive psychological adjustment following separation and divorce”.⁴

New Zealand’s child support legislation should be driven by a primary concern for the wellbeing of children. This proposed legislation is designed in such a way that inevitably compromises children’s wellbeing at the expense of addressing perceived fairness for some fathers.

(3) The Bill has potential to increase mothers’ and children’s vulnerability to domestic violence and coercive control.

Parents paying and receiving child support administered by IRD are likely to be in conflict. It is reasonable to assume that in a significant proportion of cases conflict will be associated with past and/or ongoing domestic violence and coercive control. In our study which sought to interview

² For a review and discussion see: Tolmie, J., Elizabeth, V., & Gavey, N. (2010). Imposing gender neutral standards on a gendered world: Parenting arrangements in family law post separation. *Canterbury Law Review*, 16(2), 302-330.

³ Inland Revenue Department (September, 2010). *Supporting Children: A Government discussion document on updating the Child Support scheme.*

⁴ Emery, R. E., Otto, R., K., & O’Donohue, W. T. (2005). A critical assessment of child custody evaluations: Limited science and a flawed system. *Psychological Science in the Public Interest*, 6(1), 1-29.

women who had experienced custody disputes, just under half the women we interviewed had experienced violence from their male partner.

In revising the formula assessment to define shared care as “commencing with 28% of the ongoing daily care provided” (p. 3), the Bill forces mothers to negotiate sharing the financial costs of child support with the child’s father. There is no recognition of how difficult this can be in such circumstances, and how much stress this can place on mothers. If a father refuses to pay ‘his share’ of school uniform costs or fees for a school trip for instance, the mother will be put under unnecessary financial and emotional strain, and the child may miss out on opportunities they could otherwise have had. Women we interviewed gave poignant accounts of such difficulties when in situations that required such negotiation.

Being based on idealised assumptions about how costs will be shared among parents, the Bill fails to take account of the real-world impediments to this working out in practice in an equitable way in children’s best interests. Not only does this open the door to difficult struggles for primary parents, and introduce pathways for disadvantage for children, but in some cases it will increase opportunities for violence and abuse.⁵

Recommendation

This Bill in its current form is premature, and should not be supported. Before any amendments are introduced to our child support legislation, a more balanced consideration of the weaknesses of the current law must be carried out, and supported by evidence. Additionally, to achieve a just and equitable outcome the views and interests of mothers who are primary caregivers (and receiving parents) must be given equal weight. Unless that is done, the wellbeing of children in many families receiving IRD administered child support will be seriously adversely affected. This will be due to multiple consequences of the Bill, including the impact of reduced family income (leading to child poverty in some cases and serious disadvantage in most other cases), increased strain on primary parents, and increased vulnerability to violence and abuse in some cases.

⁵ See also: Elizabeth, V., Gavey, N. & Tolmie, J. (2012). “...He’s just swapped his fists for the system”: The governance of gender through custody law. *Gender & Society*. doi: 10.1177/0891243211434765