

# He said, she said: The gendered use of public testimony in the child support reform process

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## Abstract

This paper examines the evidence used to support the claims made in the Child Support chapter of the 2003 Inquiry into Child Custody report. Of the 220 references cited in the chapter, 110 refer to individual witnesses or representatives from gendered advocacy groups. We examine these 110 references to community hearing testimony and written submissions, paying particular attention to the gender of the informant and whose interests they served. Confirming the work of feminist legal and policy scholars, we found that most references were made to men or served the interest of payers (who are mostly men). Further, of the 31 references to statements made by women, the majority of these served the interests of payers. Thus, what was presented as legitimate evidence was gendered. We conclude that the voices and interests of women were marginalized in this part of the reform process.

**Keywords:** child support, policy reform, gender, evidence

## Introduction

In 2003, in response to government concerns regarding the ‘fatherlessness’ of children living in single-mother households (Fogarty and Augoustinos, 2008), the Australian government conducted an inquiry into child custody arrangements. The Inquiry received over 1700 written submissions, called 166 witnesses and heard from 181 individuals who made individual statements at public hearings across the country. Chapter Six of the Inquiry report was dedicated to child support issues. This chapter provided the impetus for a Ministerial Taskforce on Child Support, which produced recommendations that were taken up in policy in 2006-08, culminating in a major overhaul of the Australian Child Support Scheme (CSS). Economic analyses of the reforms indicate that they have had gendered outcomes<sup>1</sup>, with a small number of high income payers experiencing net gains under the new Scheme, and a larger number of low-income payees more likely to experience losses (Smyth and Henman, 2010).

In this paper, we examine the evidence cited in the ‘Child Support’ chapter of the 2003 Inquiry into Child Custody report (House of Representatives Standing Committee on Family and Community Affairs (HRSCFCA), 2003) as a case example of the social construction of evidence in law reform processes. Our findings indicate that evidence was gendered, with men’s experiences and payers’ interests represented at disproportionately higher levels than those of payees. Our findings add to the limited body of work on the topic of evidence and law reform and in so doing, contribute to building a critical history of a reform process that has reflected and likely shaped gendered relations of power and identity in post-separation parenting.

## **Gender and evidence in family law reform**

This paper is positioned within a small but growing number of accounts of the most recent changes to child support in the Australian context. Existing work in the area suggests that in Australia, as in other jurisdictions, non-resident fathers were particularly vocal in calling for reforms around the issues of post-separation parenting and child support (Boyd, 2004; Commonwealth of Australia, 2006). There are differing interpretations of the impact of gender in the Inquiry process and implemented reforms. Analyses of the framing and implications of the child support reform (Cook and Natalier, in press; Fehlberg and Maclean, 2009) and the discursive management of witnesses (Fogarty and Augoustinos, 2008) indicates a gendered process. However, members of the 2005 Ministerial Taskforce have sidelined questions of gender and power, pointing to the importance of evidence in the process and rejecting any direct influence of fathers' rights groups (Smyth and Henman, 2010: 7).

Socio-legal studies have emphasised the political power and legitimacy of masculinist framings and claims in the context of a social, legal and cultural contestation around masculinities, including fathering practices and identities (Collier, 2010; Kaye and Tolmie, 1998). Researchers have assessed specific examples of the gendered processes and evidence used in family law and policy reform and its implication in the oppression of women (Boyd, 2003; Kathlene, 1994; Rhoades and Boyd, 2004). For example, Kathlene's (1994) work revealed how women's voices were excluded from family policy-making processes in the United States and Robson's (2005: 93) analysis revealed how a focus on "opinions and experiences of legal actors" excluded women's interests from the review of Canadian child support guidelines. Melville and Hunter's (2001) analysis of 'common sense' claims found that family law review bodies endorsed second-hand, common sense or mythical claims made during the review process, despite a lack of empirical support (see also Boyd, 2003; Graycar, 2000). Social scientific evidence is sometimes incorporated into the review process (see Harding and Percival, 2007; Rhoades and Boyd, 2004; Smyth and Henman, 2010), but the literature as a whole suggests its impact is minimal.

## **Methods**

To explore the gendered representation and valuing of personal testimony referred to in the Child Support chapter of the 2003 Inquiry report, all footnotes were entered into a SPSS database. Where multiple sources were referenced for a single footnote, each source was coded separately. The source of each reference (government department or agency, researcher(s), service agency, gendered interest group, or individual), the section of the report the reference appeared in, the interests served by the reference (payers', payees' or neutral), and whether it contributed to the recommendations made at the end of the chapter were coded for each reference.

In this analysis we focus primarily on the evidence provided by gendered interest groups and individuals. For these references, additional coding identified the nature of the evidence provided (personal experience, second-hand experience, collective experience, research) and the gender of the author/speaker. Where this information was not immediately apparent from the 2003 Report, the original transcript or submission was obtained.

Descriptive statistics were used to describe the distribution of references with respect to the gender of the author/speaker and the section of the report they supported. Chi square tests were used to identify differences in the proportion of references to men and women in general and for gender differences in the references to second-hand evidence and the interests this served.

Testimony from individuals and interest groups was just one source of evidence referred to. Our decision to report on such testimony is informed by existing conclusions that personal testimony is a particularly powerful form of evidence (Graycar, 2000; Melville and Hunter, 2001; Rhoades and Boyd, 2004). Indeed in this context, “popular acceptance” of and “public confidence in” the Scheme informed the justification of the CSS’s redesign (Ministerial Taskforce on Child Support, 2005: 177; 175). Our analytic focus in this paper should be read as one element of a larger project of developing the public and private histories of child support reform in Australia.

## Findings

In this section we highlight the marginalisation of women’s voices and interests through their relative absence in the personal testimony presented as evidence.

### *Personal testimony as evidence*

Of the 220 references to external data sources contained within the 174 footnotes included in the Child Support chapter of the 2003 Inquiry report, 110 referred to testimony provided by private individuals or representatives of gendered interest groups (Table 1). Collectively, these private individuals and representatives from gendered interest groups will be referred to as testimony from ‘interested parties’, to mark them out from the purportedly unbiased testimony provided by academics, service agencies and government departments. Within the chapter, personal accounts of lived experience were a legitimate form of evidence, constituting almost half of the references used to illustrate key points and recommendations.

**Table 1: References by source**

Type of reference	N	%
Government department or agency	91	41.4
Researcher	14	6.4
Service agency	5	2.3
Gendered interest group	16	7.3
Individual	94	42.7
<b>Total</b>	<b>220</b>	<b>100</b>

The 110 references to interested parties highlight the gendered legitimacy of personal experience. These references were comprised of testimony from 78 men, 31 women and one representative of unknown gender who was the parent of a payee (Table 2).

**Table 2: Gender of ‘interested party’ sources**

Type of reference	Male		Female	
	N	%	N	%
Gendered interest group	14	87.5	2	12.5
Individual	64	68.1	29	30.9
<b>Total<sup>2</sup></b>	<b>78</b>	<b>71.5</b>	<b>31</b>	<b>28.4</b>

Personal testimony was used extensively to provide evidence of the experiences of payers. For example, references to these 110 interested parties were distributed throughout the various sections

of the chapter, particularly the sections that addressed payer concerns over child support and contact, fairness of the scheme, payment options, and to a lesser extent, payee concerns regarding collection from payer self-employment (Table 3).

**Table 3: References to ‘interested parties’ by topic**

Topic	N	%
<b>Background issues</b>		
The formula	5	4.5
Client experience and understanding of child support	5	4.5
Relationship between child support and social security	3	2.7
Background issues sub-total	13	11.8
<b>Payer issues</b>		
* Child support and contact – what are the links?	18	16.4
* Fairness to both parents – variations	13	11.8
* Options for payment of child support	12	10.9
Taxable or after tax income	11	10.0
Exempt income and disregarded income	5	4.5
* Overtime and second jobs	4	3.6
Cost of re-establishing a home after separation	3	2.7
* Maximum payment – the income ‘cap’	3	2.7
Second families	2	1.8
Payer issues sub-total	71	64.5
<b>Payee issues</b>		
* Self-employed non-resident parents	11	10.0
Non-resident parents leaving employment	8	7.3
* Enforcement of child support obligations	6	5.5
* Minimum payment	1	0.9
Payee issues sub-total	26	36.6

Of the 13 payer and payee issues detailed in the report, eight of these included one or more recommendations for policy change (identified by an asterisks in Table 3). Excluding the 13 references that supported ‘background issues’, a Yates corrected chi square test revealed that these recommendations appeared significantly more likely to be supported by evidence from interested parties than government, service agency or academic research ( $\chi^2(1) = 25.15, p < .01$ ) (Table 4).

**Table 4: Types of evidence used to support recommendations**

Type of reference	Supported recommendation		a Did not support a recommendation	
	N	%	N	%
Interested party evidence	46	41.8	64	58.2
Government, service agency and academic evidence	9	16.4	85	90.4
Total	55	27.0	149	73.0

In addition to being provided predominantly by ‘interested parties’, the evidence used to support a recommendation was significantly different in nature to the evidence that did not support a recommendation ( $\chi^2(5) = 34.3, p < .01$ ). Recommendations appeared more likely to be supported by

personal and second-hand experiences, whereas topics that did not lead to recommendations most frequently cited a combination of policy documents, personal experience and research (Table 5).

**Table 5: Forms of evidence that supported recommendations compared to evidence that did not**

Type of evidence	Supported a recommendation		Did not support a recommendation	
	N	%	N	%
Personal experience	32	58.2	41	27.5
Second-hand experience	10	18.2	9	6.0
Collective experience	5	9.1	12	8.1
Policy documents (reports, inquiries, etc)	4	7.3	51	34.2
Legislation	-	-	10	6.7
Research	4	7.3	26	17.4
Total	55	27.0	149	73.0

These findings indicate that personal testimony is represented as a legitimate source of evidence within law reform. However that legitimacy is gendered: women's testimony was not used as extensively as men's, reflecting the findings of previous authors who have highlighted the often marginal position of research in law reform processes (Graycar, 2012) and the importance placed on men's accounts of post-separation parenting (Rhoades and Boyd, 2004).

#### *Gender interests served*

Focusing specifically on evidence from 'interested parties', chi square tests were used to assess gender differences in the interests this evidence served. The analysis revealed significant gender differences ( $\chi^2 (2) = 29.29, p < .01$ ), with men's evidence being used almost exclusively to support their own interests (92.3%), whereas women's evidence was distributed more evenly between their interests and the interests of others (Table 6).

**Table 6: The interests served by references to men's and women's testimony**

Interests served by evidence	Men		Women	
	N	%	N	%
Payers	72	92.3	17	54.8
Payees	3	3.8	14	45.2
Purportedly neutral	3	3.8	-	-
Total	78	71.5	31	28.4

These differences can be attributed to the use of second-hand evidence (i.e. reports of the experience of someone else) in the 2003 report. There was a significant difference in the nature of evidence referred to from men and women, with chi square tests ( $\chi^2 (3) = 17.08, p < .01$ ) indicating that second-hand evidence referred to in the report was more likely to be provided by women whereas personal experience, collective experience (i.e. reports of the experience of generic others) and research was more likely to be provided by men (Table 7).

**Table 7: Types of evidence by gender**

Type of evidence	Men		Women	
	N	%	N	%
Personal experience	56	71.8	17	54.8
Second-hand experience	6	7.7	12	38.7
Collective experience	10	12.8	2	6.5
Research	6	7.7	-	-
Total	78	71.5	31	28.4

Examples of the relationships underpinning second-hand evidence used in the report include partners of paying fathers, the parent of a child support payee, and “a witness speaking on behalf of several workmates who were separated fathers” (HRSCFCA, 2002: 155) whose evidence was referred to at three points in the chapter (see references to Witness 4, transcript, 5/9/03 on pages 134, 147, and 155 of the Inquiry report).

There also appeared to be a gender difference in the interests served by the second-hand information cited in the report, although the number of cases was too small to test the significance of this distribution. While women provided the majority (66.7%) of the 18 references to second-hand information, almost all (91.7%) of such testimony was used to justify claims that benefited payers. Conversely, all of the references to second-hand information provided by men were used in the report to serve male interests (Table 8).

**Table 8: Interests served by second-hand information**

Type of evidence	Men		Women	
	N	%	N	%
Benefited same gender	6	100	1	8.3
Benefited opposite gender	0	-	11	91.7
Total	6	33.3	12	66.6

Together, these findings indicate that public testimony was used to argue for men’s interests more so than women’s. This was true of sharing personal experience, and of speaking about the experiences of others.

## Conclusions

Law reform extends over time and different processes and documents, which when taken as a whole, are likely to contain contradictory discourses and outcomes. However, throughout, ‘evidence’ is important in symbolising the legitimacy and logic of the final recommendations for reform. This study, like previous studies, highlights the marginal position of research in these processes. It also highlights the gendering of evidence. The number of references to personal experience indicates its legitimacy as a form of knowledge – but that legitimacy is gendered both in terms of who is quoted (mainly men) and for whose interests that testimony advocates (mainly those of payers).

Researchers have called for the voices of family law/policy consumers to be included in the reform process (Robson, 2005). Our analysis suggests that in this case, the voices of consumers that were ‘heard’ in the report reproduce the gendered inequalities that are a marked element of family law and its reform processes. This finding supports feminist scholars’ ambivalence over the efficacy of reform processes (Graycar, 2012) and reminds us that debates over the political impact of men’s

rights groups and the ultimate outcomes must be supplemented by analyses of gender in less spectacular but still powerful dimensions of reform.

### Footnotes

1. 1. As 87% of payers are men (Child Support Agency, 2010) we argue that testimony or recommendations in payers' interests are gendered because they primarily further the interests of men.
2. Does not sum to 110 as the gender of one witness was unknown.

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