



## Bargaining in the shadow of the Child Support Agency? Cooperative versus coercive private arrangements

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*There is a notable lack of empirical data on the prevalence of private child support arrangements and the dynamics surrounding them. This article examines the reasons some non-resident fathers give for paying more than their 'official' child support obligation, as well as the reasons some resident mothers report accepting lower payments. We analyse data from 733 separated parents registered with the Child Support Agency surveyed as part of a large national study conducted in early 2008. One quarter (n=185) of respondents reported paying more, or taking less, child support than was due. As might be expected, the majority of those private child support arrangements appeared to occur in cases where the Child Support Agency was not responsible for collecting payments. Our data suggest that private child support arrangements may be more widespread than previously discussed, and can be motivated by the desire to: (a) protect or encourage parent-child contact; (b) stop fights over parenting arrangements; (c) improve the perceived fairness of payments — or some combination of these. Our data also suggest that female payees were more likely to report feeling intimidated and/or pressured to take less child support than male payers who reported paying over and above their child support assessment. These pre-reform data raise the spectre that coercion may underpin a number of private child support arrangements, and that some male payers may be informally paying extra child support in order to have regular contact with their children.*

### Introduction

Financial disputes can place enormous strain on intimate relationships.<sup>1</sup> A relatively recent nationwide survey, for example, found that around half (52%)

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<sup>1</sup> See eg, Ramsey Solutions, 'Money, Marriage, and Communication: The Link between Relationship Problems and Finances' (Report, Ramsey Solutions, 7 February 2018 <<https://cdn.ramseysolutions.net/media/b2c/personalities/rachel/PR/MoneyMarriageAndCommunication.pdf>>; Marcia Millman, *Warm Hearts & Cold Cash: The Intimate Dynamics of Families and Money* (Free Press, 1991); Rhonda Pritchard, *How Money Comes between*

of Australian couples reported arguing about money-related issues, with around 7% reporting weekly arguments about money, and another 16% reporting they argued fortnightly or monthly.<sup>2</sup> And in the context of COVID-19, a recent survey found that money was one of the top three things that couples argued about while in lockdown.<sup>3</sup> Finances, especially after parental separation, can come between otherwise caring and competent parents.<sup>4</sup> As noted by Fitzgibbon, '[f]amily finances appear in a different light when families fracture in dispute, separation, or divorce. Under those circumstances, the assets and income, which formerly were devoted to the projects of familial solidarity, become the object of competing claims.'<sup>5</sup> Financial matters illuminate family dynamics, particularly after relationship breakdown.<sup>6</sup> Child support is a case in point.

Fathers groups typically argue that separated mothers deny fathers the opportunity to have children stay overnight to maximise mothers' child support and social security benefits.<sup>7</sup> By contrast, mothers groups frequently claim that separated fathers seek more time with children to reduce their child support liability.<sup>8</sup> Consistent with economic models based on rational choice theory, the underlying premise of both assertions is that individuals seek to maximise the best outcome for themselves. But is financial gain the dominant driver of private deals about child support? Little empirical research has explored this question.

Three decades ago, prior to the introduction of the Child Support Scheme, Funder and her colleagues found that 17% of divorced men and 9% of divorced women in Victoria reported strategic bargaining over child support and parent-child contact.<sup>9</sup> More recently, Fehlberg, Millward and Campo found that 'a minority' (15%:  $n=9/60$ ) of separated parents reported consciously manipulating parenting time for child support or Family Tax Benefit ('FTB') purposes.<sup>10</sup> And drawing on data from a national random

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*Us: Common Family Problems, Creative Solutions* (Tandem Press, 1999); I Wolcott and J Hughes, 'Towards Understanding the Reasons for Divorce' (Working Paper No 20, Australian Institute of Family Studies, 1999).

2 Bessie Hassan, 'Heated Conversations: 1 in 2 Aussie Couples Argue about Finances' (Press Releases, 17 July 2017) <[www.finder.com.au/press-release-jul-2017-heated-conversations-1-in-2-aussie-couples-argue-about-finances](http://www.finder.com.au/press-release-jul-2017-heated-conversations-1-in-2-aussie-couples-argue-about-finances)>.

3 Sarah Carty, 'Couples Reveal the Top Three Things They're Arguing over Since the Coronavirus Crisis', *Yahoo! News* (online, 21 April 2020) <<https://au.news.yahoo.com/coronavirus-relationships-arguments-pandemic-015729403.html>>.

4 Lawrie Moloney, Bruce Smyth and Kim Fraser, 'Beyond the Formula: Where Can Parents Go to Discuss Child Support Together?' (2010) 16(1) *Journal of Family Studies* 33.

5 Scott Fitzgibbon, 'Family Finances: A Review of Papers from the 13<sup>th</sup> World Conference of the International Society of Family Law' (2010) 44(1) *Family Law Quarterly* 109.

6 Millman (n 1) 15.

7 Bruce Smyth and Bryan Rodgers, 'Strategic Bargaining over Child Support and Parenting Time: A Critical Review of the Literature' (2011) 25(3) *Australian Journal of Family Law* 210.

8 *Ibid.*

9 Kathleen Funder, 'Exploring the Access-Maintenance Nexus: Non-Resident Fathers' Post-Separation Involvement with Children' in Kathleen Funder, Margaret Harrison and Ruth Weston (eds), *Settling Down: Pathways of Parents after Divorce* (Australian Institute of Family Studies, 1993).

10 Belinda Fehlberg, Christine Millward and Monica Campo, 'Post-Separation Parenting Arrangements, Child Support and Property Settlement: Exploring the Connections' (2010)

sample of separated parents, Smyth, Rodgers, Son, Allen and Vnuk found that separated parents' level of knowledge of the child support rules relating to parenting-time adjustments and FTB splitting was very low.<sup>11</sup> They went on to suggest that any strategic bargaining over child support and parenting time 'was likely to be occurring in the context of misinformation or a knowledge vacuum'.<sup>12</sup> Consistent with prior studies,<sup>13</sup> they found little evidence that strategic bargaining over child support was 'widespread'.<sup>14</sup>

A fundamental principle of family law is that the best arrangements are those that separated parents negotiate for themselves.<sup>15</sup> But this may not always be the case. Child support agreements may be negotiated by separated parents with no or minimal understanding of the child support rules and during a time of immense stress.<sup>16</sup> In 2005, the Ministerial Taskforce on Child Support identified a lack of 'even the most basic safeguards to ensure that agreements that have long-term financial consequences for the parents and children are freely and fairly made'<sup>17</sup> and recommended significant change to the formal requirements for child support agreements that could be accepted (or 'registered') by the Child Support Agency ('CSA').<sup>18</sup> From 1 July 2008, the legislative framework for child support agreements was altered to address those concerns. However, a child support agreement is not the only way for parents to alter their child support obligations.

Throughout this article we use the term 'private child support arrangement' (abbreviated to 'private arrangement' or 'arrangement') to describe parents compromising the official rate of child support payable according to the CSA (ie. as entered in the Child Support Register).<sup>19</sup> Wherever possible, the term 'agreement' has been restricted to instances of a 'child support agreement' accepted by the CSA.<sup>20</sup> There is little — if any — empirical data on the

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24(2) *Australian Journal of Family Law* 214.

11 Bruce Smyth et al, 'Separated Parents' Knowledge of How Changes in Parenting-Time Can Affect Child Support Payments and Family Tax Benefit Splitting in Australia: A Pre-/Post-Reform Comparison' (2012) 26(3) *Australian Journal of Family Law* 181.

12 *Ibid* 181.

13 Smyth and Rodgers (n 7) 210.

14 Smyth et al (n 11) 181.

15 Ministerial Taskforce on Child Support, *In the Best Interests of Children: Reforming the Child Support Scheme* (Report, May 2005) 207.

16 Joint Select Committee on Certain Family Law Issues, Parliament of Australia, *Child Support Scheme: An Examination of the Operation and Effectiveness of the Scheme* (Report, November 1994) 250.

17 *Ibid*.

18 'Binding' and 'limited' child support agreements were introduced via legislative amendment in response to the report of the Ministerial Taskforce on Child Support, *In the Best Interests of Children: Reforming the Child Support Scheme* (Report, May 2005) 215, ch 13, Recommendation 17. Prior to 1 July 2008, parents could make a written 'child support agreement' without any legal advice and apply for that agreement to be accepted by CSA, subject only to a requirement for Centrelink approval if the payee was receiving more than the minimum rate of Family Tax Benefit ('FTB').

19 The accompanying prior article (Aleema, Smyth and Vnuk, this issue) contains 10 examples of private child support arrangements which can exist within the CSA's active caseload (that being the source from which the sample for this study was drawn).

20 Upon accepting a child support agreement, the CSA must immediately give effect to it by making a new administrative assessment or varying the existing administrative assessment

prevalence of child support agreements and private child support arrangements and the circumstances surrounding them. The present study begins to address this gap.

As we note elsewhere (Aleema, Smyth and Vnuk, this issue), child support payable under an administrative assessment is legally enforceable either by the payee or the CSA. The collection method is chosen by the payee when they apply and may change throughout the life of the case. However, the CSA encourages separated parents to manage the transfer of child support between themselves through private collection (*'Private Collect cases'*).<sup>21</sup> If parents cannot organise child support payments directly between themselves, the payee can ask the CSA to collect payments on their behalf (*'Agency Collect cases'*). In December 2019, there was a 50/50 split in collection type (50% Private Collect; 50% Agency Collect).<sup>22</sup> Payees in Private Collect cases are assumed to be collecting the correct amount of child support from the payer and their FTB is adjusted accordingly. However, parents in Private Collect cases are not required to demonstrate that child support is actually transferred according to the administrative assessment. If the payments fall behind, the payee can ask the CSA to start collecting at any time, including up to 3 months of arrears (or 9 in exceptional circumstances), but they are not required to do so.

On the darker side of human relationships, those who experience family violence may be pressured not to have the CSA collect child support from their former partner, but instead:

may elect to collect privately due to fear of, or coercion by, a person who has used violence. As a result of fear or coercion, victims may also collect less child support than they are entitled to — or no child support at all. Statistics of such cases may be 'hidden' as the CSA will consider them to be successful private collection cases, in the absence of any information to the contrary. This may lead to financial disadvantage for payees and their children.<sup>23</sup>

It is worth noting at this point that the legislation and policy surrounding child support is a complex, highly technical area beyond the understanding of many, if not most, separated parents. Sweeping legislative changes in 2006–08 made the operation of the Scheme, including child support agreements, even more complex. Child support is a niche area of law to which many family law practitioners admit to having only limited exposure, and the interaction between child support and family tax benefit adds further layers of complexity. Moreover, many parents do not seek legal advice about child support, and may make financial decisions without fully understanding the

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to conform with the terms of the child support agreement (see *Child Support (Assessment) Act 1989* (Cth) ss 94–5).

21 Services Australia, *2018–19 Annual Report* (Report, 2010) 111 <[www.servicesaustralia.gov.au/sites/default/files/annual-report-191019-v2.pdf](http://www.servicesaustralia.gov.au/sites/default/files/annual-report-191019-v2.pdf)>.

22 See 'Child Support Program: December Quarter 2019' file at Department of Social Services, 'Child Support Program Information', *Data.gov.au* (Web Page) 1, figure 'Percentage of Child Support Cases by Collection Method, December Quarter 2015 to December Quarter 2019' <<https://data.gov.au/dataset/ds-dga-6379b974-e547-4303-a361-6edebbb52550/details?q=child%20support%20program>>.

23 Australian Law Reform Commission, *Family Violence and Commonwealth Laws: Improving Legal Frameworks* (Report No 117, November 2011) 314.

implications. Overall, these factors create an environment where ‘side deals’ can be made, depending as much on family dynamics as the children’s needs and each parent’s financial circumstances.

### Aims and research questions

For some years now there has been anecdotal evidence to suggest that even where parents have a CSA case, deals over child support can — and do — occur ‘off-the-books’, especially where private transfers are occurring (ie, Private Collect cases).<sup>24</sup> The aim of the present study was to explore payers’ and payees’ motives for these arrangements. Two research questions guided the study:

RQ<sub>1</sub>. Do some non-resident fathers agree to pay more child support than required and, if so, why do they do so?

RQ<sub>2</sub>. Do some resident mothers agree to receive less child support than they are eligible to receive and, if so, why do they do so?

No reciprocal questions were asked about payees agreeing to receive *more* money, or payers agreeing to pay less, given the focus on parents bargaining time with children in order to manipulate child support obligations. However, this research nevertheless offers insights into what leads parents to reach a compromise in the context of bargaining over child support and parenting arrangements.

### Method

This article draws on pre-reform baseline data from the Child Support Reform Study (‘CSRS’) collected between February and April 2008. This study collected information about separated parents’ circumstances, experiences of, and attitudes to, the child support system prior to a revised formula being introduced on 1 July 2008.

### Target population and samples

The in-scope population for the Child Support Reform Study (pre-reform baseline) was English speaking parents who were registered with the CSA in 2006, were separated or divorced from their child’s other parent, and who currently had at least one biological or adopted child under 18 years living with either parent.<sup>25</sup>

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24 See eg, Joint Select Committee on Certain Family Law Issues (n 16); Maureen R Waller and Robert Plotnick, ‘Effective Child Support Policy for Low-Income Families: Evidence from Street Level Research’ (2001) 20(1) *Journal of Policy Analysis and Management* 20, 89.

25 A national random sample of 50,000 cases of the Child Support Agency (‘CSA’) was drawn. This sample was stratified by: time since separation (separated in the last 6 months of 2006; separated prior to 1 July 2006); level of care (75% sole care; 25% shared care); and method of collection (50% Private Collect; 50% Agency Collect). The strata were based on CSA records just prior to the start of the fieldwork. These data may not have reflected respondents’ actual arrangements at interview.

Two independent target participant groups were subsequently sampled:<sup>26</sup>

- (a) A *recently-separated* group: 1,002 new CSA clients who had separated between 1 July and 31 December 2006 (250 shared care, 750 sole care) (500 Private Collect; 500 Agency Collect);
- (b) An *existing-client* group: 4,000 CSA clients who had separated prior to 1 July 2006 (1,000 shared care, 3,000 sole care) (2,000 Private Collect; 2,000 Agency Collect).<sup>27</sup>

In this article we focus on data from the recently-separated group to constrain the period of retrospective recall about 'ever' paying more or taking less irrespective of the method of assessment/collection (see below).

Computer-assisted telephone interviews ('CATI') of 25 minutes duration were conducted with 1,002 CSA clients who had separated in the second half of 2006 (447 male, 555 female). For conceptual clarity, (a) 215 separated parents were excluded because no child support was being paid due to noncompliance, nil liability, or some other arrangement was in place;<sup>28</sup> and (b) 25 female payers and 29 male payees were also excluded from analysis.<sup>29</sup> Thus the final sample of recently-separated parents who answered the survey questions about ever agreeing to pay more or take less child support comprised 733 separated parents (327 male payers, 406 female payees), of whom 185 reported that they had (87 male payers, 98 female payees).<sup>30</sup>

### Survey content and key variables

The interview schedule comprised eight sections: (a) family type and relationship history; (b) children's living arrangements, and parent-child contact (eg, the frequency of face-to-face contact); (c) legal process; (d) child support (periodic and non-periodic; Prescribed Non-Agency Payments [PNAPs] and Non-Agency Payments [NAPs])<sup>31</sup> (e) negotiations and strategic bargaining; (f) family dynamics; (g) parenting and family wellbeing; and

26 A Primary Approach Letter was mailed to 16,654 potential respondents in the original extract of 50,000 cases. Around 2,000 letters were returned (12%) because the respondent was not known at the address provided. A total of 79,797 calls were placed to the 14,785 sample records to which calls were initiated. In total 5,046 interviews were successfully completed. The response rate was 67%.

27 For a detailed description of the rationale for the various sample sizes, and the use of proportionate and disproportionate stratified samples, see: Smyth et al (n 11).

28 Specifically: (a)  $n=82$  no liability; (b)  $n=70$  child support 'replaced by something else'; (c)  $n=53$  noncompliance; and (d)  $n=10$  'Don't know'.

29 Maria Vnuk, 'Merged or Omitted? What We Know (or Don't) about Separated Mothers Who Pay or Should Pay Child Support in Australia' (2010) 16(1) *Journal of Family Studies* 62.

30 Fourteen male payers and 14 female payees in this subset were from the same former union or marriage.

31 Non-Agency Payments and Prescribed Non-Agency Payments are payments made by the payer of a registered child support case to either the payee or to a third party. Those amounts may be credited in satisfaction of all or part of the child support debt otherwise payable to the CSA, provided other formal requirements are met (see ss 71-71C of the *Child Support (Registration and Collection) Act 1988* (Cth)).

(h) demographic information.<sup>32</sup> The questions about ‘negotiations and strategic bargaining’ were placed after the PNAPs or NAPS questions in an attempt to avoid any confusion about how — rather than how much — child support was to be paid.

Responses to the following two survey questions (QI2 and QI3) from section (e) form the basis of the analysis presented in this article:

I2a [*If non-resident:*] There are a number of ways separated parents reach agreement about their parenting arrangements — including child support. Have you ever agreed to any of the following: [Read out. Accept multiples. Probe for ‘Yes’/‘No’.]

I2b [*If resident/shared-time:*] There are a number of ways separated parents reach agreement about their parenting arrangements — including child support. Have you ever agreed to any of the following: [Read out. Accept multiples. Probe for ‘Yes’/‘No’].<sup>33</sup>

- 1 agreed to pay more / take less money to encourage / protect (target partner)’s contact with (target child)
- 2 agreed to pay more / take less money to stop fights over parenting arrangements
- 3 agreed to pay more / take less money because the child support amount didn’t seem fair
- 4 (None of these)

Of course, in some cases ‘agreeing’ to pay more or take less child support might actually represent acquiescence.

I3a [*If non-resident:*] Was your decision to pay more child support affected by any of the following?

I3b [*If resident/shared-time:*] Was your decision to take less child support affected by any of the following? [Read out. Accept multiples.]

- 1 Not wanting to upset (target partner)
- 2 Feeling pressured by (target partner)
- 3 Feeling intimidated by (target partner)
- 4 Being concerned for your safety
- 5 Being concerned for (target child)’s safety
- 6 Wanting to have as little as possible to do with (target partner)
- 7 Other (Specify\_\_\_\_\_)

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32 The following socio-demographic variables were examined to explore between-group differences: (a) age of respondent (years); (b) age of youngest biological/adopted child (years); (c) number of biological/adopted children; (d) length of both non-marital and marital cohabitation (years); (e) parenting arrangement (mother residence; father residence; 50/50); (f) highest level of education ((1) Yr10 or below; (2) Yr 11/12; (3) Trade/certificate/diploma; (4) Degree/postgraduate); (f) employment status (not employed; casual; part-time; full-time); (g) annual equivalised personal and household net income (\$); (h) conflict over money (‘Over the past 12 months, how often have discussions with [target partner] about money for [target child] caused conflict? Would you say: (1) Frequently; (2) Sometimes; (3) Rarely; (4) Never’); (i) child wellbeing (respondent report: rating scale 0–30); (j) respondent emotional wellbeing (0–10); and (k) physical health (‘In general, would you say your health is: (1) Excellent; (2) Very good; (3) Good; (4) Fair; (5) Poor’). Detailed socio-demographic characteristics for each sample are available on request.

33 It is possible that some respondents ‘agreed to pay more’ or ‘agreed to take less’ money for other reasons. However, QI2 response options did not allow for other reasons.

### Identifying 'private arrangements'

For the present investigation, we make the assumption that respondents who answer in the affirmative to Q12 have reached a *private arrangement* to pay more or receive less child support.<sup>34</sup> By that, we mean any arrangement apart from the payee or the CSA collecting the amount of child support officially payable according to the Child Support Register.

While we accept the veracity of respondents' reports, experience tells us that a small but significant number of respondents are unclear of the basis of their child support assessment type and collection status. It may be, for example, that some parents have a case they are not aware of or think that their private arrangement overrides this. For payers, unless there is effective enforcement action by the CSA, their child support situation is whatever they are in fact transferring at the time — even if that is more or less than they should be. For payees and the children, there may be two separate child support situations: what is actually being paid, and what Centrelink assumes is paid for the purposes of FTB. However, even if parents were mistaken about their 'official' child support status, this arguably does not matter: their 'negotiations' with the other parent were conducted on the basis of what they each understood to be their legal child support obligations at that time.

To operationalise and measure private arrangements, we derived two groups of interest based on affirmative responses to Q12a/b (above):

- (i) male payers who reported as *ever* having 'agreed to pay more' child support ('yes' to Q12a);
- (ii) female payees who reported as *ever* having 'agreed to take less' child support ('yes' to Q12b).

Furthermore, to minimise the risk that respondents might have been referring to having paid more or to have taken less child support many years ago in relation to the 'ever' timespan, we restricted all analyses to the recently-separated sample (ie, separations that occurred in the second half of 2006).

## Results

Results are in five parts. First, we estimate the prevalence of private arrangements, as reported by study respondents. Second, we examine the socio-demographic profile of male payers who pay more than assessed and female payees who accept under-payments. Third, the extent to which the method of assessment and collection was related to over-payments or the acceptance of under-payments is explored. Fourth, the reasons given by male payers for paying more, and female payees for agreeing to take less, are explored. Finally, we set out the various considerations that parents reported affected their decision to pay more or take less. Results need to be interpreted with caution because of the small numbers in the two groups of interest

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<sup>34</sup> Only those who reported paying or receiving any child support were asked the bargaining questions. It is possible, of course, that a 'no' response to whether child support was being paid was related in some way to bargaining over child support and parenting time.



( $n < 100$  in each group).

### Prevalence of private arrangements

Around one quarter (27%:  $n=87/327$ ) of male payers in the recent separation sample said they agreed to pay more child support than they were required to, while a similar proportion (24%:  $n=98/406$ ) of female payees reported that they agreed to receive less (ie, 25% of all respondents:  $n=185/733$ ). These results are conservative (ie, should be treated as lower bound estimates) in that they only pertain to the three reasons offered. Other 'reasons' might have produced additional affirmative responses. Further, some respondents might have said 'no' because they were reluctant to admit to over- or under-payments.

### Characteristics of those who paid more or who accepted less

Few significant associations emerged between male payers who agreed to pay more child support and male payers who did not pay more. Male payers who agreed to pay more were marginally younger (Mean = 37.4 years vs 40 years); had fewer (Mean = 1.9 vs 2.1) and younger biological children (Mean = 5.6 years vs 6.7 years); and had lived with their former partner for a shorter period than other male payers (Mean = 9.5 years vs 11.6 years). They were also more likely to (a) be in full-time employment (94% vs 88%); (b) report that conflict over money had occurred frequently or sometimes in the past 12 months (66% vs 29%); (c) be satisfied with the amount of child support they paid (Mean = 5.8 vs 4.9/10); and (d) reported higher levels of child wellbeing (Mean = 24.5 vs 22.9/10).<sup>35</sup>

Few significant associations also emerged between female payees who agreed to take less child support and those who did not. Female payees who agreed to take less were more likely to have a degree (but not higher personal or household incomes) and a 50/50 shared care arrangement than were those who did not take less child support (38% vs 18%, and 21% vs 12%, respectively). They were almost three times as likely to report having a 'private agreement'<sup>36</sup> (36% vs 13%), and twice as likely to report conflict about money in the past 12 months as female payees who did not take less money (65% vs 37%). There was also a tendency for female payees who agreed to take less money to report poorer physical health than their female counterparts who did not accept less child support (24% vs 14%).

Finally, around two-thirds of male payers who reported paying more, and female payees who agreed to take less, reported the presence of conflict over money in the 12 months prior to interview. Whether this conflict was a precursor to or a consequence of the private child support arrangement remains unclear.

<sup>35</sup>  $p > .05$

<sup>36</sup> Either a written 'child support agreement' accepted by, or registered with the CSA, or an 'unregistered' agreement that was viewed by the respondent as the proper amount of child support to be paid, rather than the amount assessed by the CSA using the usual administrative formula.

### Enforceability of private arrangements

An important issue is the extent to which private arrangements are enforceable. We explored this by constructing a cross-tabulation of method of assessment and method of collection by whether (a) male payers reported paying more child support than required, or (b) female payees reported accepting less than their entitlement (Table 1).

Table 1. Child Support Assessment/Collection Type by Pay More/Take Less

Child support status (self-report)	Male payers who reported paying more		Female payees who reported accepting less	
	<i>n</i>	%	<i>n</i>	%
<b>Child Support Assessment Type</b>				
CSA assessment	63	76	62	63
Registered child support agreement	10	12	24	24
Unregistered private agreement <sup>37</sup>	10	12	12	12
<i>Total</i>	83	100	98	100
<b>Child Support Collection Type</b>				
CSA Collect	29	34	24	25
Private Collect	57	66	73	75
<i>Total</i>	86	100	97	100
<b>Child Support Assessment/Collection</b>				
CSA assessment & CSA Collect	28	34	22	23
CSA assessment & Private Collect	34	41	39	40
Registered child support agreement & CSA Collect	1	1	0	0
Registered child support agreement & Private Collect	9	11	24	25
Unregistered private agreement & CSA Collect	0	0	2	2
Unregistered private agreement & Private Collect	10	12	10	10
<i>Total</i>	82	100	97	100

37 Although the survey questions used the terms 'agree', 'agreement' and 'private agreement' we have endeavoured throughout this article to only use the word 'agreement' when referring to a written child support agreement accepted by the CSA (a 'registered child support agreement'). However, some respondents reported having made a 'private agreement' about child support with the other parent that was not registered with the CSA. An agreement of that type, even if in written form, has no legal effect on the official child support obligation, which continues to be as per the CSA's administrative assessment. We have identified these reported 'unregistered private agreements' separately on the basis that the respondents considered them to be the basis for their official child support amount.

Source: ANU Child Support Reform Study.

Notes: N=183; missing cases: male payers  $n=1-5$ ; female payees  $n=1$ ; percentages may not sum to 100 due to rounding.

Most of those who reported paying more or taking less child support had their 'legal' child support amount decided — or at least notified at some point — by administrative assessment (top matrix: 76% and 63%, respectively), and transferred child support privately (middle matrix: 66% and 75%, respectively) rather than through the CSA. These patterns did not vary significantly across the two groups of interest.<sup>38</sup> In addition, female payees who accepted less appeared to be twice as likely as male payers who paid more to report having a registered child support agreement in which child support payments were privately transferred (bottom matrix: 25% vs 11%<sup>39</sup>). It is not clear whether those payees meant they were collecting less child support than they were entitled to under their registered child support agreement, or that their registered child support agreement provided for less child support than they would receive under the formula. To sum up: not surprisingly, private arrangements typically occurred in the context of private transfers.

One of the more curious results evident in Table 1 is the percentage of male payers who reported paying more, and female payees who reported accepting less, when the CSA was reported to be involved in the assessment and collection of child support (bottom matrix: 34% and 23%). One possible explanation is that the 'private arrangement' involved tacit acceptance to not change an assessment that did not reflect the parents' current circumstances. For example, the payee may have decided against seeking an increase (eg, by notifying CSA that the payer was spending less time with the children, or applying for a change of assessment if they believed the payer was under-declaring their taxable income) or the payer may have decided against seeking a reduction (eg, by lodging an estimate of income when their income was less than their previous year's taxable income, or reporting that they were spending extra time with the children). Another potential explanation is that the payer may have been paying extra on top of their child support for things such as school fees or extra-curricular costs, or the payee was meeting those costs without seeking additional child support.

### Reasons for paying more, or accepting less, child support

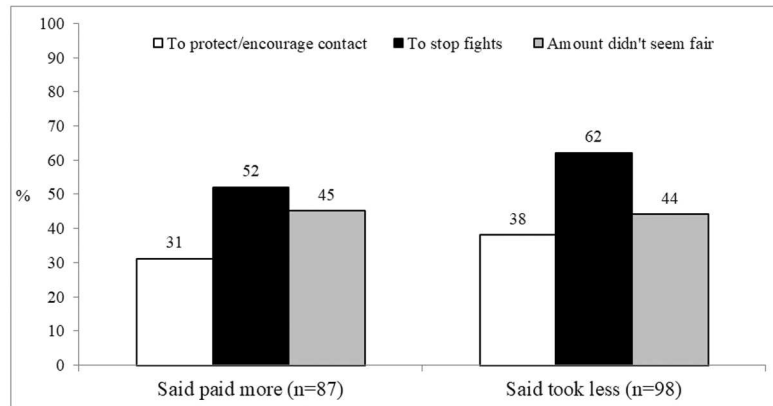
Figure 1 shows the percentage of male payers who reported paying more and female payees who reported accepting less for each of the reasons specified in the survey. (The endorsement of multiple items was allowed.)

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<sup>38</sup> Assessment type:  $X^2(2) = 4.74, p > .05$ ; Collection type:  $X^2(2) = 1.78, p > .05$ .

<sup>39</sup> This result was not statistically significant:  $X^2(5) = 9.69, p > .05$ .

Figure 1. Have you ever agreed to pay more money/take less money to protect contact; to stop fights; because the amount of child support didn't seem fair?



Source: ANU Child Support Reform Study.  
 Note: N=185.

Figure 1 shows that the overall pattern of reasons was the same for fathers and mothers in that stopping fights was commonly mentioned, followed by fairness, and encouraging or protecting parent–child contact. Specifically, around one third of those who paid more or accepted less money did so to safeguard parent–child contact (31% & 38%).<sup>40</sup> It is likely that some male payers are informally paying extra child support in order to have regular contact with their children. Moreover, 45% of the male payers who paid more, and 44% of female payees accepted less money, did so in the belief that the official child support amount didn't seem fair for the other parent.<sup>41</sup> But the standout feature of Figure 1 is that 62% of female payees who accepted less money did so to stop fights over parenting arrangements, compared with 52% of male payers who paid more.<sup>42</sup>

### Factors related to the decision to pay more, or accept less, child support

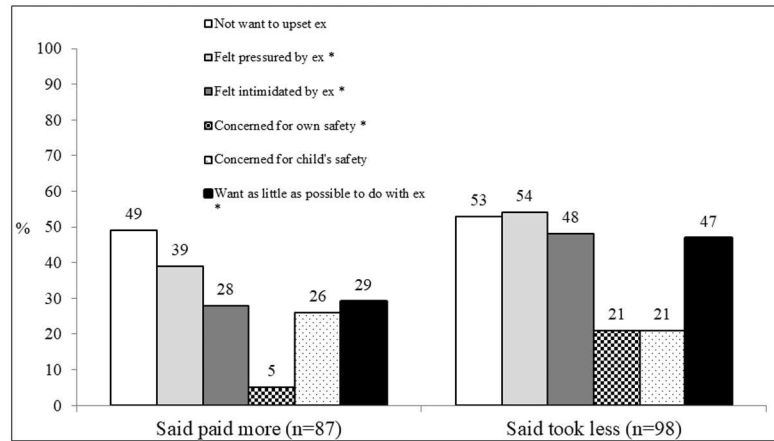
Figure 2 shows the factors reported by parents to affect their decision to pay more or to take less, and the percentage of parents who selected each factor. (Multiple responses were allowed.)

40  $X^2(2) = 0.92, p > .05$ .

41  $X^2(2) = 0.02, p > .05$ .

42  $X^2(2) = 2.08, p < .05$ .

Figure 2. Was your decision to pay more/take less money affected by the following?



Source: ANU Child Support Reform Study.

Notes: N=185; \* =  $p < .05$ .

Around half of those who reported that they paid more or took less child support said they did so because they did not want to upset the other parent (49% & 53%, respectively);<sup>43</sup> around one-quarter said that they did so because they had concerns for the child's safety (26% and 21%);<sup>44</sup> and 5% of male payers reported paying more while 21% of female payees reported taking less child support out of concern for their own safety.<sup>45</sup>

Statistically significant associations across the two groups emerged for two factors: male payers reported paying more, and female payees accepted less because of 'pressure' from the other parent (39% vs 54%<sup>46</sup>), and/or because of 'intimidation' by the other parent (28% vs 48%).<sup>47</sup> The way in which male and female respondents might have interpreted the words 'pressure' and 'intimidation' remains unclear.

Finally, the largest difference between groups occurred in relation to the desire to be left alone: 47% of female payees who accepted less money because they wanted as little as possible to do with the other parent, compared with 29% of male payers who paid more money.<sup>48</sup> This (largely gendered) pattern of response is consistent with Figure 1 insofar as those female payees who accepted less child support appeared to forego money to distance themselves from conflict, coercion or both. While some payers paid more child support for similar reasons, conflict and coercion appear to be a larger part of the story for female payees who accepted less child support than male payers who reported paying more than legally required.

43  $X^2(2) = 0.24, p > .05$ .

44  $X^2(2) = 0.64, p > .05$ .

45  $X^2(2) = 11.17, p < .01$ .

46  $X^2(2) = 4.16, p < .05$ .

47  $X^2(2) = 8.09, p < .01$ .

48  $X^2(2) = 6.46, p < .05$ .

## Discussion

Since the Australian Child Support Scheme's inception in the late 1980s, there have been anecdotal reports of separated parents bargaining over child support in the shadow of administrative assessment — ie, making informal private child support arrangements 'off-the-books' — especially among Private Collect cases. Although *formal* child support agreements are permitted and enforceable under the Scheme, there are certain restrictions that stand in the way of parents entering into such agreements if the agreed child support amount is less than the formula.<sup>49</sup> These restrictions seek to protect the public purse, and the financial and emotional wellbeing of parents and children. *Informal* private child support arrangements can effectively side-step those restrictions. If private child support arrangements are not fair, it is up to the parties to assert their legal rights and protect their own interests.

## Limitations

Before summarising our key findings, several study limitations warrant mention. First and foremost, our data derive from a small, select sample of separated parents who separated in the second half of 2006 and were interviewed in the first of 2008 (ie, pre-child support reform). Participants were drawn from a much larger national random sample. No claim is made that these data are representative of the general population of separated parents more broadly, or of separated parents who have separated since 1 July 2008 (ie, post-child support reform). As we note elsewhere (Aleema, Smyth and Vnuk, this issue), a number of important legislative and policy changes were made to child support agreements post-reform.

A second caveat is that we make the assumption that respondents who reported paying more or accepting less than their 'official' child support amount have a private arrangement. That 8% of separated parents in a large random sample reported not having their child support case registered with the CSA,<sup>50</sup> even though all were drawn from a sample of CSA cases, points to potential confusion among CSA clients. It is not possible to identify how parents' (mis)understanding of the Child Support Scheme or their individual case affects their bargaining. It has been suggested in the Australian context, however, that 'any strategic bargaining over child support and parenting time is likely to be occurring in the context of misinformation or a knowledge vacuum'.<sup>51</sup> Even so, beliefs are what drive feelings and behaviour.

A third limitation is that two broad questions were asked about private child support arrangements. Direct questions are likely to be affected by social desirability bias (ie, the desire to project a favourable image to avoid being judged in a negative light). The extent to which such bias affected the results cannot be determined.

Another limitation is that no questions were asked about when private child support arrangements occurred post-separation, or how long those

49 For a detailed discussion, see the Report of the Ministerial Taskforce on Child Support (n 15) 207 ch 13.

50 Unpublished data from the ANU Child Support Reform Study.

51 Smyth et al (n 11).

arrangements lasted. The use of an ‘*ever occurred*’ timeframe creates much ambiguity about the nature of the negotiation process. The data nonetheless offer valuable insights into private child support arrangements, and the presence of forms of coercion or cooperation by one or both parents.

Yet another limitation is that our data were collected in 2008 prior to the introduction of the revised child support formula, and the introduction of binding and limited child support agreements and the accompanying rules about notional child support assessments for working out FTB payments. At the time of the survey, FTB Part A for parents with registered child support agreements was worked out according to the actual child support collected (if Agency Collect) or the child support the payee was entitled to receive under the registered child support agreement (if Private Collect). It is unclear if, and to what extent, these changes may have affected the willingness of parents to bargain about child support — either formally through binding or limited child support agreements that change the enforceable child support amount, or informally through the use of Private Collect arrangements. We note these measures protect the taxpayer from having to pay additional FTB for children whose parents ‘collude’ to minimise child support payments. However, they are less potent in ensuring that the payee and children are protected from the financial consequences of a private arrangement reached through financial pressure or coercion.

Finally, by specification, the sample does not include any cases where no child support assessment was made. It therefore does not provide any insight into private arrangements in cases where parents choose to entirely avoid the Child Support Scheme (ie, self-administered cases).

### Key findings

Five clear findings emerged from the present study. To begin with, our data suggest that one quarter of male payers and female payees registered with the CSA and who were paying or receiving child support reported paying more or taking less than their official child support obligations. More broadly, they suggest that informal private arrangements may be occurring in the shadow of the CSA and may be more widespread than previously discussed.

Second, male payers who reported paying more tended to be younger and had younger children than other male payers. By contrast, female payees who reported accepting less than their child support entitlements were more likely than other female payees to have a 50/50 shared-time arrangement and to be well educated. Thus, different socio-demographic factors appeared to be related to within-group differences.

Third, private arrangements can be motivated by the desire to: (a) encourage parent–child contact; (b) stop fights over parenting arrangements; (c) improve the perceived fairness of payments; or some combination of these. The most common reason by male payers and female payees for privately varying the amount of child support was to stop fights over parenting arrangements.

Fourth, around a third of male payers and female payees who paid more or accepted less child support did so to protect or encourage father–child contact (31% and 38% respectively).

Finally, while around half of those who reported that they paid more, or accepted less child support, said that they did so because they did not want to upset the other parent, almost half (47%) of female payees who took less money did so because they wanted as little as possible to do with the other parent, compared with just under a third (29%) of male payers who paid more money. It is noteworthy, moreover, that pressure from, or intimidation by, the other parent featured in the reasons given by respondents for paying more or accepting less child support. Although the latter is consistent with anecdotal evidence reported over the years, little (if any) empirical evidence has explored this important issue. Our data represent a small first step.

Taken together, the above findings suggest that cooperation and coercion are likely to be occurring in the shadows of the formal child support collection system (ie, Agency Collect), with coercion being more prevalent than cooperation. Our data also suggest that some male payers might be paying extra child support to their former partners in order to have regular contact with their children.

### Future research

An obvious next step in exploring private child support arrangements, especially strategic bargaining over child support and parenting time, is to replicate the present study with a large representative sample of ex-couple dyads. Such a study would benefit from including questions that go into greater depth on this issue, especially with respect to when private arrangements were made, who initiated the arrangement, whether any professional advice was sought and, if so, from whom, the nature of discussions, compliance, and the long-term consequences of private child support arrangements for each parent and their children. This is particularly relevant given the significant changes to the legal requirements for child support agreements that can be accepted by the CSA and the introduction of a notional child support assessment to work out FTB.

Second, a more detailed and intensive qualitative investigation into the dynamics of feeling 'pressured' by a former partner over money versus feeling 'intimidated' would be helpful, especially potentially gendered differences in the language of coercion. The potential links between private child support arrangements and the broader issue of financial abuse warrant urgent investigation. Further, the possibility that some payers are informally paying extra child support in order to have regular contact with their children also needs to be explored. Strategic bargaining need not necessarily represent disagreement or conflict between parents.

Third, the potential links need to be investigated between private child support arrangements and (a) self-employment, (b) repartnering, and (c) who initiated the separation. There was insufficient statistical power to conduct these analyses in tandem with gender-payment direction in the present study.

Fourth, for some time now, the steady rise in Private Collect cases over the last two decades to where they now comprise half of all cases raises the question: Do private transfers increase the risk for underpayment of child support, and the stress and fear that can occur with negotiations over money? Private Collect cases continue to remain somewhat of a 'black box' because



compliance data are not collected for this group. Our data suggest that there is room for coercion with private transfers without formal oversight. It is therefore important to ensure that a parent's choice to opt for private transfer of child support is not motivated by fear, coercion or ignorance. The assumption that the full rate of child support is being paid for children in Private Collect cases provides a convenient and cost-effective way to administer FTB payments for them. However, if the payee collects less child support but remains in Private Collect because of coercion or pressure, that assumption may cause even further financial hardship to them and the child. Detailed independent research on Private Collect cases is needed, particularly given that the CSA includes deemed private transfers in the official figures of child support transferred under the scheme, without distinguishing them from the amounts it collects (ie, Agency Collect).

Fifth, to properly understand the nature of the private child support arrangements, it is important to note that receiving no child support at all is also a private arrangement. It would therefore be useful to study a sample of cases where no child support assessment has been made, and the parent with care of the children is taken not to have met the reasonable maintenance action test for FTB. While the interest of the Australian taxpayer is protected by limiting FTB payments for these children, there may be serious financial consequences for the households where these children reside if the payee would otherwise be entitled to more than the base rate of FTB.

Finally, there is much value in examining respondents' combined reasons and decisions for having a private child support arrangement as a set of individual case studies comparing particular cases and different clusters of responses. We conduct this analysis in the following article.