

**Invisible Parties: Listening to Children –
A social science perspective**

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Introduction

The Australian government has recently implemented the most radical reforms of the family law system since the introduction of ‘no fault’ divorce in 1975. These reforms include new legislation – the *Family Law Amendment (Shared Parenting Responsibility) Act*, establishing a national network of Family Relationship Centres (FRCs) as the point of entry to the family law system, together with an extensive suite of counselling, education and therapeutic services to promote early intervention to support people through various relationship issues over their life-course (not just separation and divorce). The total cost of these reforms is in excess of \$400 million over the next four years.

The impetus for this change includes evolving societal attitudes to inter-personal relationships and how they are managed, discontent with, and mistrust of, the adversarial family law system, disenchantment with post-separation parenting regimes despite attempts to change the culture of separation in the 1995 *Family Law Reform Act*, and the role of the Child Support Agency as it administers a formula-based child support calculation and collection process. The combined impact of these factors were investigated initially by the government sponsored Family Law Pathways Advisory Group (FLPAG) that issued a comprehensive report in 2001 and more recently by the Federal Government’s Parliamentary Inquiry into child custody arrangements in the event of parental separation (Commonwealth of Australia, 2003). Within both of these reports has been the call for reform of Family Court processes including the promotion of less adversarial and more inquisitorial processes, better integration of services, ‘early intervention’ to assist couples before conflict becomes entrenched, and inter-disciplinary case management (the Children’s Cases Program – CCP in the Family Court of Australia (FCA), and the Columbus Pilot, Case Assessment Conferences, and the Child Related Proceedings initiatives in the Family Court of Western Australia (FCWA)).

Underpinning all of these reports and reforms has been the desire for better outcomes for children. However, the question of precisely how this might be achieved continues to challenge judicial officers, policy-makers, and family practitioners alike.

Changing attitudes to involving children in family law matters

Recent years have seen a shift in the way of perceiving children’s views in areas formerly the preserve of adult decision-making. The recognition that children have rights that are equal to that of adults, such as autonomy and human dignity, have also been recognised by the Australian Government as signatories under the United Nations Convention on the Rights of the Child (UNCROC) (Hjortdal, 2004).

In Australia, there has been increasing concern that Family Court processes do not include children notwithstanding the over-riding philosophy of focusing on the child's best interests (Chisholm, 2005; Commonwealth of Australian, 2003a, 2003b; Dessau, 2002, 2005; FLPAG, 2001). Although Australian Family Law provides for judges to interview children to ascertain their views, this is seldom done and the voices of children are more usually presented to the Court either through the lawyer acting as the independent children's lawyer (formerly known as the child representative) or the 'single expert' who prepares a specialist report on the family dynamics. The independent children's lawyer does not act for the child but rather ensures that the child is not disadvantaged in the legal process. Most independent children's lawyers do not consider themselves qualified to interview children and defer to external specialists for this role.

Various Australian authors have identified inadequacies in the way that the current family law system fails to integrate the UNCROC guidelines in respect of children (Campbell, 2005; Cashmore, Parkinson & Single, 2005; Chisholm, 2005; Dessau, 2005; Nicholson, 2002). These views have echoed those of international researchers such as Smart (2002), Smith and Taylor, (2003), and Tapp and Henaghan (2000). These inadequacies in legal practice are exacerbated by the inability of adults to effectively identify or reiterate the child's wishes, concerns about the safety and welfare of the child, and the possibility of the child being manipulated or coached.

Researchers such as those noted above consistently raise the following issues that should be considered when assessing a child's place in Family Courts. Firstly the importance of the socio-cultural context in which the child is developing. It could be argued that the role of children in society is changing as western societies evolve. Therefore are models of child development that were primarily conceived in previous decades still relevant? If recent research suggests that the impact of divorce on children is changing as divorce becomes more prevalent (McIntosh, 2003), should the parameters on children's capacity to provide input, developmental maturity, and social constructions be reconsidered?

Secondly, the child's competence to participate in various (legal) processes is being defined by adults. As Smart and Neale (2000) point out, it is the child's life too. These researchers argue that provided that there is reasonable explanation and discussion, the children should be invited to establish the degree to which they want to be included. If children have such a chance for involvement within processes that shape their life it is reasonable to anticipate that the child's well-being will be less compromised than if the child is excluded from the processes.

Thirdly, the fact that children benefit from having relationships with both parents - rather than the assumption that continuing antagonism or conflict between parents will automatically be detrimental to the child and thus a factor in restricting contact. This issue is specifically addressed in the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) that recognises the child's right to an enduring relationship with both parents.

Fourthly, the child expressing a view will not always entail the child imparting a preference. The responsibility for the decision should still be vested in the parents (and if necessary the Court) - however the child should have a forum for relating their thoughts, views, opinions, and experiences.

Even in these four points, there is an obvious tension between determining the best interest of the child and developing a model of best practice to ensure that children are adequately consulted, and if they desire, included in family law processes.

Research into children's involvement

Over the past decade there has been extensive social science research internationally into the question of how, and when to involve children in family law proceedings (Demson, Graham, Huddart & MacPhail, 2006; Kelly, 2006). This research has been generated from firstly from evaluation of existing practice, and secondly from talking to children. In relation to the former, it is standard practice in many jurisdictions for the judge to meet with the children (Dessau, 2005). This has provided insights into the efficacy of judicial interviews and the skills required to talk with children of all ages notwithstanding the legal tension regarding the status of the discussion in terms of 'evidence' (Parkinson, Cashmore & Pringle, 2005; Stevenson, 2006). In terms of the latter, there is now a rich international literature reporting children's views and advocating greater and more flexible involvement of children in family law proceedings.

Children's desire to be involved

As expected, there is variation in the level of involvement that children wish to have in the decision-making processes concerning contact and residency (Campbell, 2005; Gallop et al., 2000; Murphy & Pike, 2005; Pike & Murphy, 2006; Smart, 2002). The continuum ranges from some children resolutely wanting to control all residency and contact arrangements, to other children wishing to be shielded from the process. Consistent throughout all of the research is the finding that some children describe the prospect of being decision-makers as too difficult. On the whole most children just want the chance to voice their opinion and feel as though they are being heard (by someone).

Further, in their report of the Columbus Pilot in the Family Court of Western Australia, Murphy and Pike (2005) also suggest that children need to feel that there is the possibility for flexibility or change if arrangements made by the adults are not working. The children in the Columbus Pilot study also made the point that each child is an individual and that post-separation parenting regimes should not be seen as a rigid 'job lot' for a sibling group but should reflect the developmental needs and changing interests of individual children. In other words, where at all possible, the arrangements need to be flexible and child-focussed – rather than rigid and adult-convenient.

Judicial experience in New Zealand suggests that children will have a greater understanding (and acceptance) of the Court's decisions, if they are provided with the opportunity to speak during the process (Boshier, 2006; Doogue & Blackwell, 2000). There are also suggestions that if parents make more informed choices and thus more child-centred arrangements, then the arrangements will be more stable and durable. Doogue and Blackwell argue that the timing of the inclusion of children's views in the court process is important. These authors suggest that the children's wishes are only vicariously presented, if at all, by the residential parent. The authors contend that children's views need to become part of the initial phase of post-separation parenting considerations. They argue that it is important that both parents and the courts have the chance to be aware of the children's views before the children are influenced by factors such as parents' entrenchment in the court proceedings or the children's exposure to conflict arising from Interim Orders pertaining to residence or contact. Noted American researcher Kelly (2006) also suggests that consultation with the whole family at the outset of court processes could minimise later conflict.

Smyth and Moloney (2003) argue that the judiciary must recognise that early child-focussed mediation should be viewed as an interactive process to help the family to (re)negotiate their contact and residency concerns rather than a means to determine formal 'Orders' in an endeavour to achieve a court-based 'Final' outcome. Longitudinal research on the benefits of

post-separation mediation has shown an increase in positive outcomes such as parenting satisfaction, improved co-parenting communication and a reduction in court re-listing, thus seeming to confirm the advantages of a less litigious approach to managing post-separation parenting (Emery, Laumann-Billings, Waldron, Sbarra & Dillion, 2001).

Research has also focussed on the therapeutic value that may result from talking to children. Smart (2002) notes that children need ongoing support after separation and an arena to speak freely about their thoughts and understandings may help them in the adjustment period after their parents' separation. Both Smith et al. (1997) in New Zealand and Murphy and Pike (2005) in Australia reported that many children (and their parents) felt that such support was lacking. Children spoke of not being able to speak to peers and family members and wanting to be able to have someone to just listen to them and ask them what they wanted.

As Moloney (2004:162) eloquently states "Children are not passive recipients of our wisdom, but active constructors of their own world". Although much research indicates that children's wishes need to be recognised within the Family Court (Barnett & Wilson, 2004; Dessau, 2005), further exploration into active, process oriented intervention approaches is needed (Moloney & Fisher, 2003). Research is increasingly recognising the desire of children to voice their experiences and their wishes (Cashmore, 2000) and the possible detrimental effects that parental separation has on children's well being, in particular when children are **not** given a forum to express their concerns (McIntosh, 2003).

However, as Trinder and her colleagues reiterate in their recent report, there is still a great deal of uncertainty about whether, and how to involve children in separation proceedings and parents are as divided over this as professionals (Trinder, Connolly, Kellet, Notley & Swift, 2006).

Differing models for working with children

The concern about how to involve children has led to the development of differing forms of practice. The two models of practice that have emerged in recent years in Australia are child-centred (or alternatively known as child-focussed), and child-inclusive practice.

Child focused practice

Child-focused practice is facilitated dispute resolution but has the child removed from the parental discussion arena (Moloney & McIntosh, 2004). The child's 'voice' or views are not expressed directly within the discussions but their presence may be symbolized in the form of photographs or personalized mementoes such as favourite toys and these symbols are used to focus the parental discussions on the children (Dickinson & Murphy, 2000). Moloney and McIntosh (2004) suggest that mediation and conciliation incorporating such active creation of a child-focused environment is now regarded as the minimum standard for good practice.

Child inclusive practice

A child-inclusive perspective involves the child more actively in the discussion process (Emery, 2001). The views of the child are seen as distinct from the parental wishes and are discussed separately from the parental mediation arena. Children's views are introduced into the mediation proceedings in a manner that attempts to ensure that the child cannot be blamed for expressing their views. The underlying principle in this model is that the children's psychological well-being and safety must be the paramount consideration. The differences in child-inclusive models centre on how the child is actually included in the process.

McIntosh's 'child inclusive' consultation model recognises the need to not "place the burden of decision-making on the children" (McIntosh, Long & Moloney, 2004, p87). Rather, this model seeks to identify and explore the parents' pre-existing knowledge concerning their children's views about contact and residency. Mediators initially discuss with parents the importance of focusing on their children, and identifying the parents' ability to acknowledge their children's perspective. Only when the mediator believes that the parents have the personal capacity to address their children's views objectively are these views integrated into the process.

The children's views, thoughts or opinions are then introduced by an independent child consultant who has been working separately with the children. Parents are encouraged to actively compare their personal thoughts about their children's wishes to the actuality of the children's views as presented by the child consultant. Feedback after such 'child inclusive' mediation suggests that parents develop greater capacity to understand that their children have autonomous views and want to be able to express these within open communication with their parents (McIntosh, 2000).

Case studies of this model of child-inclusive practice provide some evidence to suggest that children find the experience helpful in its own right. A shift in the parental focus toward a more comprehensive realisation of the child's perspective also seems apparent (Moloney & McIntosh, 2004). Holmes (2003) suggests that communication skills, modelled by the mediator whilst involved in the mediation session, may transfer to general life skills, thus helping to promote positive outcomes such as the couple reaching and maintaining a mutual amicable agreement with no need for future court intervention.

Child responsive practice

This term is used by Gibson (2005, 2006) to describe the approach being taken in the development of the Children's Cases Program (CCP) in the Family Court of Australia. In this model, the children's views are sought much earlier in the litigation process and relayed to the Court by the Family Consultant assigned to assist the Judge in managing the case. Although there is provision in this model for the children to eventually speak directly to the judge, early experience with the CCP model in Sydney suggests that this will not happen very often (Le Poer Trench, 2005; Collier & Stevenson, 2006).

In general terms, this model of child responsive practice mirrors the Child Inclusive practice advocated by McIntosh and her colleagues in that the children are not directly involved in the legal process and their views are relayed to the Court via the Family Consultant.

The Western Australian Research: Involving Children

Since July 2001 a number of innovative processes have been piloted and implemented in the Family Court of Western Australia (FCWA). Most of these changes have emanated from the inter-disciplinary approach that was central to the Columbus Pilot project – case managing high conflict matters involving domestic violence, family violence and/or child abuse (Murphy & Pike, 2005). The Columbus Pilot acted as a catalyst for subsequent innovations such as the development of the Case Assessment Conference (CAC) as the first court event (Murphy & Pike, 2006), Child Inclusive Family Reports (CIFR) – long-standing unresolved child contact and residency matters (Pike & Murphy, 2006), and the Child-Related Proceedings (CRP) – revised court process that commenced in July 2006.

In total more than 280 cases¹ have been analysed in these various projects.

In both the Columbus Pilot evaluation and the CIFR project, children were invited to reflect on:

- a. the impact of court processes on their parents (Columbus), and
- b. on themselves (CIFR).

In addition, the researchers have been involved in developing a set of templates to assist parents to develop age-appropriate parenting plans for each of their children. The templates were reviewed by a small group of children (three) to obtain their views on the concept and their potential to ease some of the children's anxiety about post-separation parenting arrangements.

The number of children who might participate in these studies was limited by:

- parents advising the researchers (often in very strong terms) that they had no desire to assist the court in any way whatsoever;
- the ages of the children as most were under 6 years of age; and
- logistical difficulties such as competing with school and after-school activities, transport, and parent commitments.

In all, interviews were conducted with 23 children aged between 7 and 14 years.

During all of this feedback it has become evident that the children are drawing on a different paradigm in conceptualising families, childhood, and parenting after parental separation. The children's views are not presented in isolation, for as noted above, the question of if, how, and when to involve children in family law disputes has been a consistent conundrum since the establishment of specialist Family Courts over a quarter of a century ago.

So what did the children say: Issues raised by children in FCWA research

The children were well aware that in having their voices heard, they were often placed in a difficult position. The main themes that emerged from the interviews were:

- Court processes and procedures,
- The adultification of the process,
- The onus of being placed in decision-making role,
- Adults representing children's views,
- Adults assuming that they know what children want,
- Stopping conflict to improve co-parenting,
- Focussing outcomes on adult needs, and
- The role of experts and professionals.

Court processes and procedures

The children were generally ignorant and confused about court processes and procedures as they based their knowledge on media portrayals of criminal courts (complete with gavels, wigs, gowns, policemen, prisoners, and handcuffs). The children described feeling that when they were involved, the language used was "too adult" for them to understand at times especially when they were talking with the various professionals.

¹ The studies each involved a 'quasi-experimental' group who were included in the new process (Columbus Pilot (n=93), CAC (n=52), CIFR (n=12) and a 'comparison group' (Control Group) who continued through the normal court process of the time (Columbus Control (n=62), CAC Control (n=52), CIFR Control (n=10).

The children reported that this lack of understanding led them to become confused about what was happening for both themselves or their parents.

“Like some of the words I couldn’t even understand, like the counsellor was saying all these big words ... they could have been speaking Chinese.”

“I didn’t say what I wanted to say at the time because I was confused.”

When children did attend court (CIFR), they described feeling that they were out of place, the court environment was imposing, unaccommodating, and it made them feel uncomfortable.

“The chairs are so big that you get lost and have to keep sitting up to be able to see over the top.”

The adultification of the process

We do not often hear from children. Adults are often presumed to speak for children so we hear from parents, carers, teachers and so on. What is clear from our research is that children will have their own views, perspectives and issues that concern them and they might well not be the same issues that adults would identify.

Children reported that the court environment is geared for adults so when they were involved, they were often bored and confused by processes that did not make sense despite explanations having been provided. So when the children interacted with adults either in the court, or at home when interviewed by 'single experts', they were often on guard, suspicious, protective of their parents, and reported that it was difficult for them to establish any kind of rapport with the professionals associated with the court processes.

“It was really uncomfortable. I felt weird talking about this stuff because we didn’t really know the counsellor that much.”

The children painted an exaggerated picture of the counsellor’s age and saw an older counsellor as unapproachable and not being able to understand them.

“Old; old people like don’t understand us.”

“The counsellor shouldn’t be a dinosaur...like stone age.”

In one notable Columbus case involving allegations of sexual abuse of a 10 year-old girl, the designated court expert was a man which the young girl found very disconcerting:

“I held back on some things because I can’t just sneak up to someone and tell them my secrets. I can’t because I didn’t really feel comfortable around, like counsellors and stuff. I feel comfortable around girls, but not boy people [men]. I just think that people, just people tell lies and stuff and I didn’t trust him.”

The onus of being placed in a decision-making role

The children acknowledged that, yes it was difficult to be placed in the position where they were asked to express views and possibly preferences about residency and contact issues, as they were concerned about the impact of their comments on their parents. However, many of the children were adamant that this has to be done because it is their lives which are being affected.

“I know it was very hard for Dad to hear that I did not want to see him, but if that is the truth... it was my decision.”

“Yeah I’ve always said like I’m like a tug rope and one’s pulling one arm and one’s pulling the other arm.”

Adults representing children’s views

Many of the children were concerned that the court should not rely solely on their parents or other adults to represent their views as they did not really trust what their parents might say. They were concerned that their parents might manipulate information to support their own agenda which they were often very well aware of.

“I didn’t want to say some words and when dad was there he said to the counsellor that mum made me say it anyway. And the counsellor listened more to dad than me anyway. And like I didn’t want to get mum in trouble.”

“To tell the court how I felt, to hear it straight from me, sort of like what I said would be proof because other people could just say their own version. I worked it out for myself, and it seemed this would be the only way the court could hear the truth, my version, the proof.”

Adults assuming that they know what children want

The children said that parents should not assume that they know what their children will say especially as the children are obtaining information from a variety of sources and considering a range of potential options. This different frame of reference often draws on experiences of the most appealing arrangements (predominantly low conflict, non-litigious models) known to their peer circle. In this respect it must be remembered that such a peer circle is likely to include cell phone text-message networks, email networks, or internet chat rooms and websites that are in most cases unknown to the parents (or the Court). This different frame of reference is seldom acknowledged by either the parents or the professionals with whom the children become involved.

“I have friends at school who were in the same situation and they also thought they could make a decision for themselves about who they lived with.”

“I think the second week I started going with my Dad, because I love my Dad, so I didn’t care what other people said, I just changed things to suit me.”

“Well I really just wanted to see both parents. I didn’t want to have like permanent permanent [sic] custody....Because like if I permanently lived with my Mum I couldn’t really see Dad that often and if I lived with Dad a lot I couldn’t really see Mum much.”

In relation to the parenting plans, most children from separated families believe that their parents should agree together about the children’s future and welfare but argued that these discussions should not be held in isolation; children should be consulted. As one youngster stated:

“And you should try to balance the votes ... instead of one person like just Mum or Dad saying yes, this is what’s going to happen, like yes and no to something and without giving me and my brothers any say in it.”

In the following analogy by another child, the parents are still seen to have the final decision but the child is allowed to have some input:

“I reckon the kids have to have a say in it because it is after all their life. I mean although it might be something like ice-cream, whose going to have, how much ice-cream how much are you going to have. If the parents go ‘you’re only going to have a little bit’ and the kids go ‘I want a huge amount’. There has to be some limitations [sic] and it has to be fair enough sort of.”

Stopping conflict to improve co-parenting

The most consistent theme throughout all of the interviews was that children want their parents to stop fighting. The children understand and largely accept that their parents establish new relationships (often involving new step-siblings). While they reported that they can manage the inherent tensions that inevitably arise in these new families, the children cannot understand why their parents continue the conflict. They want their parents to make sure that their children “felt wanted” and “felt safe” – continuing conflict made them feel insecure.

“It would be easier on kids if the parents would try and talk to each other, it would make their kids lives a lot happier, and let their kids see the other parent heaps of times...and let them, I don’t know, have a week off school or something, just to go and spend some time with their Mum or Dad.”

The children also reported that they want to be better informed about what their parents are thinking and feeling about arrangements that affect the children.

“Just sit them [the children] down and tell them what’s going on, it’s better than putting it aside and taking it out on them.”

The children to have some input into the decision-making and especially want the outcomes to be flexible.

“Listen to what they want to say and if the child wants a break from one of them, let them decide things for themselves. Let them decide and make some choices as well.”

“I think listen to your children. Take their word and advice in consideration, you never know they could be right. Try and gain their trust more because you might actually find stuff out about the children.”

Focussing outcomes on adult needs

Many of the children reported that they were most concerned that contact and residency arrangements were being made to suit the parents and their notions of equity rather than considering the child’s needs. One 7-year-old was trying to make sense of a contact regime that might have looked equitable in (adult) legal terms, but severely limited her time with her mother and various stepsiblings.

“...like I think its Dad gets us for the second one [school holiday], Mum gets us for the first, Mum gets us for the third, Dad gets us for the fourth. And that’s not fair because I only get to spend 4 weeks with my Mum...” and “because my brothers always go on holiday when I’m not there because they are doing it differently to us, the other way around, so we don’t get to see each other”.

Involving experts and professionals

The children were adamant that any involvement of separate representatives (counsel for the child) or single experts (custody evaluators or *guardium ad litem*) must be more than token gestures to appease adult agendas and should not be interpreted or portrayed as child inclusive or child responsive practice.

“I knew that her job was to help me out, so if I told her it would help me out. She really listened to me but what I don’t know is how, like what she was going to do with that information.”

“I didn’t want the lawyer to tell anybody else, but I wanted someone to know, and telling the lawyer was a good thing. She was a good person to tell but I didn’t know how. I thought she might have written it down after I said it and given it to the Judge. I don’t know what the Judge would do with it – maybe just keep it to himself. I just wanted the Judge to know. I wanted somebody to know, okay.”

“I talked ‘til I was blue in the face’ about wanting to stay with Dad, but no one listened to me. Like they could have done something, maybe stood up in court and said something.”

In summary, the children in the two FCWA studies reported not understanding the overall process or what was expected of them but they did remember it as being important to both of their parents. These children generally felt that the adult issues overshadowed the child’s needs in both the process and the outcomes. Most of the children reported that they liked having the chance to talk but were still concerned about the impact on their parents – they wanted things to change but did not quite know how or what to say to make it happen.

The children who participated in the group discussion considering the parenting plan templates felt that using such extensive documents was a good idea but they were not convinced that a comprehensive parenting plan drawn up by parents in isolation (ie without input from the children) would work for all families. However, these children identified other family members (grandparents or uncles and aunts) in preference to external professionals (such as teachers) as people with whom they would consult or ask for help.

So what did we learn from listening to the children?

In the course of the interviews, these children all agreed that in principle, it was a good idea for children to have a voice in relation to these matters; that children’s opinions should and needed to be heard. However there were significant differences in the feedback from the children in each of the three projects. For example, the Columbus children gave the impression that they had little or no understanding of a process that had not only been conducted at a distance but also explicitly excluded them yet had a profound impact on their lives. Not surprisingly, the children reported that they found the process incomprehensible and frustrating.

For the CIFR children, whose parents were involved in lengthy unresolved arguments about contact and residency, too much water had flown under the bridge. As a consequence, the invitation for these children to now participate in the proceedings was met with a fairly jaundiced reaction about the value of their opinions and perspectives and about how much good this would be **at this stage of the proceedings**.

For these children, their involvement was a case of *too little too late*. These children indicated that their voices should have been heard much earlier in the piece as part of a more constructive and managed process for resolving contact and custody matters. They were in fact arguing the case for early intervention guided by a third party which would facilitate presentation and discussions of a diversity of opinions and outcomes in which they could (and, in many cases, would willingly) participate.

What became clearer to us was that the children were not afraid of coming to court to have a say; they did not feel the need to be “protected” or isolated from any “abuse” as a consequence of exposure to adult matters on this front. Their major complaint was about being bored and finding the whole process rather tedious! What also became apparent was that the notion of protecting children from these adult matters is rather quaint as the children not only demonstrated that they were fully aware of what was going on between the adults (including the power games) but often discussed these issues with their peers and identified solutions to residency and custody matters through these conversations. What they did indicate they needed protection from was the ongoing ‘parental wars’ that resulted in last ditch attempts to solve custody matters by involving children at the tail-end of court proceedings. For us this raises issues of system abuse.

Many of the children (and some of the Columbus parents) lamented the lack of safe and readily available counselling and ongoing support programs for children especially if there had been court proceedings. This raises the issues of age-appropriate resources such as information about the Family Court and where children can get help and advice.

The children were also very attuned to the realities of stating their opinions regarding residence and contact; they were aware that being honest often came at the cost of hurting one or other parent. By the same token, from their conversations it became clear that diplomacy and empathetic negotiation seemed to be tools and skills that they could readily employ.

Notwithstanding the above, what was constantly repeated by the children in these studies, and consistent with the international research noted earlier, was the importance of giving children an option of having an opportunity to be heard by the decision-maker (the judge), having their voices listened to and acknowledged, and their contributions valued in seeking the resolution of family disputes.

The parenting plan templates were developed in consultation with mediators in three different settings (Pike, Campbell & Murphy, 2005). In addition, a small group of children was drawn from a support group for separated children to review the templates in order to assess whether the plans actually addressed issues that were of concern to children (Campbell, Pike & Murphy, 2006). These children confirmed earlier research findings that children need to feel part of their family’s decision-making processes especially following a separation but do not want to be placed in the position of making the decisions. The children argued that although parenting plans are a good idea, they should not be seen as a static document and it needs both parents to cooperate to make the arrangements work for the children. For children, the formal parenting plan is seen to be more relevant to the adults to “keep them accountable”. The children just want their parents to communicate and manage the new post-separation parenting arrangements in a way that makes the children feel secure and loved by both parents.

The findings in these three studies are consistent with the significant body of developmental research evidence that shows that when children are involved in problem-solving and discussions and given some recognition that their ideas and capabilities are respected, then they will grow in confidence and self-esteem (Baumrind, 1975; 1991).

Within such a process children and parents may work together and this can strengthen relationships and foster greater understanding and respect within the family.

Engaging children is also valuable for children themselves. Research on participation work with children has shown that, children learn to express their own needs, they learn to consider the needs of others, and that they may develop skills of cooperation, negotiation and problem solving. These findings were reinforced in the FCWA studies by the capacity of many of the children to take a mature perspective on their new family situation and, in many instances, to be more adult in their behaviours and attitudes than their parents.

Conclusions

In conclusion, the levels of insight and perception that the children have provided suggests that even relatively young children are highly aware of the implications of the situation they find themselves in when their parents are engaged in litigation in the Family Court. The children are certainly aware that much of the conflict centres on them yet they are not seen (by the adults) as being involved and indeed in most cases, are excluded from the decision-making processes. The children's feedback confirms that, in its current form, the Australian family law system fails to integrate the UNCROC guidelines in respect of children.

The challenge for all professionals and agencies providing support to separating families is how to integrate the children into the various processes and negotiations without placing them in the invidious position of thinking that they have to make decisions and yet acknowledging that they are integral to the process and have legitimate rights to express their views and opinions. In Australia this tension now extends beyond the Family Courts to the Family Relationship Centres where it will no doubt test new boundaries of practice over the next few years.

The final comment is left to a 12-year-old girl whose parents were in the Columbus Pilot project:

“Well, no offence, but I don't really think adults listen to us and they just want to think what they think, especially if the kid is younger. And I think the kids should be listened to as well as the adults. I think they should be treated the way an adult is treated and be allowed to have their say.”

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