The Changing Landscape of Family Law:
Exploring the Promises and Possibilities for
Children’s Participation in Australian Family
Relationship Centres

Final Report: 9 July 2009

Joint Research Project between Interrelate and the Centre for
Children and Young People

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*Final Report*

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Executive Summary

Background

Child and family policy in Australia is undergoing a time of rapid change, with the safety and wellbeing of children now firmly positioned as a national priority. Now, more than ever before, Federal, State and Territory Governments are collaborating to protect children and to promote their wellbeing, with the recently announced National Framework for Protecting Australia’s Children 2009-2020 (the National Framework) set to deliver seismic changes in the Australian social and political landscape. A comprehensive and ambitious policy statement, the National Framework aims to promote child protection and wellbeing as “everyone’s responsibility” rather than just the responsibility of child protection and welfare services and promises to place “children’s interests firmly at the centre of everything we do” (Commonwealth of Australia, 2009a, p.5).

The importance of children’s participation in this current national policy environment is quite explicit, both in terms of the decisions affecting them personally and, more generally, in the wider community. The Government’s acknowledgement that the safety and wellbeing of children is inextricably linked with developing opportunities for their participation is evident, not only in the National Framework, but in other key policy imperatives such as those to be progressed through the Commonwealth’s Family Support Program (FSP) which brings together a number of community based services for families, parents and children, including Family Relationship Services. For example, the FSP recognizes the central importance of children’s participation vis-à-vis its commitment to the promotion of social inclusion. The provision of child-focused and/or child-inclusive services that enable children’s voices to be heard is expressed as a governing principle of the FSP, which is “working in the best interests of children” (Commonwealth of Australia, 2009b, p.5).

As a major provider of family services in New South Wales, Interrelate Family Centres (IFCs) play a significant role in embedding the key governing principles of the FSP, including working in the best interests of children, as they implement a strategy for children’s participation including the provision of child-inclusive and child-focused family dispute resolution.

This report details a study, undertaken by the Centre for Children and Young People (CCYP) at Southern Cross University, which investigated ways to promote, facilitate and assess the participation of children and young people in Family Relationship Centres (FRCs). Interrelate requested that the study might be designed to inform the continual quality improvement of its family law dispute resolution processes in the FRCs operated by them. The project is significant in that it is one of the first studies of children’s participation in post separation decision-making processes in FRC’s since their establishment in 2006.
Aim of the Study

The aim of this study was to explore how children’s participation is understood and facilitated in the context of Interrelate FRCs. In order to explore this aim, the following research questions were developed:

1. What are the views of children in relation to their participation in family law decision making, including their experience of the child consultation at the FRC?

2. What are the views of other key stakeholders, including parents, carers, child consultants, family dispute resolution practitioners, managers and Interrelate Executive, regarding children’s participation in family law decision making, including in child-focussed and child-inclusive family dispute resolution?

3. How could children’s participation be further refined and developed within Interrelate FRCs?

Method

Semi-structured, individual, face-to-face interviews were undertaken with key stakeholders (n=55). Participants included children (n=12), parents (n=27), staff (n=10) and Interrelate Executive (n=6). A tailored interview schedule was developed to access understandings, views, experiences and expectations about children’s involvement in decision-making and their participation in FRCs. All interviews were recorded and transcribed. Data was then coded thematically using NVivo, a qualitative software program designed to manage observations, interviews, document analysis and literature, ensuring consistency and rigour throughout the process. A summary of the key findings and emerging issues for policy and practice is presented below.

In addition to the individual face-to-face interviews with children, an on-line, interactive focus group was facilitated with this sub-group only, using Elluminate technology. The purpose of the focus group was to present the analysis of the children’s data and seek feedback in relation to the findings.

Key Findings

This report includes a detailed analysis of the views of children, parents, staff and Interrelate Executive. The findings have been structured to provide a better understanding of:

a) what children’s participation is in the context of family law decision-making;

b) whether and why children’s participation is considered important;

c) issues and concerns in facilitating children’s participation in FRCs;

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1 With the selected site for this study being the FRC located in Lismore, NSW.

2 This group included Board members (n=3) and Executive management (n=3).
d) effective approaches to supporting children’s participation;  
e) barriers to implementing children’s participation; and  
f) overall advice in relation to progressing the idea of children’s participation in the context of FRCs.

These findings are presented in Chapters 4 to 7, with Chapter 4 presenting the findings from children, Chapter 5 from parents, Chapter 6 from staff and Chapter 7 from Interrelate Executive.\(^3\)

The discussion below elaborates on these findings with a particular emphasis on identifying the key issues for consideration in future policy and practice. These issues include the central importance of recognition and respect for children in post separation decision making processes; supporting and developing the achievements of the FRC in promoting the well-being of children through their participation in post-separation decision-making; addressing ambiguities in the way children’s participation is described and practised in post-separation decision-making; attending to the tentative relationship between the protection of children and their participation in post-separation decision making; continuing to refine procedures and processes around child consultations given the value placed on these by children and parents.

**Children in post separation decision-making processes want recognition and respect**

While children acknowledged their involvement in family law decision-making was complex, difficult and not always what they wanted, this did not diminish their variously expressed desire to be recognised and respected. For these children, the most tangible way of conferring such recognition and respect was to listen to them and to take their views into account in decision-making processes. When their participation is approached this way, the children identified three important elements at work for them: the likelihood their involvement might 1) effect change; 2) include choice; and (3) shape important relationships in their lives. Conversely, when the children felt they were not recognised and/or their views not respected, they perceived the effects as negative – most frequently expressed as feeling angry, sad, frustrated and lonely. The children’s calls for recognition and respect did not necessarily extend to having a determinative say in the final decision. Rather, they viewed their participation, particularly opportunities to have a say about how arrangements might work for them, as something that needed to be ongoing – a process where their views were valued and respected. Such nuanced understandings of participatory processes co-existed, however, with the fundamental premise very evident in both the children’s individual and focus group interview data, this being that all children should have a say, and that there are many benefits for children and parents when children are afforded the opportunity to do so.

Adult stakeholders largely shared with children the value and importance of recognition and respect as a central guiding principle for children’s participation in post separation decision-making. Parents, staff and Interrelate Executive all spoke in broad terms about the importance of recognition and respect for children, also emphasising the need to listen to children and to enhance opportunities for children to be included in decision-making. Some parents spoke of the child’s right to have a say. Others drew on the language of citizenship to express their belief that recognition and respect were integrally linked with children’s participation. Like the children

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\(^3\) For ease of reading, the term ‘Executive’ will refer to Executive and Board members collectively.
themselves, this did not mean adults thought children should carry the burden of a final decision on complex matters such as parenting arrangements but that they should be part of the process, depending on the age and maturity of the child as well as the child’s willingness and desire to be included. The benefits of doing so were highlighted extensively, most notably that involving children in decision-making gives them the opportunity to talk to someone about their experiences, affirms their competence to make a worthwhile contribution, encourages and empowers them to speak up about the issues most concerning them, and likely results in better decisions as a result of their involvement.

**Stakeholders strongly affirmed Interrelate’s approach with and for children**

A second key theme emerging from the data was the consistently positive comments made about the work of the Interrelate FRC, Lismore, in relation to children. The children reported that they felt welcome and comfortable at the FRC, staff members were caring and helpful, and the FRC space itself was child-friendly and well resourced. Most children were very positive about the opportunity to have a say through the child consultation (discussed further at section 8.1.5 below). For parents, the FRC was viewed as a source of support and assistance, playing an instrumental role in helping them to negotiate post separation parenting arrangements. Parents described FRC staff as kind, concerned and committed to their work. Attending the FRC, for the most part, affirmed them as good parents and helped them to normalise some of the difficulties arising from the experience of separation. Parents whose children had participated in a child consultation were also strongly supportive of the role child consultations play in family dispute resolution processes. Whilst this finding may be partly explained by the participants recruited for the study (possibly skewed towards clients providing consent if they had a relatively good relationship with staff at the FRC) it is nonetheless very evident that both children and parents viewed the organisation, specifically the staff and resources, very positively.

In terms of Interrelate’s ongoing commitment to good practice, parents made a number of suggestions worthy of further consideration. These were primarily linked to what the FRC might provide by way of more extensive support in building parent confidence to facilitate the participation of their children. Suggestions included more assistance with identifying the developmental needs and capacities of children, help with managing their own issues and fears so as to better ‘hear’ the feedback from the child, strategies for reflecting and acting on the feedback and communicating with the child afterwards, better preparation to help them decide whether or not to provide permission for their child to be involved in a child consultation, and advice on how to talk to their child about this involvement. The proposed further support could be embedded in the consultation/mediation context, or by including or extending further workshops such as the ‘Building Connections’ program.

The FRC staff and Interrelate Executive were generally also very positive about the contribution of the FRC to effective post-separation family dispute resolution. Staff were proud of the philosophy and work of the organisation, their personal level of expertise in helping parents to resolve conflict, their sensitivity to the needs of children, the resources of the FRC and of the physical space of the Centre itself. Executive members conveyed a deep commitment to children through the work of Interrelate, both in terms of improved outcomes for children themselves, as well as in relation to ensuring staff can work skilfully and respectfully with children and their families.
Overall, the study shows that the Interrelate FRC at Lismore, despite its relatively short history, is developing a very positive reputation with children, parents and staff in providing a welcoming, caring, effective service.

**Ambiguity evident in the way children’s participation is described and practised in post-separation family dispute resolution**

A third key theme emerging from the various data sources was an obvious ambiguity in the language and practice of children’s participation, especially evidenced in conflicting understandings and inconsistencies regarding the role and purpose of child consultations. Specifically, there were significant differences in stakeholder understandings about the purpose of the child consultation, variously crossing between a focus on parental alliance, for children to be heard by their parents, for children to be assessed, to reduce parental conflict, for children to have someone to speak with, and to ensure the child’s voice was included as part of the decision-making process. Perspectives also varied as to the weight to be attributed to the views of the child within the context of the child consultation, indeed, whether their views on parenting arrangements should be sought at all. Some stakeholders stated that children should never be asked questions about their views and wishes for post separation parenting arrangements, whilst others perceived these as a critical element of the family dispute resolution process.

These conflicting accounts were not directed towards the value or importance of the child consultation since children, parents and staff all spoke highly of their experience of these. Instead, the ambiguity appears to be linked to confusion around the rationale for children’s participation in the decision-making process i.e. whether the intent is therapeutic, evidentiary or advocacy based. These three approaches envisage a very different role for the child and for the decision-making process.

A therapeutic approach assumes the primary purpose of inviting a child to have a say is to provide the child with an opportunity to talk to someone about his or her experiences (in the case of child consultations, a trained counsellor) and to provide the child with information and coping strategies. In a predominantly therapeutic approach, there is little, if any, opportunity or intent for the child to influence the outcome of the dispute resolution process. In an evidentiary approach, the primary purpose of inviting a child to have a say is to achieve a resolution for parents and for successful family transition (for example, a parental alliance, a parenting plan and/or greater capacity to focus on their child’s needs). While the reduction of parental conflict is clearly in the best interests of the child, the role of the child in the decision making process is directly linked to dispute resolution and hence to an outcome for the parents. In an advocacy approach, the rationale for inviting a child to have a say is predominantly linked to recognising and respecting their agency and competence in offering perspectives on post separation parenting arrangements. Children play an active role in the decision making process, if they so choose.

The ambiguity in the way participation is described by various stakeholders interviewed for this study, appears to reflect a hybrid understanding and application of these three approaches. Whilst children, parents, staff and Interrelate Executive variously emphasised the therapeutic potential of participation, they also referred to its evidentiary intent and also to its potential as an advocacy outcome insofar as it might work to enhance the recognition and respect of children. Yet, the underlying rationale for the child consultation does not envisage advocacy for children and there
appeared to be confusion when stakeholder expectations for such an outcome were not met. Compounding this confusion was a blurring between the language of ‘child-focused’ and ‘child inclusive’ practice, where these were sometimes understood to be specific and particular interventions developed by McIntosh et al (2007), and at other times as a cultural or philosophical standpoint more akin to ‘child-centred’ practice that incorporates scope for a range of interventions.

**The tentative relationship between the protection of children and their participation in decision-making**

A fourth key theme emerging from this study relates to the complex tensions evident for all key stakeholders as they simultaneously endeavoured to involve and protect children as part of the dispute resolution process. The data suggests that staff and Executive, in particular, were tentative about proceeding with a child consultation in many instances. Some staff conveyed a lack confidence when it came to assessing the implications of participation in relation to the safety and protection of the child. Hence, the two (protection and participation) were often enacted as if they were mutually exclusive activities. The pragmatic view of some staff and Executive was that it was better for children living in high conflict situations not to be involved, although they clearly recognised the disadvantages as well as advantages for the child in taking this position. Parents, on the other hand, were more likely to suggest that children should be involved in decision-making processes where there was violence, abuse or neglect. Not to do so was viewed as potentially more risky for the child.

In making explicit this recurring theme in the data, it must be acknowledged that the issue of children’s safety and protection is intensely complex with no clear answers or ready solutions. At the same time, however, concerns about child protection remain a major consideration in whether particular children will ever know or experience the benefits of participation, especially in relation to having a say regarding post-separation parenting arrangements. Given the National Framework for Protecting Australia’s Children has recently identified children’s participation as an underlying principle associated with their improved protection, it may be timely to focus on whether and under what conditions it is possible to implement and safeguard both priorities.

**Procedures and processes around child consultations**

The fifth theme evident in the data is linked to the opportunity that now exists for refining the procedures and processes around child consultations given a) the very high value placed on these by all stakeholders and b) the ambiguity evident in the language and practice concerning children’s participation. As signalled previously, parents and children reported child consultants to be warm, friendly and understanding and the consultation to be a positive and beneficial experience for the child. At the same time, parents and children perceived a need for greater clarity of purpose, more information (about both the purpose and process of the child consultation) and more provision for follow up with children at the conclusion of the dispute resolution process. Refining these aspects of the child consultation process would address various issues raised in the study including:

- Children’s reports that they were not well enough prepared to take part in the child consultation, nor was there any follow up to inform them of the outcome of the decision;
• Children’s views and expectations about their participation (which envisage an active role for children) contrasting with their confusion as to the weight to be attached to what they had to say;
• Parent reports that the child consultation was separate to the family dispute resolution process, and that the child consultant should be present during the negotiation of parenting arrangements, rather than to merely feedback the child’s views;
• Parent concerns that they are not well enough supported to ‘hear’ and respond to children’s feedback;
• Parent concerns that child consultations were not offered to all families;
• Staff reports that the child consultation was not an integral part of the dispute resolution process;
• Staff reluctance and ambivalence about children’s involvement in child consultations;
• Executive concerns in relation to the small numbers of children deemed to be ‘appropriate’ to participate in decision-making processes.

Recommendations

The findings of this study point to the critical importance of maintaining and developing opportunities, processes and procedures in FRCs that facilitate children’s participation in post-separation family law decision-making. The following recommendations are framed with the intention of assisting Interrelate to builds on its considerable strengths in this area.

**Recommendation One:**

That Interrelate clarifies and further develops its current emphasis on the participation of children, including the role of child-focused and child-inclusive interventions, so as to help ensure children are recognized and respected as key stakeholders in post-separation family law decision-making. Particular consideration should be given to the language used to describe Interrelate’s overarching philosophy concerning children’s participation so as to delineate this from particular interventions used in achieving its objectives.

**Recommendation Two:**

That Interrelate examines the ways in which its current practice in FRCs already aligns with the National Framework for Protecting Australia’s Children so as to highlight how its commitment and approach to children’s participation comfortably co-exists with the aspirations and objectives of the national child protection agenda.
Recommendation Three:

That Interrelate continues to build strategically and systematically on the progress it has made in relation to children’s participation in FRCs, including a review of its processes and procedures for the intake of children into the service, information and resources available to children and parents, the provision of a range of services to children and appropriate and timely follow up after child consultations.

Recommendation Four:

That staff employed by Interrelate in FRCs are provided with a program of professional development that includes regular, mandatory in-service in relation to Recommendations One, Two and Three above.

Recommendation Five:

That Interrelate consider the participation of children and young people in the design and development of any resources aimed at assisting them during post-separation transitions.

Recommendation Six:

That high quality, intensive education be provided to parents to assist in building their confidence, understanding and skills regarding their child’s participation so as to better support them in listening to their children and taking their views into account when making decisions about residence and contact.

Recommendation Seven:

That the Interrelate Board clarifies the strategic importance, including the likely financial implications, of positioning the organisation as a national ‘lighthouse’ in developing, implementing and evaluating a distinctive child–centred approach in FRCs.
Chapter 1: Introduction

Child and family policy in Australia is undergoing a time of rapid change, with the safety and wellbeing of children now firmly positioned as a national priority. Now, more than ever before, Federal, State and Territory Governments are collaborating to protect children and to promote their wellbeing, with the recently announced National Framework for Protecting Australia’s Children 2009-2020 (the National Framework) set to deliver seismic changes in the Australian social and political landscape. A comprehensive and ambitious policy statement, the National Framework aims to promote child protection and wellbeing as “everyone’s responsibility” rather than just the responsibility of child protection and welfare services and promises to place “children’s interests firmly at the centre of everything we do” (Commonwealth of Australia, 2009a, p.5).

The importance of children’s participation in this current national policy environment, both in terms of the decisions affecting them personally and in the wider community more generally, is quite explicit. The Government’s acknowledgment that the safety and wellbeing of children is inextricably linked with developing opportunities for their participation, is evident not only in the National Framework, but in other key policy imperatives such as those to be progressed through the Commonwealth’s Family Support Program (FSP) which brings together a number of community based services for families, parents and children, including Family Relationship Services. For example, the FSP recognizes the central importance of children’s participation vis-à-vis its commitment to the promotion of social inclusion. The provision of child-focused and/or child-inclusive services that enable children’s voices to be heard is expressed as a governing principle of the FSP, which is “working in the best interests of children” (Commonwealth of Australia, 2009b, p.5).

As a major provider of family services in New South Wales, Interrelate Family Centres (IFCs) play a significant role in embedding the key governing principles of the FSP, including working in the best interests of children, as they implement a strategy for children’s participation including the provision of child-inclusive and child-focused family dispute resolution.

This report details a study, undertaken by the Centre for Children and Young People (CCYP) at Southern Cross University, which investigated ways to promote, facilitate and assess the participation of children and young people in Family Relationship Centres (FRCs). Interrelate requested that the study might be designed to inform the continual quality improvement of its family law dispute resolution processes in the FRCs operated by them. The project is significant in that it is one of the first studies of children’s participation in post separation decision-making processes in FRC’s since their establishment in 2006.

1.1 The study

This study was conducted by the Centre for Children and Young People and funded by Interrelate Family Centres. At the time the study was undertaken, Interrelate was funded through the Attorney General’s Department, to operate a number of FRCs including a Centre at Lismore. Interrelate FRC’s are now funded by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) under the Family Support Program. This Centre was selected as
the site for the research due to the particular focus allocated to it by Interrelate to progress the work of the organisation in relation to the participation of children and young people.

1.1.1 Aim and questions

The aim of this study was to explore how children’s participation is understood and facilitated in the context of Interrelate FRCs. In order to explore this research aim, the following research questions were developed:

1. What are the views of children in relation to their participation in family law decision making, including their experience of the child consultation at the FRC?

2. What are the views of other key stakeholders, including parents, carers, child consultants, family dispute resolution practitioners, managers and Interrelate Executive, regarding children’s participation in family law decision making, including in child-focused and child-inclusive family dispute resolution?

3. How could children’s participation be further refined and developed within Interrelate FRCs?

1.2 About Interrelate Family Centres

Interrelate Family Centres (IFC) is a not-for-profit agency approved and funded primarily by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (formerly Family and Community Services - FaCS) and the Australian Government Attorney-General’s Department (AGD - formerly AG) under the Family Relationships Services Program (FRSP). In February 2009, the FRSP, along with a number of other community based services for families, parents and children, was brought under the umbrella of the FSP with the goal of providing a more coordinated and flexible approach to delivering support to families and children. The purpose of Interrelate Family Centres is to conduct family and relationship counselling, family and child mediation, men and family relationship services, relationship education programs, primary dispute resolution and other special service programs under the provisions of the Family Law Act 1975 (FLA). Interrelate has a long history, having been established in 1926 to develop better communication, effective solutions and strong relationships for children, young people and their families.

1.3 About the Family Relationship Centre (FRC) Lismore

Lismore FRC is located in Bundjalung land in Northern NSW. The region extends north to Tweed Heads, east to Ballina/Bryon Bay and west to Casino and Kyogle. Lismore FRC commenced in June 2006 and was one of the first 15 established. The Lismore office is situated on the outskirts of the central business district in a well-known local landmark building. The interior of the building has been remodelled to incorporate sound proofed practice rooms and to make the premises child
and family friendly. In addition, outreach centres are located in Tweed Heads, Casino/Kyogle and Ballina/Byron.

Lismore FRC received a high performance standard in the 2008 FRC audit conducted by the AGD. Lismore FRC is administered under the Family Relationship Services Program (FRSP), the purpose of which is to improve the wellbeing of families and children by supporting positive family relationships through prevention and early intervention services (EIS) and post separation services (PSS). Until February 2009 the AGD was responsible for the policy and program development of Family Relationship Centres and approved preferred providers, including the amount of funding and conditions attached to each AGD-funded service. The AGD continues to be responsible for Family Law Services, specifically, providing assistance to manage the process and impacts of separation in the best interests of the child (Commonwealth of Australia, 2009b).

In 2006, the Lismore FRC commenced operation with 4 practitioners. There are currently 9 practitioners including an Indigenous mediator and 3 client service officers, who are the client’s first point of contact. Practitioners come from a variety of professional backgrounds including law and social work. All are accredited under the AGD guidelines. The Lismore FRC provides assessment, referral, family mediation, child consultations, parenting groups, and a parental communication program known as ‘Building Connections’, all of which are designed to assist families who are experiencing problems. Assistance is provided through referral, advocacy or direct service provision. The FRC also acts as a gateway to the service systems within the region.

1.4 Structure of the report

This report is set out in 8 chapters. Chapter 2 describes the context for the study, in particular, the changing landscape of family law in Australia, the legislative and policy context for FRCs and the current research context. Chapter 3 provides an overview of the design and methods used in the study. In Chapters 4-8 a detailed analysis of the interview data is presented. Specifically, Chapter 4 introduces the children’s views in relation to their participation, including whether and how their inclusion benefits or supports them. Chapters 5, 6, & 7 report the views of the other key stakeholders involved in family law processes, namely parents, client service officers, child counsellors, dispute resolution practitioners, managers and agency executive, regarding children’s participation, including in child-focussed and child-inclusive family dispute resolution and how this is understood, facilitated and evaluated in the Lismore FRC. Chapter 8 provides a discussion of key findings and culminates in a set of recommendations intended to usefully inform future policy and practice.
Chapter 2: The Context for the Study

The purpose of this chapter is to set the context for the study. Given FRCs are a relatively new initiative, introduced in response to a number of social and political factors, it follows that the views of key stakeholders in the family law decision making process should be examined within the broader social, legal and political context in which such decision making takes place. The chapter begins by describing the socio-demographic context of parental separation. Second, it describes the legislative context relevant to the study. Third, it briefly outlines the landscape of Australian family law policy, including an outline of the family law policy underpinning the establishment of a network of FRCs nationally, and the recent policy initiatives heralded in Chapter 1. It concludes with a brief discussion of recent research concerning children’s participation in family law decision making.

2.1 The Australian socio-demographic context

Parental separation and divorce is a significant feature of Australian family life. Australia has a reasonably high rate of marriage and de facto relationship breakdown, with about 2% of married couples and 3% of de facto couples separating every year (Fehlberg & Behrens, 2008). This results in approximately 50,000 children experiencing their parents’ separation and divorce in any one year (Australian Bureau of Statistics, 2006a). In 2003, just over one million children under the age of 17 years lived with one parent and had a natural parent living elsewhere as the result of separation and divorce (Australian Bureau of Statistics, 2006b). Hence, the experience of separation and divorce is an important issue in the lives of many Australian children.

However, while the experience of adjusting to living in two households is common to many Australian children, the experience of separation and divorce is unique to each individual child. Indeed, a wide range of factors influence children’s experiences of their parents’ separation, including their ability to cope and adapt. As Hogan et al (2002) explain:

> children’s beliefs, feelings and capacity to cope will be shaped, at least in part, by social-cultural expectations regarding ideal family forms, the degree of social censure applied to those who do not conform to these expectations, the support available for parenting post separation, and the nature of support made available to help children to cope with distress, sadness or confusion they may experience when their parents part’ (p. 9).

It is against this backdrop of complexity, where children’s lives are deeply implicated in family transitions, that this study examines the role of FRCs.

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4 The number of children whose parents divorced in 2006 was 48,396.
2.2 The Australian legislative context

Australian family law has undergone fundamental change in recent years, culminating with the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*, on 1 July 2006. The Act, which made significant changes to Division VII of the *Family Law Act 1975* (FLA) governing disputes concerning children, embodies the legislature’s aspiration for a ‘cultural change’ whereby parents are required to resolve disputes cooperatively and for children to have contact with both parents on a regular basis. This two-fold objective is reflected in the statement of the four new objects inserted into Part VII, Section 60B(1) of the Act, which are intended to ensure that ‘the best interests’ of the child are met by: both parents having meaningful involvement in children’s lives to the maximum extent consistent with the child’s best interests; protection from harm; adequate and proper parenting; and ensuring parents fulfil their duties and responsibilities concerning the care, welfare and development of their children. In addition, Section 60B(2) outlines five principles which underlie the objects of the Act: children’s right to ‘know and be cared for by both parents’; children’s rights to ‘spend time on a regular basis’ with both parents and other significant people including grandparents; the obligation on parents to ‘jointly share duties and responsibilities’; an obligation on parents to ‘agree about the future parenting of their children; and children’s rights to enjoy their culture.

The emphasis in the new legislation on shared parenting is also evident in the introduction, in Section 60CC, of a two-tiered structure for the determination of the child’s best interests: ‘primary’ considerations (shared parenting and protection from harm) and ‘additional’ considerations. The ‘additional’ considerations, which are found in Section 60CC(3)(c), include the child’s views as one of a number of factors to be considered by the Court in determining their best interests. This also sets out a ‘checklist’ of factors relevant to the determination of the best interests test under the previous legislation, along with an additional factor, ‘the willingness of and ability of each of the child’s parents to facilitate and encourage a close and continuing relationship between the child and the other parent’.

For those with an interest in the principle and practice of children’s participation, the relegation of the child’s view to a secondary tier of decision making is a development that warrants close monitoring. At its most basic, the legislation now clearly prioritises a child’s right to contact and protection above his or her participation rights. As Chisholm (2006) states, the amendment is unnecessary, adds a layer of complexity and confusion and downgrades the importance of children’s views by putting them into the category of an ‘additional’ rather than a ‘primary’ consideration. The Family Court of Australia has also suggested that the relegation of the views of the child to a mere additional consideration suggests that they ‘would always or at least commonly be outweighed by one of the “primary considerations”’ (Family Court of Australia, 2005, p. 167). In this way, the legislation blurs the boundary between children’s right to contact and their responsibility to have contact with both parents since the opportunity to have a say is circumscribed by a hierarchy of interests which prioritise children’s rights to contact and protection above their participation rights.

While extensive changes have been made to the legislation that focus on encouraging post-separation parenting by both parents, these changes have not altered significantly the way that children will be involved in the resolution of disputes of which they are the primary focus. For
example, reference to the child’s ‘wishes’ has been changed to the child’s ‘views’ (Section 60CC(3)(a)), reference to a child’s age has been removed (Section 60CC(3)(a)), and the children’s representative should now be referred to as the Independent Children’s Lawyer (ICL). It is also important to emphasise that such statutory changes do not apply to non-contested matters, such as family dispute resolution in Family Relationship Services, to which this discussion now turns.

While there have always been requirements aimed at encouraging settlements before trial, the 2006 reforms intensified the movement towards private, non-adversarial, dispute resolution that involves lawyers as little as possible (Fehlberg & Behrens, 2008). This is most evident in Section 60I(7) which provides that parents are now compelled to engage in FDR before making an application, unless an exception applies. Exceptions to this pre-filing requirement are outlined at Section 60I(7) and include situations where: consent orders have been made; there are ‘reasonable grounds to believe’ there is abuse or violence; there has been a contravention of an order made in the previous 12 months; or urgency and incapacity are involved.

As noted above, the FLA does not mention FRCs, but instead refers to Family Dispute Resolution (FDR) and the designated occupations of ‘family counsellor’ and ‘family dispute resolution practitioner’, some of whom will work at FRCs (Fehlberg & Behrens, 2008). This decision to keep FRCs outside the FCA marks a continuing trend away from the ‘one-stop shop’ it was originally envisaged the FCA would be, towards keeping dispute resolution services separate from adversarial processes (Fehlberg & Behrens, 2008).

The provisions contained in the Family Law Rules, 2004 governing FDR in FRCs are comprehensive and highly prescriptive, targeting the behaviour of parents as well as all those people working within the family law sector. Numerous directives are issued to service providers that they ‘must’ or ‘will’ ensure parents are encouraged to consider the child spending equal time with each of them, and if not reasonably practicable, substantial and significant time (for example, see s63DA(2)). It is also relevant in the context of this study to note that there are no obligations on advisors to tell parents to consider their children’s views, or about the need to protect children from violence. Further, the fact that the legislation does not mention FRCs means that the new emphasis on child-inclusive and child-focussed family law practice is applied at the discretion of the individual organisations who provide FRC services, although the changing policy context, as signalled earlier and discussed in more detail at 2.4 below, may well strengthen the ways in which FRSP service providers can facilitate children being heard.

2.3 Family dispute resolution in Australia: The introduction of Family Relationship Centres (FRCs)

The establishment of FRCs heralded a unique approach by the Australian Government to assisting parents to ‘make the transition from parenting together to parenting apart’ (Parkinson, 2006, p.1). FRCs are designed to enable families to access information about family relationships at all stages – including those forming new relationships, overcoming relationship difficulties and dealing with separation (Family Relationships Services Online, 2006). FRCs do this in a number of ways. Firstly, they provide an accessible information and referral service for families to help prevent relationships
from breaking down. Secondly, they provide information, referral, advice and dispute resolution services to separating families in order to help them facilitate agreement without going to court, and to help them identify issues and options and to focus on the needs of their children. In addition, FRCs can provide assistance to grandparents and advice in relation to child support issues. Information, referral and individual sessions are free of charge. In addition, Centres provide up to three hours free mediation, or up to six hours where an interpreter is required. Thereafter, Centres may charge a fee for services, depending on the circumstances of the client.

As envisaged by the former Coalition led Government, FRCs now play a major role in the provision of family dispute resolution services for many Australian families following parental separation and divorce. The number of families attending Interrelate Lismore FRC alone testifies to this, with 2255 new cases opened at the Lismore FRC since the Centre started operating (July 2006 – April 2009). A central feature of the delivery of such family dispute resolution services in FRCs is the emphasis on children’s participation in policies, programs, requirements and guidelines. The following section outlines how such children’s participation is currently understood and applied in FRCs.

2.4 Children’s participation in family dispute resolution in Australia

The importance the Government has placed on children’s participation in family law decision making is most evident in the development and implementation of child-focused and child-inclusive family law practice. This has been the case since the very beginning, with the development and establishment of FRCs, emphasising the importance of child-focused and child-inclusive practice. For example, the Operational Framework – Family Relationship Centres (2005)(Operational Framework)(Commonwealth of Australia, 2006), states that FRCs are central to achieving the Government’s objectives of keeping separating parents out of court and focused on their children’s needs. FRCs are directed to do this through the provision of ‘child-focused information, advice and dispute resolution, as well as referral to other services’ (p.2). In particular, FRCs are directed to ‘adopt child-focused practice and, where appropriate, ensure that child inclusive approaches are used in appropriate circumstances’ (Commonwealth of Australia, 2006, p.6), including through the following ways:

- The organizational planning of FRCs must take into account the needs of the children, as contained in the FRSP Approval Requirements, Standard 3.
- FRC’s should make information resources available for children and, where appropriate, consider conducting information or group sessions for children.
- FRC’s should be places where families can bring their children.
- In relation to the parenting advice and dispute resolution services, FRC’s may either:
  - include children in these processes, if the family wishes and the Centre has capacity and skills
  - make arrangements with other services with experience in child-inclusive practices so that families can receive this type of assistance in appropriate cases.

5 See Attachment ‘A’.
A second key policy document which reveals the importance that has been placed on child-focused and child-inclusive family dispute resolution practice is the *Family Relationship Services Program (FRSP) Strategic Plan 2005 – 2008* (Commonwealth of Australia, 2005). This policy, which applies to all FRC’s, states that the FRSP must improve responsiveness to children and young people, through the inclusion of children and young people in decision making:

Para 1.1.2: Skilled practitioners facilitate the inclusion of children and young people in decision-making where appropriate.

FRSP services provide child focused services. (Australian Government, 2005b)

The recent *Strategic Plan 2005 – 2008 : Progress* further reflects this emphasis, noting that funding has been allocated to training and professional development for child consultants in relation to child-inclusive practice. Research examining the differential outcomes of child inclusive and child focused family dispute resolution continues to be funded (Commonwealth of Australia, 2009c).

More recently, the importance of ensuring all children are offered the opportunity to participate in decision making that affects them has been explicitly stated in the *National Framework* (Commonwealth of Australia, 2009a) and identified as being consistent with Australia’s obligations as a signatory to the UN Convention on the Rights of the Child (UNCRC). Expressed as a ‘principle to guide our actions’, children’s participation in decisions affecting them is thus recognised as an underpinning principle in protecting Australia’s children, and in the delivery of universal support, services and programs that ensure children are ‘safe, valued and cared for’ (Commonwealth of Australia, 2009c, p. 12). As signalled previously, one such program is the recently announced *Family Support Program (FSP)*. Described as ‘reflecting critical elements of the National Framework’ (p. 4) the FSP aims to ‘work with and support families and nurture children to enable them to better manage life’s transitions and contribute to building stronger, more resilient communities’ (Commonwealth of Australia, 2009b, p. 2). Whilst the development of the FSP program, including consultation with key stakeholders, is still underway at the time of writing, the scope for children’s participation in the delivery of family services – including in FRCs – is very evident.

### 2.5 Child-focused and child-inclusive models of family law dispute resolution

Whilst the development of child participatory processes in family law dispute resolution is still in its infancy, it is evident that the contribution of Jen McIntosh and her colleagues has been most influential in FRCs to date. This approach comprises two ‘treatments’ aimed at improving ‘the psychological resolution of parental conflict with associated reduction of distress for their children’ (McIntosh, Wells & Long, 2007, p.8). In differentiating between the two treatments McIntosh (2003a; 2003b) suggests that a ‘child-focused’ intervention is concerned with finding the child’s voice in the *absence* of the child. Hence, child-focused dispute resolution aims to:
create an environment that supports disputing parents in actively considering the unique needs of each of their children;
facilitate a parenting agreement that preserves significant relationships and supports children’s psychological adjustment to the separation, including recovery from parental acrimony and protection from further conflict.

‘Child-inclusive’ intervention, on the other hand, is concerned with finding the child’s voice in the presence of the child (Maloney & McIntosh 2004; McIntosh 2007). Hence, child-inclusive dispute resolution aims to:
consult with children, in a supportive, developmentally-appropriate manner about their experiences of family separation and dispute, and in a way that avoids and removes any burden of decision-making from the child;
understand and formulate the child’s core experience within a developmental framework;
validate children’s experiences and provide basic information that may assist their present and future coping;
form a strategic therapeutic loop back to the child’s parents by considering with them the essence of their child’s experience in a manner that supports them to hear and reflect upon their child’s needs;
ensure that ongoing mediation/litigation and agreements or decisions reflect the psycho-developmental needs of each child;
support parents to leave the dispute resolution forum on higher rather than on diminished ground with respect to their post separation parenting.

Maloney & McIntosh (2004) and McIntosh (2007) emphasise that an important aspect of a child-inclusive intervention is that it is two-dimensional in its intent and effect, in that it aims to give children a voice and to provide skilled and sensitive feedback to parents which has an informative and therapeutic intent. Hence the child’s inclusion is closely linked to the resolution of the dispute between the parents.

In the Interrelate FRC at Lismore, which is the ‘case study’ site for this research, the McIntosh intervention models have informed the approach to children’s participation within the Centre. This is apparent in a number of ways. Firstly, family dispute resolution processes reflect the intent of child-focused practice which is to maintain parental focus, at all times, on the best interests of the child or children. Secondly, children have access to a dedicated child-friendly space at the reception of the FRC which offers a range of children’s resources, games and activities. Thirdly, children are referred to other counselling and support services depending on their particular circumstances and wishes. Finally, in some instances, children may be invited to participate in child consultations, consistent with the intent of a child-inclusive model.

In commissioning this study, Interrelate was seeking to further its understanding of how participation in FRCs is viewed by children, parents and other stakeholders, so as to refine its current approaches, which include the abovementioned child-focused and child-inclusive interventions.
2.6 The research evidence supporting a more participatory approach

The importance the Government has placed on acknowledging children is well supported by an extensive body of research that suggests the involvement of children in family law processes holds important and far reaching benefits for the well being of children and their families. This research suggests that children and young people attribute a great deal of importance to being recognised and acknowledged as individuals with opinions and feelings of their own and as able to constructively contribute to and shape decisions made in their everyday lives (Bagshaw et al., 2006; Butler et al., 2002; Parkinson and Cashmore, 2008; Smart, 2002; Smith, Taylor & Tapp, 2003).

The benefits of participation in family law processes have also been shown not to be confined to children and young people, but also flow onto their wider family relationships, communities and organisations. These benefits include the likelihood of better decisions and outcomes and greater acceptance of decisions by all family members (Cashmore, 2003; Smith, 2002; Raynor, 1993). Smart (2006) has observed that because separation and divorce shatters the taken-for-grantedness of family life for many children, and because it allows for children to witness their parents’ emotions and pain in a new way, acknowledging and recognising children and providing them with support has the potential to enable them to evaluate how they will behave and respond to future adversity and problems.

In addition, there is a growing body of work that suggests that children’s participation contributes to the well being of communities by making policy more sensitive to social needs, and therefore more likely to work and that it helps policy makers to better understand the lives of children and young people (Davis & Hill, 2006; Wierenga et al., 2003). For organisations, the benefits of encouraging and including children in decision making processes are understood in terms of enabling children to influence the design and delivery of the service, including providing children with the opportunity to introduce new and innovative ideas to the service, thus allowing it to be relevant and responsive to the needs of users of the service (Kirby and Bryson, 2002). The participation of children in family law decision making also acknowledges that adults, including parents, do not always act in the best interests of children (Cashmore, 2003; Smith et al., 2003, Smart et al., 2001).

Notwithstanding the increased emphasis on children’s involvement in family law and policy, concerns are being voiced about the extent to which children and their views are taken seriously even in those policy and project initiatives that are intended to promote their participation (Davis and Hill, 2006; Prout et al., 2006; Bagshaw et al., 2006). Although children may have become increasingly important in terms of contemporary social, legal and political agendas they continue to have little or no influence over the many decisions that profoundly affect their everyday lives. Researchers continue to point to a gap between the rationale for participation and evidence regarding the impact and outcomes of children’s participation, what difference it makes, to whom and the quality of participation (Cairns, 2006; Prout, Simmons and Birchall, 2006). For example, Davis argues that while the participation of children and young people is widely accepted as ‘a good thing’, considerable confusion exists as to what counts as participation, what it is for and how it impacts on the social exclusion of children:
Often [participation] is glossed over by casual statements that allow for the widest possible variations in practice to be described as participative and result in a confused debate littered with ambiguity and misunderstandings (ESCR Seminar Participants, 2004, 103).

Such research confirms what children caught up in family law processes have been telling us for some time – that whilst they want to be involved in key decisions regarding their parent’s separation and divorce, and many adults agree in principle with this idea, children continue to feel excluded and disregarded (Bagshaw et al., 2006; Smart, 2002; Butler et al., 2002; Neale, 2002). Indeed, Richard Chisholm (1999), a former judge of the Family Court of Australia, has observed that opportunities for children to participate have almost been non-existent within family law litigation and rare in family law mediation processes. Ongoing research shows that few children report any involvement in the formulation of initial or ongoing residence and contact arrangements (Smith et al., 2003; Smart, 2001; Butler et al., 2002). Of those children who say they were involved, many report that when they were invited to participate it was usually to express a view on a decision that had already been made (Butler et al., 2003; Smart et al., 2001).

In addition to being excluded from the decision making processes, a large body of research suggests that children’s experiences of separation, including their feelings associated with grief and loss, are also often overlooked at the time of their parent’s separation and divorce (Graham, 2004). This said, considerable gaps remain in our knowledge about the relationship between children’s involvement and how well they adapt to decisions and changes following the separation or divorce. Research tells us even less about the negative or detrimental implications for children when their participation is promised or expected but is experienced as absent, tokenistic or superficial.

As it currently stands, then, the existing body of research reveals two trends at work that are relevant to this study and which require further close examination. The first is the trend nationally and internationally acknowledging the need for child and family policy, including family law policy, to be responsive to children and to their inclusion in policy initiatives. While this trend shows promising signs for improving the status and well being of children following their parents’ separation, there is a need to monitor closely how this trend is reflected in Australian family law, policy and practice. This is particularly so in relation to how the nature and purpose of participatory initiatives, such as child-inclusive and child-focused practice, are understood by the key stakeholders involved in the resolution of family law disputes following parental separation, including children, parents, carers, counsellors, dispute resolution practitioners, service managers, government and non government organisations, policy makers and legal practitioners.

The second and more recent trend is reflected in the new and emerging body of empirical work that questions the ready appropriation of the principle of participation to describe any number of activities or initiatives involving children. Given the Federal Government has shown leadership in promoting children’s participation as a fundamental principle to guide the implementation of policy, it follows that local, State, Territory and Federal governments, non government organisations (such as Interrelate), policy makers and researchers will come under increased pressure to develop practical ways to ensure all children are given a voice in relevant decision making meetings, consultations and processes affecting them. As it currently stands, the literature suggests that embedding the principles of participation, including those underpinning child-inclusive and child-focused interventions, must be articulated and evaluated so as to determine their effectiveness in keeping children safe, valued and cared for. For although it is evident that there is
strong support in both Australian family law and associated policy for the inclusion and participation of children, there remains a glaring need for improved understanding of what participation is, why it matters, how it is translated into practice in a family law setting and, importantly, what the implications are for children’s social and emotional well being.

2.7 Conclusion

It is increasingly evident that the Federal Government’s national agenda for children and families now firmly recognises the potential role children’s participation plays in addressing the best interests of the child. Increasingly, it is imperative for FRCs, particularly in the resolution of parental disputes, to ensure that the participation of children and young people is respectful, purposeful and appropriate. Interrelate acknowledges that further scope exists to develop and refine its current approach, so as to ensure it reflects current national and international evidence that points to the benefits of considered processes for children’s participation.
Chapter 3: Study Design and Method

3.1 Introduction

This chapter provides an outline of the research approach, design and method.

3.2 Approach to the study

The aim of this study was to explore how children’s participation is understood and facilitated in the context of Interrelate FRCs. The research design needed to allow access to the views of all key FRC stakeholders, namely the children, parents, staff and Interrelate Executive.

A qualitative approach was considered most useful for this study because it provides for the multiple perspectives of individuals and organisations while at the same time encouraging dialogue and conversation (Greene & Hill, 2005). This is made possible because qualitative research is grounded in interpretative traditions that are interested in how adults and children experience, interpret, understand and make sense of the world.

The study positioned children’s participation as the pivotal focus around which the research questions, methods and analysis were developed. To this end, children were invited to share their views about having a say in the decision making processes following their parents’ separation. Involving children in the research, through individual semi-structured interviews and a focus group, affirmed them as competent agents who actively contribute to shaping their social world. Children are considered experts in their own lives and therefore central contributors to the research.

The inclusion of parents, FRC staff and Interrelate Executive affirmed that children, and the ways in which they are invited to participate, are also closely connected to their families and to those adults they encounter in the provision of family services following their parents separation. Semi-structured interviews with all stakeholders provided a relevant and appropriate means of collecting detailed personal views about children’s involvement, which in turn provided rich data for describing and analysing how FRCs facilitate children’s participation.

3.3 Sampling and recruitment

3.3.1 Sample

The participants were categorised into three broad groups:

**Families directly participating in the service**

*This group included those individuals for whom the services of FRCs are primarily targeted and who are directly affected by the FRCs policies and procedures concerning children. This group included:*
Children

The inclusion of children in the study was consistent with both Interrelate’s commitment to children’s participation and the CCYP’s research agenda which has a core interest in how children understand, interpret and negotiate their everyday lives. The children were recruited through the Interrelate Family Relationships Centre at Lismore and its outreach service at Tweed Heads. Twelve children participated in individual semi-structured interviews for this study. The study included 6 girls and 6 boys aged between 7 and 18.

Every child interviewed for the study was invited to participate in a focus group to discuss the interview data when analysed. All children agreed to participate in this focus group. However, due to the work commitments of one young person, eleven children subsequently contributed. The focus group consisted of 6 girls and 5 boys. The focus group was held at the Centre for Children and Young People as an online ‘Elluminate Live’ session. Six children attended in person and 5 children joined an online meeting room in a two hour session which presented the findings of the study back to children in a fun and conversational way. Children’s feedback on the findings was sought as well as regarding the process of participating in the research.

Parents

Parents play a central role in children’s lives in facilitating, resisting and preventing children’s inclusion in family law decision making. It was therefore imperative to access parent views about children’s participation in the context of FRCs. The study included a diverse range of parents, not all with children participating in the research. Twenty-seven parents were interviewed for this study.

FRC staff

This group included those individuals directly involved in working at the FRC. Participants included:

Client Service Officers

Client service officers play a key role in FRCs as they represent the first ‘port of call’ for both parents and children seeking the assistance of the FRC service. Client service officers are primarily responsible for guiding children towards the space dedicated to children and for encouraging children to engage with the resources and activities available for them. Three client service officers were interviewed for this study.

Family Dispute Resolution Practitioners

While Family Dispute Resolution Practitioners do not work directly with children, they are responsible for ensuring that the resolution of parental disputes concerning children are child-focused and responsive to children. FDRP’s also facilitate the inclusion of children where they

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* Elluminate Live is Web conferencing software that allows participants with the capability to speak via the Internet in real-time. Participants can also communicate through a text messaging system, application sharing, and a whiteboard.
assess such participation to be relevant and appropriate. **Four family dispute resolution practitioners** were interviewed for this study.

**Child Consultants**

Child Consultants play a central role in facilitating the inclusion of children in that they meet privately and confidentially with the child in order to specifically ensure the child’s views are considered in the dispute resolution taking place between the child’s parents. **Two child consultants** were interviewed for this study.

**FRC Managers**

FRC Managers play an important role in facilitating participatory processes in Interrelate FRCs. In Lismore, the **one manager**, who is also a trained child consultant and family dispute resolution practitioner, was interviewed for this study.

**Interrelate Executive and Board**

*This group of participants play a key role in leading and monitoring Interrelate’s, culture, policies and practice in relation to children and families, but are not directly involved in the day-to-day operation of the FRC. Members in this group are also involved in establishing the strategic directions for children’s participation at Interrelate. This group included:*

**Interrelate Executive**

The Interrelate Executive plays a fundamental role in the strategic development and funding of participatory initiatives in Interrelate FRCs, including child-inclusive and child-focused models of dispute resolution. **All three members of the Interrelate Executive, who are trained child consultants and family dispute resolution practitioners**, were interviewed for this study.

**Interrelate Board**

The Interrelate Board sets the strategic directions and determines funding in relation to all Interrelate services. **Three members of the Interrelate Board** were interviewed for this study.

**3.3.2 Recruitment**

The recruitment of the three groups of stakeholders took place in a number of phases. The first, beginning in February 2008 and completed in October 2008, saw the recruitment of FRC staff to the study from both Lismore and its outreach service at Tweed Heads. An important consideration was to engage the support and trust of all FRC staff, as both participants in the study and as the primary gatekeepers in recruiting children and parents to the study. In February 2008, a briefing with all staff overviewed the following issues: the purpose of the research, benefits and challenges of hearing children’s views, an overview of the research design and process, the issue of consent, strategies for seeking parental consent, and the importance of ensuring staff represented the research to children and parents in a way that was consistent with the research aims, that is, to
enable the authentic telling of participants stories from their own perspective. Information packs were prepared for FRC staff to provide to families who indicated interest in the study.

The second phase, beginning in August 2008 and competed in May 2009, involved the recruitment of families directly participating in the service. While a heterogeneous group of parents and children with a wide range of experiences and family backgrounds were targeted, the CCYP did not intend for the group to be representative of any particular group or groups of parents or children. Only parents and children receiving services from the FRC since its establishment on 1 July 2006 were targeted.

The third phase, which took place on 31 March 2009, involved interviews with members of Interrelate’s Executive and Board. Three Board members were nominated by the Executive on the basis that they were considered to be well informed in relation to Interrelate’s philosophy concerning the central importance of children’s participation.

The fourth phase was the facilitation of a focus group for children interviewed in the previous 12 months. The purpose of this focus group was to provide the participants with the findings of the study and seek their feedback as to whether their views were adequately captured in the findings summary.

A number of conditions were determined by Interrelate as to the most appropriate process for recruitment of families. Firstly, the Manager, FDR’s and CC’s would assess the likely benefit (or detriment) to a parent or child of participating in the study so as to minimise any possibility that the research would disrupt the family dispute resolution process. Secondly, the study would not actively seek to involve pre-lingual children or very young children, although it would not preclude very young children who showed an interest in the research. Thirdly, the active consent of both parents was to be sought. The decision to secure dual consent was taken in view of the fact that decisions about contact were being made at the time of interviews with children and so issues over privacy and confidentiality assumed heightened significance. Once the consent of both parents was secured, the resident parent was asked for permission to provide their contact details to the researchers. A time was then arranged to meet the child, who was then invited to take part in the study. At the conclusion of interviews, children were advised that a focus group would be held towards the end of the study and asked for their consent to be contacted closer to the time.

A number of important factors should be noted about the recruitment of children to the study, which was difficult and protracted. Like Hogan et al (2002) have previously identified, a considerable amount of time was consumed recruiting children, largely due to the complexity of relationships that exist within separating and divorcing families, as well as between families and organisations such as the FRC. Compounding these difficulties was a reduction in the number of child consultations taking place, which in turn, reduced the potential number of children available to participate in the study.

The following table, Table 3.1, shows the number of children attending child consultations between July 2006 and April 2009 at the Lismore FRC. It is relevant to note the significant reduction in consults over the three years, from 177 child consultations in 2006/7, 60 in 2007/8, to 23 between July 2008 and April 2009. The table also includes the number of child consultations that took place in the period July 2006 to April 2009 (‘registered parents’), and compares these
with the number of children who were not involved in a child consultation (‘unregistered parents’),
but whose parents attended the FRC.

Table 3.1 : Comparison between the number of children attending a child consultation and the number of children of parents attending the Lismore FRC but not taking part in a child consultation.

<table>
<thead>
<tr>
<th>Month</th>
<th>Children participating in a child consultation</th>
<th>Children NOT participating in a child consultation</th>
<th>Percentage of children attending child consult</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006/2007</td>
<td>177</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>2007/2008</td>
<td>60</td>
<td>488</td>
<td>12.3%</td>
</tr>
<tr>
<td>July 2008 – April 2009</td>
<td>23</td>
<td>335</td>
<td>6.9%</td>
</tr>
</tbody>
</table>

3.4 Ethics

The project was approved by the Southern Cross University Human Research Ethics Committee on 7 December 2007 (ECN-07-163). The study conformed to the ethical principles as outlined in the National Health and Medical Research Council’s National Statement on Ethical Conduct in Research Involving Humans and the Centre for Children and Young People’s Code of Ethical Research Conduct. Once the Lismore FRC was nominated by Interrelate as the case study site for the research, CCYP researchers liaised with the manager at the FRC to develop protocols for recruiting participants to be involved in the study. Special attention was given to ensuring that the involvement of all participants in the study was respectful, consensual, confidential and safe.

3.4.1 Informed consent

All participants were fully informed in a letter of invitation as to the purpose, outcomes and process of the study. An information sheet was also given to children before the research. Families were contacted personally by a researcher to ensure any further questions which they might have were addressed. In addition, the researcher reiterated the ethical principles underlying the research process, before asking participants to sign the consent form.7

The issue of informed consent in relation to children was approached as having two aspects: explicit consent as evidenced by compliance with ethical standards determined by the NHMRC as outlined above, and implicit consent as determined by the notion of children’s consent as ongoing throughout the research process. Implicit consent was understood as ensuring continued ongoing informed consent by the child whilst at the same time being attentive to situations in which genuine informed consent might become compromised. In practical terms this meant that before the interview, researchers ensured that the decision by the child to consent was based upon their

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7 For more information, see the Centre for Children and Young People’s Code of Research Conduct at www.ccyp.scu.edu.au.
knowledge of the research proposal and the requirements for their participation in the study. Researchers also offered children the opportunity to discuss any issues or questions raised by the child.

Care was taken to ensure that children were informed that what they said would be confidential and not passed onto anyone, including their parents (except in relation to issues of safety, outlined below). A shared statement of consent was read and signed by the child before the interview began. In addition to seeking explicit consent, children were advised that they could withdraw if they became frustrated, bored or disenchanted by questions. Consistent with the idea of implicit consent, CCYP researchers undertook to conclude interviews if consent was considered to be diminishing, the children’s interest waivered or fatigue was setting in.

3.4.2 Anonymity

All participants were assured their names and identifying information would not be included in the report. No link exists between the transcripts and the personal details of the participants in the research. Pseudonyms have been chosen by the researcher to ensure confidentiality and anonymity and facts which might identify participants have been changed or not included. Numbers have been allocated to staff data only, due to the marked gender imbalance in the sample. Where potentially controversial material was shared, researchers informed participants that they could have access to their transcript and remove any quotes they did not wish to have included for the purposes of analysis and reporting. No participants requested access to their transcripts. All data is stored in a locked and secure location as per Southern Cross University’s Ethics Committee requirements.

3.4.3 Confidentiality

The issue of confidentiality raises particular dilemmas in the context of family law research. This is especially so in relation to children where a researcher’s promises of confidentiality must be weighed against considerations of child protection. Considerable care was taken to explain the notion of confidentiality to parents and children and its limitations in the research setting. Children were clearly informed about the implications of disclosing to the researcher information concerning whether the child has been or is being exposed to harm. All participants were informed that if they were to become distressed during the interview, counselling would be made available at no cost to the participant.

3.5 Data collection

Semi-structured, individual, face-to-face interviews with all key stakeholders was the primary form of data collection in the study. A tailored interview schedule formed the basis of conversations with all participants (child and adult). These schedules were structured to access understandings, views, experiences and expectations about children’s involvement in decision making and their participation in FRCs (see Attachment ‘B’). The interviews focused on the following aspects of children’s participation:
1. The process of participation
   (i) Rationale for children’s participation in family law decision making
   (ii) Types of children’s participation
   (iii) Supporting children’s participation
   (iv) Barriers to children’s participation

2. The impact of participation
   (i) Positive outcomes of children’s participation
   (ii) Negative outcomes of children’s participation
   (iii) Use of information arising from children’s participation
   (iv) Evaluation of children’s participation in FRCs

The schedule developed for the children approached the concept of participation from the standpoint of ‘having a say’ since most children understand their involvement or participation as primarily being linked to opportunities ‘to have a say’ about the decisions or actions affecting them. The majority of interviews took place at the FRC. However, due to the circumstances of some participants, a small number of interviews took place in their homes, at their businesses or by telephone.

A two-hour focus group was conducted with eleven of the twelve children interviewed for the study following initial analysis of the children’s data. The focus group took place at the Centre for Children and Young People in an on-line, interactive meeting room, Elluminate Live. The focus group reported back the children’s findings, before inviting further additional comments and feedback. Consistent with the commitment of the CCYP to undertaking participatory research with children, advice and feedback was also sought from children in relation to the research methods used and their experience of the study.

All interviews were recorded and later transcribed. Data was then coded thematically using NVivo, a qualitative software program designed to manage observations, interviews, document analysis and literature, through a process aimed at producing descriptive and theoretical ideas, and at exploring links between themes emerging from the data.

3.6 Dissemination

The dissemination of the research will include:

- This final full report
- A report for children
- A presentation to FRC staff
- Staff development days for FRC staff across the organisation
- Presentation at agreed conferences
- Publication of findings in refereed journals.
Chapter 4: Children’s Views about their Participation in Family Law Decision Making

4.1 Introduction

In this chapter we present the views of the 12 children who agreed to participate in this study. Children’s participation in the study took place in two ways. First, in semi-structured interviews which focused on how children perceived their involvement at the FRC, including opportunities to have a say about the changes and decisions occurring in their family. Attention was directed in interviews on whether, and how, participatory processes and procedures benefited them, particularly in the context of the child consultation. Second, their participation in the research extended to an on-line focus group, where 11 of the 12 children convened to review the summary of findings from the children’s interview data. A short summary reporting feedback from the focus group is included at the end of each section reporting the interview findings.

4.2 What is children’s participation?

All children interviewed for this study (12) considered, as a general principle, that children should be offered the opportunity to have a say in the decision making process that follows parental separation. The following discussion details how the children perceived the benefits and challenges around their inclusion and, in particular, outlines three key, interconnected themes about their participation which emerged from their narratives: change, choice and relationships.

Participation is about change

The first consistent theme identified by the children is that participation in decision making facilitates change in children’s lives, as well as in the lives of their families. Children suggested their participation – having a say and being listened to - opened up possibilities for adults to take their views into account and hence to potentially influence the outcomes of family law decisions made on their behalf. The following comments from children highlight the importance of change as one important component of participation:

[Having a say] is when parents do something about it after they’ve listened, or saying they’re not going to do anything about it – at least going to let you know – ‘No, I’m not going to do that’. So making a decision, I guess. Nathan

[Having a say] means knowing what’s going to happen. Deciding for yourself where you’re going to be or what you’re going to do. Brooke

Sometimes deciding. Zac

Things that we’d like to change – we’d like the plans of the places where we can go and stuff and schools and stuff. Toby
Being offered the opportunity to have a say was also seen by children as important in helping ensure changes in the family did not result in them being ‘forced’ into arrangements they were unhappy with:

**You don’t want to be forced to do something you don’t want to do. Like at school – like if someone’s pressuring you to do something, and you don’t want to do it. So it should be the same in the household as well. Cassie**

So I’m not forced into anything....it’s just so much more relaxing. When I was five, I didn’t have much of a say basically because I couldn’t really understand. But when I got to the age of eight she started giving me more responsibility. **Jed**

I don’t like that [when children do not have a say] because if I had to go live with my dad - I’d be so cranky and I wouldn’t want to talk to anybody. I’d just be so disturbed. **Zac**

[Having a say has meant] I’m having more time with my Dad and more time with both of them and I get to see them both more often and that is really special to me. **Gabby**

A second consistent theme evident in the children’s narratives is the idea that their participation results in some degree of choice and flexibility regarding parenting arrangements.

**Participation is about choice**

One of the main ways to effect more positive outcomes for the children was not so much in relation to wanting to make the final decision about who they live with but rather being given a degree of flexibility in response to choices made elsewhere about parenting arrangements. This was important for the children as they acknowledged that decisions and arrangements may not work for them, nor for their parents, on every occasion or in every circumstance.

**I think that parents should have a choice, we all should have a choice, like just a say. And then we can make a decision from that. Like if I might say if I wanted to go to my dad’s, and mum said I had to because a reason, and I couldn’t say ‘oh maybe I could do this, this and this, mum’ you can’t do this’. I would like to be treated like everyone else.** **Timothy**

The need to have a choice does outweigh the kind of guilt feelings that come up than when you think that you’re hurting one of the parents. **Maddie**

[Having a say] made it a lot more flexible...it felt a lot better. **Toby**

For the children in this study, the idea that having a say should help facilitate choice and flexibility was framed within a broader understanding of their participation as a process, rather than as a single event. Such a process implicated children in an ongoing way in the decisions that were being made, particularly in relation to the form and frequency of contact they had with both parents.

Importantly, as signalled previously, most children clearly distinguished between being given a ‘choice’ and having to ‘choose’. While all children either explicitly or implicitly indicated that
they wanted to be afforded a say in the ongoing, day-to-day arrangements that constitute how they spend time with both parents, few children wanted to ‘choose’ between parents, that is, to participate in the final determination of residence arrangements, as the following comments from children reveal:

Sometimes you just get told, ‘Oh well, you know, you’ll be sixteen anyway and then you can choose where you want to live’ and sometimes you don’t even want that choice. Maddie

Well sometimes, I guess, if you don’t know what you want to do... or you want to stay or you want to go. But you don’t... can’t choose which one... it’s alright if they choose for you because you don’t have to make the choices yourself. Brooke

If there is a really hard decision to make it’s better if the parents make the decisions. Yeah. It’d be pretty difficult to make your own decisions as well. Particularly when you’re not, not near, like my age. Timothy

It’s a relief of the fact not to have a say. Ashleigh

It is important to emphasise that being offered choices was not considered by children as something that would necessarily make their participation in decision making any easier. A number of children spoke about the challenges and difficulties of balancing their inclusion in decision making with the choices and consequences that such participation inevitably entails. While this issue is discussed in greater below, Maddie’s comment provides an initial insight into some of the complexity children negotiate when considering the choices available to them:

Where you can go, ‘Oh I’m grown up now and make my own decisions. Isn’t that good.’ And then reality kicks in and you just kind of say, I have to worry about this and this and this. And I’m the one worrying about it, not my parents. Kids need to know that whatever choice they make they’re still loved. And it doesn’t mean that they don’t love their parents or something like that.

This paradox embedded in being given choices was alluded to by a number of the participants. However, the positives associated with having a say seemed to outweigh the concerns of most children, as the following narratives show:

I think [children having a say] is important when it’s concerning the child’s feelings - whether or not the parent would like to hear what the child has to say. In all seriousness, I think it’s better off for the parent to understand and hear all of what the child has to say so that they can get a firm grip on what the child’s going through. Jed

Participation is about relationships

A third important theme consistent throughout the children’s narratives was that their participation in decision making was closely bound up with their family relationships. The children considered their inclusion required communication, flexibility and openness to the views of other family members. In this way, the children were quite clear that their participation was closely linked to their relationships such that their own needs and wishes were balanced with those of their parents.
Any kid worries with divorced parents about saying something. Nathan

There has to be some sort of balance [about how much say children have] obviously because if this kid wants to live only with their Mum. But their Mum has to work or you know work sixty hours a week... or something and you know sometimes there’s practical things too because you know if one of your parents needs to go away for something then there’s always the other parent to stay with and that sort of thing. So there needs to be flexibility and there needs to be balance. Maddie

I think children should have a say. The parents need their say as well. Cassie

When kids have a say, it makes parents happy because they actually know what the kids are thinking. Gabby

Having a say is about responsibilities – you know, you can’t have freedom and no responsibilities or most of the time [you cant just] say something and then just not take responsibility for it. Nathan

In feedback from the focus group, children confirmed that these three themes formed the ‘essence’ of participation for children and young people. Once again, there was consensus that all children should have a say, although children collectively emphasised that individual differences, including in relation to age and maturity, should always be taken into account. In other words, having a say might not necessarily be ‘for everyone’. Children also emphasised that all three themes were interconnected, and not easily separated. This, in turn, meant that while there are real benefits for children when they are valued, listened to and their views acted upon, the relational nature of participation will always mean that having a say comes with responsibilities and consequences which can, at times, make having a say difficult. The difficulties of having a say were discussed at length in the focus group and are reported below at 4.6.

4.3 Why children’s participation?

The children in this study identified a range of reasons as to why having a say in post separation decision making is important. The following discussion outlines these reasons in greater detail.

Firstly, children reported a number of benefits for children when they are involved in decision making processes. In particular, children talked about how ‘having a say’ has positive implications for their well being:

It makes us feel more confident. Speaking to people. If you just keep it bundled inside then it’s not going to really do anything. So you need to tell someone before it just washes away and goes really bad. Gabby

It’s good to have a say with arrangements on weekends - I can sort of say “I don’t want to. I’ll only go for a little while” type of thing. But before that I was still able to do that but I didn’t because I didn’t want to hurt the other parent. Jed

Having a say feels nice. It feels like they’re listening to me, they’ve heard what I said. Even if when sometimes mum says I say something and then she says ‘okay I’ve heard you and I’ll think about it’ that always means no - it’s rare that she’ll say ‘okay yes’, but yeah.... Timothy
Secondly, children emphasised that children learn how to make good decisions by participating:

[Not allowing children to have a say] is just going to get your kids – if they’re controlled like that all their life - they’re just going to one day go and probably screw themselves up, because one day they’ll be let free – they won’t have any boundaries and they’ll just go berserk – even when it comes to leaving them out of interviews. Nathan

I’ve seen with a few of my friends whose parents have broken up and I just find that because they don’t have a say they’re not used to having a say, so they don’t feel that they can have a say. If they are not used to saying ‘no I don’t want to go to dad’s or I don’t want to go to mum’s or saying stuff about their parents, they’re not going to just suddenly open up to some stranger. Ashleigh

Thirdly, children considered that including children in decision making helps adults to know more about children and their lives. The following excerpts highlight some of the reasons why children want adults to understand them:

When kids have a say it makes parents happy because they actually know what the kids are thinking and they will just like try and fix it to make them like happy and not sad and miserable, for the rest of their lives. Then the kids would be happy and the parents would be happy and they will just live happily ever after. When I’m an adult, yeah I’ll give my kids heaps of say because then I know what they’re thinking and it will make them feel better. Gabby

Well children can definitely teach them [parents] stuff about themselves. I mean they always say that about kids though you know when you have kid you know all this stuff about yourself and that sort of thing. Maddie

They couldn’t work out the problem themselves. That’s probably why dad was getting me to do the phoning as well, because basically they couldn’t work it out between themselves. Nathan

[Having a say] is important so that people know about what the child needs to do. If [children are not asked] then parents don’t know and you can’t solve the problem of it. Grace

So that children can have what they want and also so their parents don’t just keep bickering about each other. Toby

Similarly, children considered that inclusion in decision making allowed them to better understand decisions being made. Children further acknowledged that the issues and considerations parents and children bring to the decision making process are quite different. For example, when parents make decisions about parenting arrangements, they must consider, among other things, employment, financial and safety considerations – issues children might not necessarily know about or may not want to take responsibility for, as Maddie suggests:
Kids need to have a say but you know there’s things that kids don’t consider that parents do... so if you make the decision based only on what a kid says there’s all these issues that’d come up [and] are going to come up in the future just about practicalities, and you know adult’s feelings too.

Finally, children were quite explicit that **not participating has negative implications for children**, with many children reporting how being left out of decision making processes left them feeling angry, frustrated and sad. The following quotes are illustrative:

<table>
<thead>
<tr>
<th>Name</th>
<th>Quote</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toby</td>
<td>Pretty annoying – it feels a bit angry, because your parents are always telling you to speak up with what you want, but then when you do, it doesn’t really change anything.</td>
</tr>
<tr>
<td>Cassie</td>
<td>Cranky and upset. Because I don’t like it when that happens. I feel like it when he does kind of... because when he talks to me or something... it sounds like he gets upset sometimes, and I feel really bad and bothered and stuff.</td>
</tr>
<tr>
<td>Nathan</td>
<td>I would have been really frustrated if I hadn’t [had the chance to have a say] But I reckon I probably wouldn’t have been frustrated at the time – I probably would have felt frustrated afterward – because if the problem wasn’t solved, I’d probably start noticing, and I’d probably feel, I guess, patronised, maybe – I don’t know.</td>
</tr>
<tr>
<td>Zac</td>
<td>Really bad. I really get angry because they never listen. And I just – I get my hand and I hit my head, because they won’t listen.</td>
</tr>
<tr>
<td>Timothy</td>
<td>I remember once I said ‘I didn’t want to go [to visit a parent] this time’ but I was made to go with him. I said ‘let me think about it’ and I didn’t want to go. It feels horrible especially that time, I was just left.</td>
</tr>
<tr>
<td>Brooke</td>
<td>I don’t know. I just didn’t like it much, that they’re making all the decisions for me and I don’t get to choose where I be and anything... So I guess when I said something I didn’t really believe that it was going to go that way.</td>
</tr>
<tr>
<td>Tex</td>
<td>Oh kind of depressing. It’s kind of oh it kind of just back fires the idea that you know everyone says, ‘Kids have a say.’ You have a say, of course you have a say, we’ll listen to you. And you know they probably listen to you they just don’t do anything about it I mean in the end. It kind of makes you feel like an outsider a bit. I don’t know. I suppose I would just feel more satisfied with the whole process and know that I’d actually said something that had been taken notice of. And that way feel better. Because you know I believed, [and] I don’t know if I still believe it, but that [being involved] wouldn’t be something that’d be good for us as a whole or for me. Um and it did make you feel kind of used. And so if they had um had my view kind of taken into consideration a bit more ah it definitely would have given you a bit more of that advocate feel.</td>
</tr>
<tr>
<td>Tex</td>
<td>Left in the dark I guess.</td>
</tr>
<tr>
<td>Grace</td>
<td>Bad and sad.</td>
</tr>
<tr>
<td>Gabby</td>
<td>People get hurt, like really badly, like really badly and another thing when people don’t speak up and the parents don’t know what they’re thinking and they feel the wrong impression...</td>
</tr>
</tbody>
</table>

Children also thought parents were less happy when children did not have a say because they were less likely to know how children “think and feel” and thus more room for misunderstanding and confusion. The following quote and picture from Gabby view on the importance of parents supporting kids to have a say captures this issue well:
Before concluding the findings about how children understand their participation and its benefits, it is also relevant to note children’s comments regarding the relevance of age as a factor to be considered in determining the extent to which children’s views should be taken into account. Children tended to distinguish between age and maturity, stating that a child’s maturity and experience should be more influential than their age in ascertaining their views. As Jed noted, “it depends on how mature the person is”. Timothy also hinted that the language of children sometimes hides their maturity, saying young children can sometimes feel like they are “talking jibber jabber when they were talking the smartest thing in the world”.

While children commented that they were often given greater say with age, for example, Brooke observed that “basically the older you get the more say you actually have”, this did not mean children considered that age should preclude participation, as the following from Cassie suggests:

My brother, I think he’s not very smart. He doesn’t understand a lot of things and I think he might be a little too young, because he’s only seven…[but]…he should still have a say about who he wants to go live with…

In feedback from the focus group in relation to the question why children should have a say, children once again affirmed that their views in regard to this issue had not changed – that children
should have a say – but that this did not make having a say easy (discussed below at 4.6). One young person observed that “children are human beings” and if they are not asked their opinion, then they are “just like a pet being dragged around”.

4.4 Children’s participation in FRCs: Views and concerns.

The most common way children are included in decision making processes in FRCs is through a child consult, and all children involved in this study had participated in a child consultation session. This section, which reports the children’s views and experiences of participating in a child consultation, begins by reporting children’s views of the purpose of child consultations.

4.4.1 Purpose of the child consultation

Children provided an array of reasons as to why they had attended a child consultation. For example, a number of children reported that the main reason they had attended was to help improve their parent’s post separation relationship:

| To help my relationship with mum and dad – helping it better...not to argue all the time and stuff. *Toby* |
| Yeah, to fix up bits like my Mum and Dad didn’t agree with and that’s all I can remember. *Gabby* |
| Mum just told me that it was to see – again, see how we were feeling about it and maybe some things we could do to help. She said some things we could do to help us get through it. *Cassie* |
| We were just going to talk about what Mum and Dad want. And what we want. And what’s best for us. *Tex* |

For other children, the purpose of the child consult was to provide children with the opportunity to talk to someone:

| I was shy, but I actually – I felt better when it was over, because I had all this stuff I needed to get out and stuff, and I don’t really have anyone to talk to, because sometimes I don’t feel like talking to mum or dad or anyone, and I just need to talk to someone that I don’t really know, but I can trust. *Cassie* |
| It’s just good just actually talking to somebody. Just telling them stuff... you could actually say what you wanted... and what was important to you and stuff. *Brooke* |
| The reason was to talk about my family, what’s going on and if I wanted to talk about anything. Mum was telling me about it and she said it’s just to talk about your family and anything that you’ve been wanting to say to express to say. And know that it’s not going to be told to anyone else. I wanted it all kept quite private. Most of it, or all of it. That would’ve been very important. It felt kind of nice, it felt good. *Timothy* |

A third reason given by children as to the purpose of child consultations was for children to be heard by their parents and to influence existing arrangements:
Basically, for me it was like what I wanted to say to my mum and dad which I couldn’t say to their faces, kind of thing. That was the main use, I guess, for me… I thought – well, this might be an opportunity – not then, I didn’t think, but later… I thought this might be an opportunity to let dad know a couple of things. Nathan

So that children can have what they want and also so their parents don’t just keep bickering about each other child or children. Toby

Finally, children identified child consultations as an opportunity to provide children with information about what was happening in relation to their parents’ agreements about residence and contact following separation and divorce:

I think that they [children] should be protected, but they should also be told and so they can understand what’s going on around them. If they’re just being – they’re hiding everything and they don’t know what’s going on and then when they see their mum and dad having an argument or something, they could get really upset. Zac

It sort of broadens the knowledge of what’s happening, but it helps to express yourself more openly… but definitely if it’s like an unresolved situation like mine – on-going – it helps a lot. It’s good. It helps you to think about things and you think about the situation and understand what the parents are going through. Gives a little bit of insight to what other kids are going through, from what they’ve heard and how the consult sees the situation and can see avenues and ways to get around that, or improve it, which is good. Jed

It is relevant to note the views of two children regarding the ways in which child consultations differ from counselling. For Maddie, the main difference arises in relation to how children are positioned, with counselling positioning children as “having a problem”, whereas child consultations position children as “helping fix a problem”:

When you go to a counsellor you always get a feeling that they’re trying to change something about you. Because you go to a counsellor because you think you have a problem. Or someone thinks you have a problem that needs to be fixed… obviously. Whereas when you’re here you’re just talking about you know something that’s happened. Not something that’s your problem. But just a problem that you’re kind of involved in.

For Jed, the main similarity between child consultations and counselling lies in the fact that both offer children the opportunity express their feelings to someone and so to better understand the events taking place around them:

The more I look at it – I’m not more with one parent than the other type of thing, whereas I notice that [younger sibling] more biased to one parent when he’s with them and same with the other one. I think that the early counselling sort of helps in understanding that. You don’t realise that until you get older……

It’s a good outlet (counselling and consult) that you can go to and express to a person how you feel and I think it improves the way you see life as well because you’re more understanding of people and how they react and stuff…

If I didn’t go to the counselling or the consult, I think it would be very hard for me to talk to my parents about what’s happened and how to deal with it. Simply not having that secondary education about feelings and opinions and what’s happened – I would say it would probably be really difficult and just try to sort of express how you feel about certain situations. It’s very useful. I’m fairly open – I don’t mind talking about it but I’ve noticed that my brother’s still a little bit insecure about talking about things. Over the years it’s helped him open up,
even though that’s what it’s like to a random person, but sort of express himself a bit more and to tell his feelings rather than what’s been fed in type of thing from parents or other people.

Jed also thought the difference between child consultations and counselling was in relation to their purpose, with counselling addressing the “whole situation” and the child consult focusing more on allowing the child’s voice to be heard:

Well I feel that they’re both trying to achieve the same thing but the counselling is trying to get the whole situation resolved whereas the consult was just trying to voice the child’s opinion and make it aware for the parents and give them a little bit of insight into what the child’s experiencing and stuff like that.

The following section outlines children’s views and experiences of being involved in child consultations.

4.4.2 What was good about child consultations

The majority of the children interviewed in this study (11/12) enjoyed some aspect of their experience of a child consult, with some saying that they would encourage other children to participate in a child consult if they had the opportunity. The one child who did not comment on any ‘good things’, one of the younger children interviewed in the study, conveyed that his father continued not to listen to him and he did not feel the child consult had made any difference to this situation.

The following section outlines a number of consistent themes in children’s narratives about the benefits of child consultations. A first important benefit of the child consult identified by the children in this study was being listened to:

That they tried to do what I said because they weren’t really focusing on each other anymore. 
_Toby_

You kind of go in there and go it’s really easy. It just felt really positive. Because at least someone listened to me. 
_Madgie_

I think it’s good, because it made me feel good, because I don’t think your parent have to know exactly everything, because sometimes you just don’t want to tell them or something, until you’re ready. 
_Cassie_

A second consistent theme in the children’s narratives about the benefits of the child consult was having an advocate to speak on the behalf of children to their parents:

I do think I have more of a say simply because of the consult we had. It was pretty heavy and we really got to talk about everything. And [the child consultant] was really good. She was really understanding. And I actually thought I could trust her to, you know, argue my points, which I really hadn’t felt before at any time. I knew that it would get to my parents. You know if they chose to take note of it or not. I do think the idea of someone outside of the parents talking to kids is a very good way of going around it. I mean there is always the case that something could get lost in the process of communication. 
_Madgie_
For the last couple of years when it’s been decision making, it’s been good to know that my feelings have been expressed to both of the parents and they’ve been taken into account with arrangements and stuff like that. You sort of get feedback from the parents saying “Oh, we’re going to take into account this…” It’s a good feeling to know that’s been taken into account.  

Jed

Not only did children appreciate having an advocate, but they appreciated that the child consultant discussed with children what they would and would not like reported back to their parents. In other words, a good thing was having some control over the process:

I felt... like when I go over to my dad’s I whinge about what mum does and when I go over to mum’s I have to say something about dad’s... what dad’s done. I don’t know I just... it felt very safe talking to someone and knowing that nobody's going to go tell your mum and [that they are] going to get disappointed. I think it would hurt his feelings - and mum’s.  

Timothy

The child definitely gets included. You have a one-on-one with the consult and then depending on what type of meeting it is, they’ll relate back to the parent, which is good. You can say “I don’t want anything to be said to the parent that’s been said” or you can say “Whatever” or “Just certain things”.  

Jed

A third benefit of the child consult identified by children was that parents benefited from hearing children’s views. For example, Nathan reported that although he did not feel he benefited directly from the child consult, that it contributed to reducing conflict between his parents:

Well, me personally, not very much at all, kind of thing. But family – I mean, I probably didn’t appreciate it during or straight after, but then I realised – mum and dad are talking again.

In keeping with Nathan’s observations, of the 11 children who commented, 8 reported a change for the better in their own relationship with a parent, or in the relationship between their parents after the child consult:

But it’s been better after that. Dad didn’t listen very much. I told the lady we had that dad didn’t listen very well, and she told him that he needs to listen more, and it’s helped because he takes the time to listen to me now. I’d tell him I didn’t want [contact arrangements], and I felt like I was being forced to do it. But now, he’s actually listening to me and he doesn’t force me into doing things I don’t want to do.  

Cassie

I suppose they got on better.  

Tex

It was really noticeable that they were talking again. So it was like subliminal feedback.  

Nathan

Fourthly, children reported that child consultants were friendly, trustworthy and understanding:

They were nice people, they’re friendly, if you talk to them they understand even if you say something that’s kind of rude. It felt very nice.  

Timothy
Although children were not specifically asked, two children spoke positively about the sock puppets – as Brooke said – “I like the socks though!”

While it is clear children were very positive about their experience of child consultations, the following section reports a number of things about child consultations which children felt were not so good or that could be improved.

4.4.3 What wasn’t so good about the child consultation?

One of the most difficult things about the child consult identified by children was that they felt they were not well prepared, and so they had little understanding of the process before going into it. Subsequently, children did not know what to expect of the process:

I think dad told me – it was just at the end of kind of this family crisis – he just said – he was pretty cranky at the time… ‘You’re going to come...’ He just basically said – ‘You are going to have a mediation kind of thing or something like that’. That’s how I found out. **Nathan**

I don’t suppose I had any preparation... I just tend to throw myself into things...Yeah the mysteries [of the child consultation] are one of the things that throws you off. You’re kind of waiting out there and you’re just like hhh ‘What’s going to happen?’ And you go like I don’t want to talk to some person. **Maddie**

Well I thought that things would change because she looked really professional and I knew like someone was going to get in trouble, and I didn’t think it was going to be my Dad or my Mum, so I thought it was going to be us. **Gabby**

Children also suggested that they should have been provided with more information, noting that it may have made the child consultation a little less “scary”:

I was kind of scared because we didn’t know it at first. Mummy didn’t tell us the day we went. **Grace**

Yes, maybe a little bit more [information]. Just someone to talk to – it would be a lot easier just talking to – not having to talk to a person, but obviously it is better to talk to a person – just not as easy. **Toby**
They just need to be told what they’re doing because... they’re going to be scared anyway going to talk to a stranger but I reckon they need to be told that other kids have been through this and it’s not so incredibly scary.  

Ashleigh

In addition to receiving little or no information, a number of children were disappointed that there was no feedback following the child consult.

I probably would have appreciated a bit more feedback.  

Toby

Maybe you could give some feedback – enough to kind of tip them off, kind of thing, that you’d been given feedback. Not a letter – the best way would be another meeting.  

Nathan

It would have been good (to have feedback) but I can’t remember if she did or not. No I don’t think she did. We did exchange email addresses and talked for a bit.  

Maddie

[it would have been important] I guess to find out if they said, ’Yes or no’.  

Tex

I thought she (child consultant) should have rung us because, if they [parent/s] would have told us themselves, they could of like told us the wrong thing. They could have just done it for themselves. The lady should have told us, like, the right thing and should tell us what’s happening and stuff... but my Mum and Dad were truthful.  

Gabby

In addition, for Toby at least, the purpose of the child consult was unclear because he was not asked about “the important things”, as the following conversation reveals:

She didn’t really ask us much of the important things – like she only asked us what we would like to tell our parents – like there were just things that we didn’t like – like things that they’ve done that we didn’t like.

And do you mind if I ask you what the important things were?

Things that we’d like to change – we’d like the plans of the places where we can go and stuff and schools and stuff.

Ashleigh

A small number of children conveyed disappointment that things did not change as a result of the child consult having taken place:

But then it didn’t really do anything.  

Toby

I reckon the only point I reckon that it had was seeing how things were going, if we were being treated properly and that basically all I can think of.  

Ashleigh

However, it is important to note that, for these children, the fact that the child consult did not change very much was not surprising because, in their view, their parents were not inclined to listen to them or to take their views into account in any case:

I guess because when I didn’t have a say - whatever my Mum or Dad chose happened - So I guess when I said something I didn’t really believe that it was going to go that way.  

Brooke

Two children thought the child consult room could be improved. Nathan thought the room needed “more toy cars”, and Maddie commented that the room needed a window:
Finally, two children stated that **undertaking the child consult with a sibling** was not ideal in that, at the time, they felt one sibling spoke on their behalf, a dynamic which meant they felt they were either unable to speak themselves or there was not enough time left for them to have a say. For example, Toby described how his sibling “said most of the talking. I was just sitting there most of the time”. Consequently, he suggested that it would be better for siblings to undertake a child consult separately or “maybe a little bit with [sibling], but then the other bit not with [sibling]”.

The key **feedback from the focus group** in relation to the child consultations was that although children still agreed that there were difficulties with the processes (as identified in the data, and reported back to them) and that having a say could be very difficult, the child consultation was viewed as a very positive experience for children, from which many benefits – for both children and their parents – flowed.

### 4.5 Supporting children’s participation

The question of *how* to best support children’s participation in decision making provoked an array of responses. For example, Cassie thought children required a “good education” to help them make the right decisions, as well as encouragement from parents and adults to “say what we want to say”. Brooke emphasised the need for parents to talk with their children, but also thought meeting with other children might support her to have a say: “it would have been nice to [meet other children in the same situation] yeah. Because you know what other kids are going through”. Jed also considered that learning from other kids would help support the way in which children are able to participate in family law decision making:

> Learning that other kids have gone through it and they've got past the situation and sort of moved on – that helped me to realise the importance of it and being able to express myself helps a lot. I think going to the counselling improves home in general. It’s a lot more open and a lot more understanding between the parent and child.

Maddie also considered that parents need assistance to support children’s participation:

> If I was a parent and my kids said things to me like I said to my parents sometimes, I’d be pretty... I don’t know I’d have to think about it a bit. You know things like support groups and... I think my Dad started going to one... probably made him a bit more open and understanding and accepting, you know, of himself and everything else. So I think support for parents from the Family Relationship Centre in groups or in private meetings is kind of important too.
4.6 Difficulties of children’s participation

While the findings above reveal that there are widespread benefits to involving children and young people in decision making processes, children also pointed to a number of significant issues which prevent them having the opportunity to participate, or which make their participation difficult.

Firstly, some children considered that there was little point having a say when their experience to date suggested that their views were not taken into account:

Yeah, like the bigger issues, like arrangements and stuff - I’d be asked and I thought about it but what I wanted wasn’t really necessarily taken into account when that decision was being made. **Jed**

I wanted to be asked what I wanted. And it didn’t really get asked that much. It was more Mum and Dad who made all the decisions. I guess when I said something I didn’t really believe that it was going to go that way. **Brooke**

Definitely not taking kids seriously....you know people say, ‘Oh we can listen to them’ but then just discredit their ideas because there’s still that underlying discourse that children don’t know what’s good for them. A lot of the time some people, when they go through divorces, get really bottled up and hidden and, and they just kind of really withdraw and don’t think they can show their feelings or their emotions or what they think. Also... [parents] probably make up a whole lot of stuff as parents tend to do. Believe me I know. **Maddie**

Several children offered reasons as to why parents might not take their views into account. The most dominant of these was acknowledgement of the parent’s own fears:

Maybe they’re tied up with their own thing with the other parent. **Toby**

Well I reckon the only thing they’re scared of is the child is going to choose the other parent. I reckon they [think if they give the child] a say they’re going to choose the opposite person. **Ashleigh**

I mean there’s always parents that say, ‘I don’t want my kid to have a say’ because it’s just fear I guess.....So that’s something they need to put behind themselves too. **Maddie**

Secondly, one of the most difficult things about having a say for the children in this study concerned their own fear of hurting their parents:

Because it hurts their feelings...like when there’s something on but my dad asked to come over and I haven’t been there for a long time... it would probably be going to the other persons’ house that I really wanted to go to but my dad wanted to see me as well. **Timothy**

I don’t know... it’s complicated to figure out what’s best. And when you hear what the children want and it gets even more complicated. And you don’t want to hurt anybody. **Brooke**

Well basically... am I going to hurt dad’s feelings? Am I not seeing him enough? He is my dad. I should go see him, but he’s not the whole of my life. Do I want to go, I don’t have to go, does he want me to go, I do have a say. **Ashleigh**

Yes, like hurting their feelings or something. **Cassie**
I think [children] should get a say in stuff...but like people say when you're old enough you can stop visiting one parent and just stay with the other but I think that's pretty mean... and pretty sad for the other parent, and they'd get very upset. Gabby

Thirdly, several children commented on how **having a say can be really difficult when children are feeling distressed or upset**:

- I think some of the time kids not talking about what they really feel... [some kids] internalise a lot of emotions and have a pretty low sense of self esteem. Maddie
- Pressure, because mum and dad, they both want me over at their house and there's just pressure, yeah, just pressure. I just feel I don't know what to do. Yeah I just keep on going. Timothy
- I'm not sure [things would be different if she had been listened to]. I don't really know what I want. I want to be, like, have longer periods at each place. Except then I don't get to see my Mum or Dad for a long time. Brooke

Fourthly, the issue of **ongoing parental conflict and tension** made the question of participation in decision making feel almost irrelevant because, in the view of some children, nothing they could do or say could change such entrenched conflict.

- Yeah. [When there is ongoing parental conflict] you couldn't care less what type of things happened. I don't know whether it's... like, it's not much of a feeling when things get taken into account – it's like a good feeling, but it's kind of like a worthless cause. It's like "Well, I shouldn't really have to be doing this". It's a bit ridiculous to sort of decide whether you want to go and see one parent on the weekend. Jed

Fifthly, some children worried that **what children say can be taken out of context**:

- Well [what you say] can obviously be stuffed up... they can be taken out of context which happens... Things get taken out of context. Um, there's also, you know, different interpretations of things because adults, a lot of adults, just kind of have these very specific ways of thinking about things and they kind of interpret something their kid says to mean something that they think it means without really thinking about it. Maddie

Finally, for Jed, one of the hardest things about having a say, is summoning up the courage and weighing up the risks and benefits of saying all of what he wants to say:

- The hardest thing is getting the courage up to say exactly what you want and not only saying like a quarter of it. Like it's a big thing to say that to both, not just one, of your parents and saying "No, I don't want to do that" or "I don't think this is the right decision". It's worth doing that but you can't really tell what's going to happen afterwards.

As signalled above, discussion and **feedback in the focus group** reiterated the complexities having a say can raise for children, further confirming the finding that having a say can be an incredibly difficult thing to do. Such difficulties could arise in relation to a range of issues. For example, Gabby described how having a say can be a reminder of what you don’t want to think about or believe:

- You know when we said that having a say isn’t easy sometimes......well sometimes you wake up and you think...everyday you think you want your parents to get back together...then you have to start trying to get yourself to believe it is over, and you have to stick with it.
Children also returned to the fact that no matter how much they might want to have a say, children always worried about the impact of what they say on their parents:

| It is really complicated. When you are choosing who you want to live with, the other parent you don't go with is always going to feel upset, and then you feel like it is your fault that they are so upset, and it keeps on gong, and then you feel really bad. Maddie |

Words such as “scared” and “scary” were referred to often and provided a reminder of the deeply relational nature of children’s participation and the courage it takes for both children and adults when inviting children to have a say.

4.7 Children’s advice to other children, parents, child consultants and FRCs

At the conclusion of each interview, and again at the end of the focus group, children were invited to give advice to other children, parents and child consultants in relation to how to improve their participation in FRCs. The following section reports the children’s advice.

4.7.1 Advice to child consultants

Children’s advice to child consultants was wide ranging. For example, several children advised child consultants to talk more freely with children about the more difficult issues, and to “ask about things like what they were like with the arrangements and stuff”, as well as to “be prepared to hear heavy stuff”. As Brooke advised:

| Ask [the children] what they want and try to give them what they want as much as what’s best for them… just listen to what they say and try to change things so that it's the way the children want it as well. |

A second theme was to advise child consultants to put “more weight on children’s views” when they were reporting back to parents, as the following exchange with Nathan reveals:

| Take it in. What should they do? Well, listen – but properly listen, don’t just stand there and say ‘I’m listening’. They’ve just got to acknowledge, I guess.  
What’s proper listening?  
Doing something about it after they’ve listened, or saying they’re not going to do anything about it – at least going to let you know – ‘No, I’m not going to do that’. So making a decision. |

Others commented that child consultants should follow up with children after the mediation with parents has taken place:
Finally, children focused on some of the qualities a child consultant might bring to a consultation with a child:

- Be somebody who’s understanding, who can understand things very much, somebody who can work things out, somebody that’s very kind. Really understand what children are saying. **Timothy**

In **feedback from the focus group**, children affirmed their previously expressed views about the child consultants being friendly and warm, and suggested that they continue to ensure child consultations take place in a “friendly environment”.

### 4.7.2 Advice to parents

A key theme emerging in children’s advice to parents was to listen to children, and to have their views taken into account:

- Take the opportunity to encourage them and the child to go and see a consult because it helps with understanding. I think it was very helpful. **Jed**

- I’d say probably don’t control them [children] too much – if there’s a limit, kind of thing. **Nathan**

- Ask the children what they want. **Brooke**

- I think it’s good to have the child’s opinion, depending on what type of situation, but I think it’s a good idea for the kids of a maturer age to have a bit of input and being able to be included in the decision making is really helpful. **Jed**

- To not let them have too much of a say but let them have enough. And probably to have enough time to talk about it. **Timothy**

Children also advised parents to communicate well between each other, and to keep the children out of the conflict:

- Be friends with your husband, just try to tell your kids it will be alright. **Tex**

- Advice for parents, that’s a hard one. If parents are going to stick their kids in it then I wouldn’t because they will have to live with the kids for the rest of their lives and it would just be really bad for the kids and when they grow older then they wouldn’t want to speak to both of the parents, so just leave it out of them and you two sort that out. **Gabby**

When asked to give advice to parents who want to give their kids a say, Ashleigh’s response was encouraging:

- Good on ya!
In feedback from the focus group, children reiterated the importance of parents listening to children. Children described how such listening can not take place where there is conflict or the home is not a place where children feel comfortable to talk. The following quotes attest to the importance the children attributed to parents listening:

| Make home a place where you don't have arguments – it should not be constantly brought up in every conversation – you need a space for it....if parents are fighting all the time, then what you say isn't going to get heard. |
| People should be allowed to be parents, but why should they have the entire say of what we do? |
| Don't pretend |
| Maybe I am a bit high in my expectations, but parents shouldn't be congratulated for listening to their kids – it should be something that all parents do. |

4.7.3 Advice to other children

The advice children offered to other children in a similar situation to their own focused strongly on encouraging them to talk with someone – either a parent, a friend or someone understanding:

| I'm not going to say – ‘You're not alone’ – because in a way, they kind of know that, because if they haven't got their parents, they've always got someone – well, most of the time. I might be wrong – but I don’t really know what if feels like – plus it’s really clichéd... I’d say probably if you want to tell your parents something, and you can’t tell it to their face, or can’t – you just don’t even want to tell one of the other parents, in fear that they might tell it to the other parent differently – it’s probably best to let everyone know here [at the FRC], or let everything – let the person you’re talking to hear everything you want to say. Nathan |
| I’ve heard the advice that people have given me, to sometimes tolerate it at the start and then if it gets really annoying, maybe you could ask your mum or dad what’s happening. If you didn’t know or something like that. Yes, and sit down and explain what you’re feeling. Cassie |
| Don’t take things to heart – talk to people who have similar experiences, because that helps you understand what’s happening and what pathways you can go down to resolve that. Take every opportunity to make things better. Jed |
| I’d probably say not to spend too much time worrying about it, and especially lots, if it’s really bad, as bad as me. I would probably say just get someone that’s very understanding, like to have someone close that’s understanding. Timothy |
| Say what’s on your mind. Never be afraid to tell. I don’t know how to explain it. It’s not every day that you go up to a person and tell them all about your mum and dad, it’s not... you’re not used to it. So kids really need to relax because I’m sure I wasn’t... There’s not really much you can do but all you have to do is try and get on with life. Ashleigh |

In addition, Toby advised other children not to try to be fair, or to make contact “even”:

| Don’t try and – if you’ve got a choice in where you go, don’t try and make it even – like not too much one side and not too much the other. Do what’s best for themself. |

Finally, children encouraged other children to see a child consultant:
Know they are going to help you. It is not because you need help but they can be whatever you want them to be... you know it’s just talking. Just be open. There’s nothing to be scared of. Maddie

Don’t be nervous or anything because it’s actually really good. Brooke

Say what you want and don’t make it too hard otherwise it will be too hard. And just hope for the best. Tex

Just be calm and don’t be sad or bad because it will be alright and they’ll fix it. Grace

Just relax and say what you feel because, like, the person will help you in some kind of way and if you actually relax and say what you feel then they’ll get a lot out of you and that can fix the situation instead of just keeping it all bottled in and just sitting there like really confused and shaking and being really scared. So you just have to relax and just say what you think. Gabby

One of the strongest themes emerging in feedback from the focus group was advice to children to talk to someone they trust – “don’t leave it inside” was a common refrain. Children called on other children to “speak up”, “not be afraid” and to “say what you need to say”. Consistent with children’s relational view of participation, children advised other children to try to talk with their parents:

Be confident in what you way, sit down and think about what you want, and if you don’t know, you can work things out together a lot of the time. You are not always going to know what you want.

At the same time, children acknowledged that parents are sometimes not the best person to talk too, but that children should find another adult they trust to talk with:

If you can’t talk to your parents – if they are not really functional – find someone else to talk to.

4.8 Children’s advice/feedback on the study

Consistent with the research aim of seeking to better understand how children’s participation is understood and facilitated in family law decision making, both the interviews and focus group were concluded with a brief discussion with children about their views on participating in this study on family law decision making.

Overall, children’s reported their experience of participation in the research to be very positive. Of the 10 children asked for advice and/or feedback about the research, all made positive comments about their involvement in the study. A key theme was the fact that children appreciated the opportunity to discuss the issues raised in the study with the researcher. “Just talking was good” was a common theme as the following comments reveal:

It’s made me feel better. I can be shy when I don’t know someone. But today, I don’t really know you, but I feel okay. Cassie
I don’t know if it’s a good thing, but I feel a bit special doing this. I don’t know what it would be like for — probably a little kid would probably feel bored at the fact of coming into this big building full of white... although as soon as you walk in there, you see all the toys — they’d probably start enjoying it. Nathan

It’s been good... it’s been brilliant for me. Maddie

It’s good to be able to talk to somebody and say what you want. Brooke

Jed also commented that participating in the study was beneficial for him in that the interview “gives a wider knowledge, so to speak, about experiences and stuff and it helps other kids understand what’s happened and how to go about things”. Unsurprisingly then, children were supportive of the choice of interview as the primary method of collecting data. In addition to the opportunity the interview provided children to talk directly to the researcher, Maddie’s observations are relevant:

| Interviews are one of the most practical methodologies for getting actually getting firsthand opinions and stuff. Maddie |

Children were also very positive about their involvement in the study because they perceived they had a good opportunity to help other children and parents in similar situations:

| I don’t mind it, glad to help. Because it’s just giving a kid another chance to say something. Ashleigh |

| I think you guys are doing a great job and when you finish this thing I think heaps of people are going to very happy. It will give them information that they really need to know and that’s just fantastic. Because people, like other parents and stuff, just pretend – like Santa Claus and reindeers – if parents read one of these then they’re actually going to know how the kids feel and all the information they need to know to sort this out and to be brave and stuff. Because sometimes it is really hurtful and parents have to be brave because they don’t want their kids to see them like that. Gabby |

| Whatever makes things easier for kids because you know I’ve gone through quite a bit. [We] have gone through quite a bit and anything that makes that easier, I’m really willing to support and I think we’ll make a difference. Maddie |

For some children, the decision to participate in the study was not an easy one. Three children said they felt uncertain about going ahead, in particular, about meeting someone they did not know. For example, Toby said it was “pretty hard” walking into the interview with the researcher, although at the end of the interview he considered “talking to a person” to be the best way to gain insight into his, and other’s, knowledge and experience. Jed considered that the interview could be “a bit frightening” for younger children “going to talk to a random person”, especially in light of the fact that the study is “trying to solve or get more information about the divorce and stuff like that”. Yet, while anticipating the experience may have been “a bit off-putting in that you have to go through and relive it”, Jed emphasised the benefits of doing so, saying it was “good” to be involved, especially “when you realise what’s going into it, it sort of helps”.

Children were also invited to provide advice as to how the involvement of children in the study could be improved. Two children advised the researcher to improve the information provided to children. Brooke commented that the information sheet had not been very useful in helping her to understand what the interview would involve, and she would like to have had a
better idea of “what we were going to talk about... so we can think about what we’re going to say”. Nathan agreed, describing how he had been:

“trying to think what some of the questions would be, and I just thought – no, stop it – just don’t guess what the questions are going to be, because then you’ll probably prepare answers. And I just thought – just answer the questions as they come......... because I had no idea what it was going to be like”.

Secondly, Cassie suggested that the interview could be improved with the use of games in the early stages of the interview: “if you could start off with maybe a kind of game that could introduce you and make them feel more comfortable around you. Because we – usually we do that every year in primary school, to get to know the teacher and the teacher gets to know us”.

Finally, in a most sage piece of advice to all researchers, and indeed all practitioners working with children, Nathan advised “Don’t mess with the info… like what a news reporter does”.

Feedback from the focus group was very positive, with children noting a number of benefits, including meeting and talking with other children with similar experiences and helping other children in the future. The following comments are illustrative:

| Very interesting – kids finally have a say |
| Thank you for talking to us – its been really nice and you guys rock |
| I like it – it is good |
| It has been really nice meeting everybody because we are kind of in the same boat... |
| Being in the focus group has been interesting |
| I liked that what I say can be read by other people and that it will help other people. |
| Good to express our feelings |

4.9 Chapter summary

This chapter introduced the narratives of twelve children talking about their views in relation to how they perceived their involvement through the FRC, including opportunities to have a say about the changes and decisions occurring in their family. The chapter reveals that the children in this study held sophisticated and nuanced understandings and expectations about their participation in decision making following their parents’ separation and divorce. Children perceived participation as a process that afforded them the opportunity to effect change, when necessary, to be offered choices, and to actively and positively shape and influence family relationships. Children outlined a strong case for their participation, drawing attention to the benefits of participation for children and to the fact that children need practice if they are to participate effectively in the decision making of everyday life. Importantly, children emphasised that they sometimes felt angry, sad, confused and anxious when they were excluded from decision making processes taking place around them.
The chapter further reports a number of rich insights from children regarding the child consultation process. The chapter shows children were very positive about their participation in the child consultation and appreciated the opportunity it afforded them to be heard by their parents. This said, the children appeared confused as to the purpose of their involvement, as evidenced by the range for reasons suggested as to why they were involved. Children also did not understand why they were not informed about the reason for their involvement before hand, and made it clear that they required more information and follow up about the process to help them better understand the process and outcomes.

Having explored children’s views and experiences of participation, including in child consultations, the chapter reported children’s views on how to best support them to have a say and, in turn, what prevents or shuts down opportunities for children to have a say. The chapter concluded with recommendations from children for other children, parents and staff, as well a summary of children’s feedback about their experience of participating in the study.
Chapter 5: Parents’ Views About Children’s Participation in Family Law Decision Making Processes

5.1 Introduction

In this chapter we present the views of 27 parents interviewed for this study (9 males and 18 females). The semi-structured interviews focused on how parents viewed children’s participation in family law decision making, including in child-focused and child-inclusive family dispute resolution. Of the 27 parents interviewed, 11 had agreed for their children to participate in a child consultation, and 10 agreed for their children to participate in this study.

5.2 What is children’s participation?

An important finding to emerge from the parent data was that every parent interviewed (27) was supportive of the principle of children’s participation as understood in the context of post-separation decision making processes. However, like the children, there were a range of differing interpretations of how the principle of children’s participation might be practiced. The following section outlines a number of key themes emphasised by parents as to what participation is, and the circumstances affecting its interpretation.

When asked to share their views and perspectives of what they perceived child participation to be, parents identified a number of common themes. The first theme in parents’ definitions of children’s participation was that it is about children being listened to.

That I listen to them and that they can come to me and express their feelings honestly and openly without being judged for them. That they know that they can come to me and trust that I’m going to listen to them, that I’m going to value what they actually are saying and take that into consideration when I make a decision for them. *Andrea*

Someone to talk to and let them have a say. Giving them a voice. *Sallie*

Parents also defined participation as taking *children’s views into account* in decision making:

I think it’s also to do with, for want of a better word, ownership. It’s their right, their decision, they’re making the decision. If their decision is valued and they can have that sort of power over their own lives even at a younger age, I don’t think that that should be taken away. They should be given the right to make a decision and I suppose with a bit of a helping hand along the way. *Marion*
Other parents emphasised tensions that arise when the idea of children’s participation is raised in the context of family law decision making, that is, between the need to find a balance between respect for child and parent needs and views:

I think that kids should have some input but it should be limited and that every care should be taken to make sure that children are not unduly influenced by any parent. Anyone under, say, the age of 12, should have no say. [It] should be left to the parents to decide what’s in the best interests of the children and anyone in between should be heard and should be carefully listened to. But if there’s a major disagreement between what the child wants and what either or both parents want then in the end it should be done what the parents decide is best for the children. Peter

There’s got to be a happy medium. A child’s opinion is still a child’s opinion, but it’s nice to know what they think and it does influence, but I don’t think that should be the ‘be all and end all’, but making sure that what is happening is best for them, you know, even to the point where it’s disregarding what they want. If what they want is something that’s valid for them then it needs to be heard and acknowledged and then explained what the best thing for them is. Ruth

Being asked to define their understandings of child participation also raised sensitivities from some parents, pointing to the difficulties and challenges that including children in decision making can raise for some parents:

I’ve never consulted – a selfish thing – never really consulted the kids. They’ve just been dragged through it. Mary

Interestingly, for some parents, the question of what participation is prompted an immediate response related to children’s right to have contact with both parents, or, as one parent expressed, that it is “important to keep the father in their life”. This was also evident in the way some parents defined children’s participation in the context of the mediation process itself:

Well both parties come in with their own sense of ideas and the mediator sits down and listen to both party’s ideas and basically take the median or the mean of both of those ideas which then resulted in the child being, you know, the majority of the idea’s being attended towards the child. Ed

5.3 Why children’s participation?

Parents were asked their views on whether, and why, children should participate in family dispute resolution processes. A number of themes emerged from parents’ responses, with these primarily concerning children’s rights, children’s capacity to participate and the benefits for children and families when they do.

5.3.1 Participation is a child’s right and acknowledges they are competent and capable

Firstly, a number of parents justified the importance of child participation in terms of children’s rights – that children had a right to be heard, recognised and acknowledged and that their views
should be respected. In presenting these arguments for the importance of participation, these parents expressed views of children as competent and capable of having a say:

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<th>Name</th>
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<tr>
<td>Meg</td>
<td>I feel very strongly that they actually need to be heard. I think it’s a bit of a strange idea treating children not as human beings in a way that have feelings and ideas and valid ideas. To me it seems a bit like they are treated as things, or property, or something like that and I particularly don’t like that at all.</td>
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<tr>
<td>Peter</td>
<td>I think kids are “smarter” than most people think or give them the credit for. If you really come down to their level and talk to them on an equal footing - if you go down to their level and make them feel comfortable, they can tell you a lot.</td>
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<tr>
<td>Sean</td>
<td>The child’s opinion should be respected. They know what’s going on.</td>
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<tr>
<td>Janice</td>
<td>They should have a say, I think so, because they’re a human being, they’re just like you and I. They’re part of all this and what they say is important.</td>
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5.3.2 Benefits for children

Many parents explicitly discussed a range of perceived benefits for children, indicating their beliefs that children were likely to be happier and more accepting of their situation when they were recognised and respected as having important things to say and having their voice heard:

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<tr>
<td>Peter</td>
<td>I think if they say ‘well this is something I wanted’ they are more easy to be happy in any solutions. If something is just imposed on them, then they might object to that and become obstructive.</td>
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<tr>
<td>Meg</td>
<td>[It helps children when] they’re being heard and they can express their feelings and put them out there instead of bottling them up and keeping them inside. That they know that they’ve got a voice and that if something’s wrong, they know they can put their hand up and say ‘I think it’s wrong’.</td>
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<tr>
<td>Andrea</td>
<td>So that they feel acknowledged. So that they can feel that they’ve had a part in what has been decided for them. It empowers them, it makes them a stronger person, if they’re acknowledged, even if what they want is not necessarily the best thing at least they’ve been heard.</td>
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<tr>
<td>Sonny</td>
<td>It gives the kids a sense of independence of having a hand in their own destiny, their own future. I think looking back on my own life I would have liked that type of independence as well.</td>
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<tr>
<td>John</td>
<td>They’re learning some adult lessons at the moment, you can’t really help that but these are lessons that they’ll be able to apply later on in life when dealing with people.</td>
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Parents, like other participants in the study, expressed a view that there could be negative implications for children when they are not heard:

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<tr>
<td>Janice</td>
<td>It affects children, it affects their social life, if they can’t have a say...they’ve got to be able to say how they’re feeling otherwise that child’s going to be pushed into a little corner and what sort of life are they going to grow up with... they can’t resolve their own or have an opinion on anything. And I think they get withdrawn.</td>
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Many parents referred to their own contexts, indicating that their children had felt hurt (Andrea), stressed (Mathew) or a level of rejection and abandonment (Sallie) when they were not being
heard. A number of parents also connected their children’s misbehaviour to “expressing frustration at not being able to make decisions… and fed up of me being in control” (Tina):

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<tr>
<th>It depends on the child. My son tends to shut down if he’s not acknowledged and not listened to. He tends to shut down emotionally. Some kids throw tantrums, some kids just refuse to do what they’re asked to do. Ruth</th>
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One parent highlighted what she saw as the negative outcome of consulting with children in the decision making processes, but then not allowing their involvement and views to influence or change the outcome of decisions made:

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<th>So it’s like me involving them in the decisions, it’s made them distrust me. So it’s like – maybe I shouldn’t have consulted them. It’s so confusing and so hard. Mary</th>
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### 5.3.3 Benefits for Parents

Most parents felt that hearing children’s views could lead parents to make better decisions, with some indicating that involving their children had been pivotal in assisting them to work out their disputes or in building stronger relationships with their children:

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<th>Him being able to voice his opinion made it easier for me to understand how he was feeling and putting things into perspective. Janice</th>
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<th>It benefits [a parent’s] relationship with their children if they listen to them… it can only build their relationship to be a better one and a happier one, a nurtured one and there’s huge benefits to it. Andrea</th>
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<th>You sit there sometimes and go oh, how am I going to deal with all this. I’m on my own and how am I going to help the kids. But when they actually speak to you and you actually listen to them you can help them because they tell you what they want. That’s the thing. And then you can say, okay, this is how they’re feeling, this is what I can do to help and it makes it a whole lot easier. Janice</th>
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While parents held, and expressed, quite firm views and values about children’s capacity to participate in decision making processes, as outlined below, many parents contextualised such comments around considerations of age and maturity:

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<th>I think in decision making for the kids it really depends on the individual child as to whether they understand the gravity of the subject matter. John</th>
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<tr>
<th>Responsibility just shouldn’t be given to young shoulders. Tina</th>
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<th>Children should have a say about where they want to live and give a reason for why… but ultimately I think it’s depending on how old the kids are and the environment the kids are going to be going into. Mark</th>
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<th>I think it depends on the kid’s age and their maturity but I think a certain level of the decision making could come from them but ultimately they aren’t going to make the decision. But I think they should have their say in it. Sue</th>
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I think it has to be age appropriate decisions that they’re being given choices in. I really feel they should have as much power as they can have for their age so that they feel involved in the process. Because I know they can feel pulled, parent to parent and so I think if they can have some choices where they feel some control in the matter is good. Pauline

Interestingly, Marion qualified that “we can underestimate how much say the younger ones can actually understand about what’s going on”.

5.4 Children’s participation in FRCs: Parents’ views and concerns

Like the other participants involved in this study, parents identified a number of positive aspects about the child-focused and child-inclusive approach of the FRC, along with a number of issues impacting on their willingness to engage with their children’s views. As well, parents identified a number of barriers which sometimes shut down opportunities for their children to participate in post separation decision making processes. The following section begins by outlining the positive aspects of the child-inclusive and child-focused practice of the FRC.

5.4.1 Parents’ views of child-focused family dispute resolution processes

The majority of parents (24) were highly positive about the family dispute resolution experience. Several emphasised that FRC staff were doing a fantastic job and that they were highly supportive of the processes:

He was warm, he was very genuine, he shared his experiences, which was great. Knowing a bit about his background was helpful to us. I think he did a fantastic job. We were both evenly heard and there was no side taking. Everyone’s been super friendly, everyone’s been great here. It’s a nice environment to come into, especially when you’re going through this part of a relationship break up, its nice to have that openness. Ruth

Your brain’s completely screwed up when you’re going through these situations, you’re not thinking straight. The pendulum is swinging from side to side…. but they’re good at keeping you on the track of what’s best for the kids along the way. So I think it is child focused, keeps you on an even keel. John

It was really positive and helpful and they were friendly and doing what they could be doing. Pauline

I think that what the Family Relationship Centre are actually trying to do is absolutely essential. I don’t necessarily think they’re all the way there yet, but I think that what they’re trying to do is essential, in terms of getting out of the courts, because so many people I know – it just turns to shit. Mathew

Of the 24 parents invited to comment on the extent and ways in which the process was child-focused, 16 parents strongly agreed, 3 agreed but with reservations, and 5 disagreed. Of the parents who agreed, several emphasised the important role that their children’s voice, conveyed through the mediation, had had on their dispute resolution. The comments from Marion were typical:
She’s really persisted in taking the focus back on the children and particularly after the child consult. She had actual points to pin it down on and to bring us back - whereas before it’s a little bit difficult because she didn’t know what the kids were thinking. Yes, she didn’t allow us to stray off really a lot. Marion

Two parents reported that although they had elected not to go ahead with a child consultation, the process of mediation encouraged them to become more child-inclusive in day-to-day interactions with their children:

We actually got out of our interviews was [the importance of] sitting down having group meetings with them, so instead of just explaining something there and then we had more meetings as a family or as a group. That came out of there where we weren’t doing anything like that. Bianca

5.4.2 Parents’ views of child-inclusive practice

Parents whose children had participated in consultations described the benefit of hearing from the children in the dispute resolution process for parents:

It was also very beneficial to the parents because the feedback we got helped me immensely. Basically we got kids’ children’s opinion, their own words - of what’s going on in their head, their thinking, how they’re adapting and they were assessed as well and the feedback from that made me feel better because the feedback was saying that our kids have adapted really good. There’s no issues there. They’re happy. It was good to get an insight of what’s going on in their head. You don’t know what’s going on in their head, what they’re thinking, like both parents have their view/opinion of why the relationship broke down and basically we just agreed to disagree who was to blame or what the reason was or whatever. I think it’s basically one of those things. It was just good to know how they were feeling about everything. Leyla

These parents also described their children’s experiences and responses to involvement in very positive terms. In particular, parents reported that their children were happy with the process, and benefited from being able to talk to someone about what was happening and feeling part of the process:

Well they seemed like they were happy. From what I gathered they had a positive experience and they liked talking anyway. They liked talking just for the sake of talking. And they liked the confidentiality and I felt a bit frustrated by some of that because I guess I wanted to know their secrets or what they didn’t want me to hear. Pauline

She was a part of it, that she wasn’t this little kid who was being ignored. Not ignored but that her feelings weren’t being taken into consideration. Because it was about her. Bianca

The kids had a ball with this woman. They wouldn’t stop talking, chat, chat, chat, chat… There was another woman there who said her son actually said ‘I feel lighter Mummy’. I think it was non-threatening….. that’s a really big issue because the whole separation is threatening… so it was a non-threatening interaction in a potentially threatening environment. I think it was about being safe to say this is what I think. Marcus

Yes definitely [benefited the child] because she was allowed to express her concerns to a neutral party and I think she felt better that she could do that sort of thing. Leyla
They didn’t have to have that fear of “am I hurting her feelings or am I hurting his feelings”. So just to be able to express it without having this worry. It actually turned out that they did have a lot of those worries and that’s why they didn’t talk to us about it. Kids really hardly ever want to hurt their parents’ feelings. It’s their Mum and Dad. Its just so amazing how adult they are in their thinking in a way, to try and protect you, whereas, we should be the ones to protect them. Marion

A number of parents viewed the consultation process so positively that they questioned why more children wouldn’t be involved:

I think all children should go. I would have been lost without all this basically, Janice

I don’t know why you wouldn’t offer everybody the opportunity for their children to come in. I think that that is really, really important in trying to get a solution that meets everybody’s needs. So I would really strongly advocate for everybody to be offered that opportunity. Marcus

I’d definitely suggest involving the child. I mean as good a parent as anyone can be you might not be aware. It’s not saying they’re a bad parent but you just might not be aware of exactly how it is affecting the child. There might be deeper issues and it is so important that they come out so that the child can grow and mature emotionally as well. Marion

Parents whose children had participated in consultations were also asked what the purpose of the child consultation was. Data reveals that parent views were wide ranging. For some, the purpose of the child consultation was to ensure children’s views were advocated in the decision making process. For example, Sallie described it as an opportunity to “advocate for the children” and Janice as an opportunity for the child to voice her opinion without hurting someone’s feelings or feeling uncomfortable.

First of all, to give the children a voice because they had this horrific experience before where they weren’t heard. And in a sense too to actually find out myself what they truly wanted or what was truly important to them as opposed to what I believed was. And that was actually quite different and it was quite hard. Meg

Other parents saw the purpose of the child consultation as being to provide them with professional assessment and feedback on the emotional and psychological well being of their child or children, as indicated in the following quotes:

To look for any sort of serious emotional disturbance that might have been occurring as a result of the conflict. Well, I told them that it was just an opportunity to talk about any difficulties or any issues that they had with regard to the obvious difficulties that we were starting to have. Mathew

The reason was mostly to see if I was doing it right. Wendy

At the same time, however, a number of parents offered a range of insights into aspects of the child consultation process which they considered problematic or difficult. These are outlined below.

5.4.3 Parents’ concerns with the child consultation process

The first concern raised by parents was that the child consultation appeared to be quite separate from the family dispute resolution process. A number of parents commented
specifically on issues surrounding the effectiveness of the children’s consultation process in informing the mediation session. The following comment indicated how they felt the nature of the questions asked of the children diminished the effectiveness of the mediation session:

Well, ‘we’ll hear from her [the child consultant] first and then we’ll get on with the real work’. The mediator didn’t put it like that. It was just like I felt we were going through a procedure, and I think we had mixed agendas. It just wasn’t very smooth. It wasn’t very relaxed. And she wasn’t given enough time. I think I had an unclear expectation of what [the child consultant] would do. But I now realise that the best thing that she could have done was stayed in the room, not left. The reporting back was not adequate – she should have stayed in the room – not ‘she’ – but the system should have allowed her to be present and hear the crap that was going on with the parents, and why the children were responding in that way. These uplifted, empowered, smart little kids – why couldn’t their parents hear them? They’re sensitive, nurturing parents – what was the problem? I don’t think that purpose, in her mind, was that clear either. I mean, how could it be, if she wasn’t – if she knew that she couldn’t sit through as many sessions as we were going to have or pay for or whatever it was? Consequently the children ended up with a rigid plan which denied them their needs. Olivia

I don’t think the child consultant was brave enough, really, to actually voice and to confront us with anything about the children. Mathew

Data further revealed issues for some parents regarding the weight given to feedback from children by the family dispute resolution practitioner. One instance was recounted where a parent had been told by the child consultant that the children were happy in their current arrangements (spending 65% time with him/her). Yet he/she did not feel supported in their argument that this should mean that there should be no change:

I felt that I wasn’t trying to put the knife in and say, you know, they never want to be with you but I was saying, we’ve heard from the children, the children were happy and they were spending 65% time with me, and here you are, you’re heckling for more. The point of involving the children was to hear their voices, if we’re not, if you’re now fighting for more then have you actually heard their voices? So I was trying to bring that child consult, the value of that content back in, and say you know this is good confirmation for us that we’re on the right track. And as I said that sort of got rejected and, you know, [family dispute resolution practitioner] said no, that means they’re happy with how it is now but we didn’t ask them if they would be happy with it being different. Barb

The second concern raised by parents related to the balancing of children’s participation and protection rights. As with staff and executive, parents spoke of the difficult balance between protection of children from harm or violence and their participation in dispute resolution processes:

I thought it was best to shield the kids from that because they were ultimately dealing with our separation. It was the breakdown of our family and to introduce just another factor into that was going to complicate things. Andrea

I think they need to be involved but depending on the situation. If it’s highly volatile, like there’s been abuse involved, there might be particular times (like say in court or whatever) that the child should not be exposed to that. So there’s no harm if they were sat down and spoke to someone prior to that. Marion
Contexts where there was violence drew particular mention from parents. Views differed on whether children should have a voice where violence is a factor. Some felt that it was inappropriate for child participation in these situations:

I think that the kids should be included as long as there’s no danger to the kids. If were talking about a violent partner or violent ex-partner then no, but in all safeness and all security they should be able to have some sort of part in it. Ruth

Other parents, however, felt that children should be heard even where there was violence, providing there was reassurance that there was going to be no repercussions for the child:

... because when we were going through our relationship thing, I was in a bit of denial of what was happening at home. And [children’s father] was coming up with all these allegations and I’m saying – ‘You don’t know, you don’t know’. But if they had have spoken to the kids, I think they would have got the true situation, and really – like, it is about the kids – it shouldn’t be about the parents. I know it’s hard to admit, but...It’s got to be about the kids – it really has to. Mary

I was hesitant at first because they’ve been through enough as it is, but then I thought if it does bring out some emotion in them that would be good to help them, particularly to get it out in the open and he might feel much better. Sue

Not in my situation [where there was an amicable separation]. Maybe [children should be included] in other situations where there’s abuse or someone that’s violent. I was worried about my kids being in a violent house where they were physically throwing punches and that. I was worried that maybe the kids were witnessing that and maybe they wanted counselling for that. In that situation [where there is violence] maybe it would be good [for kids to go to a child consultation]. Luke

I think their father should hear exactly what comes out of their mouth, to be honest. The truth hurts. It might open his eyes up and he says he doesn’t, he’s absolved himself from his actions. He says he’s a changed man now, all this sort of stuff. And you know, so be it, let’s go, let’s move on. I would like him to hear exactly what the kids have to say. I just want what’s best for the kids. It might hurt me, some things that they say, but I’ve got to remove myself from my emotions to help them. Sue

It is important to acknowledge that an exchange with one parent revealed their perception that the mediation process had overlooked issues of violence in consideration of the contact arrangements and that there had been pressure for shared access. This parent’s perception was that keeping the focus on the children overlooked focussing on the child’s experiences of violence:

Trying my best to bring it back to the violence and issues there. I was pretty disappointed actually. [The mediator] basically said that s/he was pushing for the extra time so that they could see how the kids coped and I went but you’re not meant to be pushing anything, you’re meant to be helping us both decide. But s/he kept on turning it around saying .....so it would get over and done with. I don’t think that they took as seriously as I did but, you know, I am so emotionally involved in it that maybe I am possibly going a bit over the top but I don’t think so. Violence is not acceptable in any shape or form. Because there was no physical signs and there was no AVOs, I should have got an AVO, but I didn’t because I was too scared.

A third concern raised by parents related to the support for parents to hear feedback provided by the child consultant to parents. In particular, quite a number of parents did feel that parents need support and preparation to hear what their kids have to say:
I think so [there should be more support for parents]. Because you might be really, really shocked with what you are hearing and it might be the first time you’re hearing, you know, some deep sort of feelings. And if you don’t know how to address their feelings there could be repercussions. I think probably just a family counsellor to speak to the parents individually. You know, it’s great for the kids to be able to say what they’ve got to say, but it could rock the parents. So offering the same sort of support for the parents, if they needed someone to talk to, and they weren’t able to make an intelligent decision because it was emotional. Having someone professional helping them deal with that response. Sallie

We weren’t prepared. The lady came in and she sat down. She had these pictures with her and she just explained to us what the kids - because she had notes and she was reading from the notes - what the kids had actually said and done when they were drawing the pictures and things like that. Wendy

It is important to note comments from parents reflecting on what it was like for them personally. While it was these parents who had chosen to allow for their children to be heard, this did not make the experience any easier, with many parents commenting on how upsetting and painful it was receiving feedback from their children:

That session was hard for me I have to tell you. Meg

I got upset, I cried because I felt the pain for them and when it come from the lady who was talking to us I just thought oh you poor things. I felt really bad because I couldn’t give them everything and I want to, so, yeah, it was upsetting for me. But it was really good to hear it, and when it comes from somebody else it does sink I think a little bit more. But it all depends how they conceive what this person’s going to tell them. I still think they should know though. Because they wouldn’t tell them anything that would jeopardise the child, they’d only tell them certain things and do it in a way that for [the child] to understand without the child actually criticising I suppose. Not that children criticise, but... Janice

Whilst generally parents were very keen to hear from their children and appreciated the importance of hearing their views, some parents commented on what they saw as the inappropriate way in which the feedback was provided – in particular that both parents were together at the time:

We didn’t hear what the kids had to say until we were all sitting in the room. For me it was like being ambushed because I went into mediation going - well I’m preparing my argument based on the fact that I believe the kids want to be with me and you go in there knowing in the first ten minutes of that mediation I could be told a completely different story. And that, I think, is really difficult. If I was their father I would have been horrified and I think if he had heard that personally, privately that might have been a bit better than hearing it in everybody’s presence. I have no idea of how much material they did have and what percentage of that got shared with us. I don’t think it all needs to be. I’m biased because I had a positive outcome. Barb

It’s a very sensitive, stressful time in anyone’s life and you know probably the toughest thing I’ve ever had to endure in my life. And you just want to be reassured that it’s not going to be, I don’t know, exposed or your privacy jeopardised. Leyla

I was nervous because I didn’t know if they were going to come back and say, ’oh my God what are you doing to your poor children’, you know. Because I’m a yeller and I swear at them. You know, that’s how I am. I’m that frustrated because I think at my age I shouldn’t be a sole parent, right. That’s exactly how I feel and that bit makes me cranky. So I get angry at them. So I wanted to see if it bothered them and it didn’t, so it was good. Wendy
A fourth concern raised by parents related to the issues of confidentiality, with some parents indicating that they may have wanted to see the “transcript” of the child consultation if the report back to them had not been positive:

I’d like it be a bit more transparent because obviously they’re my children. But also they are part of a process. Even though I know they liked the idea of the confidentiality I just wondered if it was really that good an idea - not to keep it all transparent. I worry if you give the children too much power they may feel the opposite, going from feeling empowered and that their opinions matter, which is your aim, to maybe having too much responsibility. I was concerned about that too. If I was giving them maybe too much power and too much responsibility that they get overwhelmed with, “What should I do?” Pauline

If I had a negative outcome I might be inclined to say I want to see the transcript - I want to see exactly what was put in there. Because I had a positive outcome I thought the key messages were fine, do you know what I mean? Barb

Finally, a number of parents commented that their children did not understand the purpose of the child consultation, and that they didn’t know themselves how to prepare or advise them:

[Older child] knew it was to help her/him express, whereas [younger child] I don’t think really understood. I said to them its called a consulting, its not a counselling where you’re not going to be, you know, you’re going to be able just speak your mind and not have to. Janice

I really think that it was a great big mystery to my [child] and he/she had a lot of anxiety going into it. Because I couldn’t really fill in the blanks... all I could say was generally this is what I think is going to happen but there was just a natural anxiety level that was going to be there anyway. Marcus

The children just expected to be asked questions. Leyla

A small number of parents expressed concern about the time allocated to the child consultation. One parent noted that they didn’t feel that the sessions were long enough:

I don’t really think that they got to the bottom of it in 45 minutes. [The child consultant] couldn’t pick up on the subtleties. Mathew

Two parents voiced that they felt that children were not asked about directly about post separation questions:

I was just told that they wouldn’t ask any direct questions, as in who do you want to live with, who are you happier with, those sort of things. Marcus

Children were asked trite, surface level questions. Olivia

Two parents commented on issues related to siblings engaging in the consultation together:

They were together, they’re like twins and I liked that they were together but I also wonder if in some situations the dynamic overshadows the individual voices. Barb

[One of the children is] really good at communicating and making friends. But they’re talking about everything else but the subject and it took time away from the other children because she was able to engage [only one of the children] really well. Meg
Two parents conveyed their views that child consultations should have been offered or made available in instances when this didn’t occur:

> I wanted her to speak to someone. I wanted that to happen - I wanted her to be heard and I actually brought it up with [the mediator] and he was saying something about the dad didn’t feel that there was a need for it. I just wanted her thoughts on the situation…for her to be recognised because she’s an older child. She’s mature. I think that if her dad had been able to hear what she had to say with no fear of saying it he would be shocked. He needs to know what’s going on for her so he can take steps to change it so that she wants to go. It’s a no brainer. *Lily*

Several parents commented that they felt sessions were rushed or that the staff members were nervous:

> The consultant was nervous when she gave the report, which made me think – I don’t know what – I didn’t draw a conclusion about it, but she did seem nervous and lacked confidence. *Mathew*

> She was rushed and slightly nervous. It was like she couldn’t quite be with us, and it was fairly new. I think she should have stayed in the room. *Olivia*

A number of parents indicated that they felt that the FRC processes were not child-focused but rather father-focused:

> It was aimed more so for their father. That’s the way I perceived it. But the way that they were talking and the little scripts that they had for each of the couples and all the rest. It was very simple and very staged and it was like it was [supposed to be] aimed at children but it was more about men and their rights. Mind you, having said that I was very angry and I’m still very angry… you know, Dads in Distress and all that sort of stuff. Well what did Dads do in the first place to get to that stage? *Sue*

> So I felt that it was more about the dad’s rights in that. It was brought back to what’s best for [the daughter] a few times. So yeah it was a little mixed there. *Lily*

Two parents found the processes of both the mediation and the child consultation too formal and not focused on resolving emotional issues:

> It was all very legal, in my opinion, practical. The mediator was not willing to go into the emotional stuff. He wanted us both to make compromises and such that were just practical. [The children] would have been disappointed, actually, because they would have been hoping for some resolution. But all that came out of it was a plan. And actually we undid it really quickly, because what we came out of it with was a set plan that was based on a legal kind of contract. *Mathew*

> My advice to Family Relationship Centre is to stop being so governmental and personalise it. I know they’ve got to be very wary to cover their own bottoms and, you know, they’ve got to be seen to be non, what’s the word Non-biased yeah, but they’re only human and we’re human and we’re going through a really, really, really tough time and I think they need to be less stale about the whole thing, but not condescending at the same time. There’s a fine line, just treat us normally, don’t wrap us up in cotton wool or try and push us one way or the other. I think that’s more detrimental than anything else. *Sue*
5.5 Supporting children to participate in post separation decision making

5.5.1 Parents’ perceptions of what support children need to participate in decision making processes

Parents provided a range of suggestions for supporting children to ‘have a say’ in post separation decision making processes, including “reassurance” that there will be no negative consequences for them if they express their views, a “loving, safe environment”, “talk often” and “to give them flexibility”. The following views reveal the importance parents placed on supporting their children to have a say:

Give them an unbiased perspective on things, don’t load it up in one person’s favour or the other, always unbiased, always supportive and don’t sugar coat things but at the same time don’t expose them to stuff they don’t need to be exposed to. If you’ve got a beef with their mother or whoever it is or their father, keep it to yourself, you know, not around the kids, that’s basically what we do.

Sonny

I think they need to have the assurance that they are free of any pressure from any of the parents, that they can really can say what they want without feeling that they are letting someone down, one parent or the other.

Peter

5.5.2 Benefits of Seasons for Growth

Six parents suggested a good way to support children was for them to attend a program for children whose parents had separated. Two parents mentioned the Seasons for Growth program as being a good way to support their children:

At school they have Seasons for Growth and they offer that and that supports the kids if you feel that they need to. I think that if that’s the only thing that they get out of it it’s worth it because some kids feel that you wouldn’t want to know what goes on at my house... I mean I’m not sure if you have programs in place where children do get an opportunity to say but I guess if you had programs that existed that children could go and talk and be heard in that safe environment, and that was taken into consideration and monitored and seriously taken then it would benefit.

Tina

I think Seasons is great. My kids did it last year as well and it’s helped them a lot and [Her daughter] actually helps run it in the class, because they’re in Sixth Class so they have so many that come out and actually run the groups. And she’s found it excellent, it just helped her.

Janice

5.6 Barriers to children’s participation

Parents offered a number of insights into the reasons why they, and/or other parents, may be unwilling to support children to have a say, including consenting to their child’s participation in a child consultation.
5.6.1 Underestimating children’s competence

A number of parents felt that many parents underestimated children’s competence and their capabilities of being able to participate in decision making processes. Two parents mentioned “old fashioned values” impacting on parents’ willingness to hear their children:

Old fashioned values, children should be seen and not heard, you should do as your parents say regardless of whether or not you’re being hurt by it or you’re unhappy by it. Andrea

Old fashioned values, also arrogance from parents – they think they know what is best for a child without consulting the child. Ed

A related issue concerned parents’ beliefs that their children could offer a ‘neutral’ perspective, unbiased from the other parent’s influence. Some parents were concerned children’s accounts could not be trusted when there was “manipulation”. For example, Mark observed “if they’ve been manipulated too much and told too many lies and brainwashed sometimes you can’t explain the truth”. On the other hand, others considered children were reliable despite the fact that they might manipulate parents in order to negotiate parental conflict:

Some kids manipulate their parents, because they’re not communicating – the parents don’t communicate with each other, the children in a position where they can easily manipulate. And they don’t necessarily want to do that, but they’re always going to get out of a difficult situation if they can with a parent. I don’t think it is their fault they manipulate – it’s just a reaction to conflict. Mathew

5.6.2 Fear – for children and parents

Fear was also cited as a major barrier to children’s participation. This fear worked both ways. Many parents referred to children being too scared to have a say - fear of making parents unhappy or disappointed or precipitating further conflict between parents, or fear of provoking anger and retribution from one or both parents:

Well, probably the fear of conflict between the parents, fear of causing anger of one parent towards another, even if they’re not there. Luke

“Dad will yell at me” Cheryl

She was [scared] of hurting his feelings. Janice

Further, though, a significant number of parents spoke of the fear many parents feel about what children might say – a fear of losing their children or exposing their family – as a major barrier:

I’m scared of losing them, because I know at the moment, the home isn’t the way that a home should be for children to be brought up in. But I don’t want to lose my kids. As I said – it scares me what I would hear – how I’ve failed them as a mother. Mary

I think what it is an invasion of privacy. That’s what it is. I think you really need to drive home the fact that it’s confidential and anonymous. I actually thought about that and I thought well if there was something going wrong within the family, I as a parent would be reluctant to let my kids to talk to someone in fear of that coming out. You’ve got the exposure factor and people just don’t like outside parties intervening. They have the mindset, just mind your own bloody business sort of thing. Leyla
I think fears crop up. People might feel really ashamed about what’s happened for whatever reason, religious background or cultural background. Pride could be involved. I think especially in my case where there’s been abuse, I was fairly afraid to be sitting in the same room as this other person but they really protect you on that and so you don’t need to be afraid of that. Marion

It’s very, very difficult and I went in there and I said to the mediator I feel quite a degree of anxiety about bringing them in but that’s not enough for me to not offer them the opportunity because if they really have a position that’s different to what I think, I need to hear that. I really need to hear that. So it was really like taking a big breath in and putting on a brave face and going, right children this is what you need to do.... because I’d never, ever had a conversation with them about it. I just thought I really don’t know what you’re going to say. Marcus

Another fear reaction was tied up with parental fear of losing control:

I think, as parents, we really like to have control over our children. I mean obviously we need to have some form of influence but I think sometimes maybe we can bring our own feelings and ideas and it’s not necessarily the right way to go about things because we might be a bit distorted because of feelings we’ve got against the other party. Marion

5.6.3 Difficulties putting children first

A number of parents commented about how difficult it can be to put kids first at a time when things are so stressful for them:

I feel like I did all the wrong things. So it’s like hard for me to tell somebody what they should do, because I know how hard it is to not put yourself first all the time, and to put the kids first – it’s really hard. Mary

When it comes to Centrelink and people on low incomes, there’s financial interests in there too and it wouldn’t be honest just to negate that parents do have a financial interest when it comes to having children or not having children. Say an unemployed parent who doesn’t get any Centrelink benefits for children because he sees them only very infrequently might be tempted to want to have a larger share of the care just for getting some more money, whereas someone in a job or so this probably wouldn’t be a big consideration for them. Sean

5.7 Recommendations

Parents were invited to make recommendations to other parents, FRC practitioners and Executive and to children. The following section reports this data.

5.7.1 Length of time with children and follow-up

A number of parents recommended that child consultants should spend more time with both children and parents, during the consultation, as well as through engaging in more feedback and continued contact with families and children after sessions. Resourcing issues were identified as impacting on this service provision:

I would suggest follow up phone calls and things like that because there was a period where I didn’t need them, or things were going well, but then it deteriorated again. Maybe just a follow up call in case some people don’t feel confident to ring back. Sallie
And I think talking with people, especially after it’s been a while since they’ve been, even if it’s, you know, a couple of months once things have settled down to see if it’s going well, if it’s not going well, whether they were happy. Cheryl

When I was worried about something, you know, I would have liked to have, say, a direct phone number with [the mediator] and say I just need to talk this through. Because I’ve a really good relationship with her and she does put me on the straight and narrow. That would be the only criticism but most times I’ve left messages and she’s got back to me pretty well within a day. Sometimes when you’re going through all this horrible stuff you just want somebody outside to say, oh, blah, blah, blah, you know, to bring you back a bit. John

One consult and that’s it. And you know, as much as I like the way that the consult was done, I would have liked a bit more after that. I felt a bit hanging, left hanging in the air and I can imagine that the children would have similar feelings. Meg

I guess for the kids because they go for this interview type thing and then it’s forwarded on to the next mediator for the parents, but I don’t know whether the kids get a feedback and say ‘look your comments were really important’. Georgia

If Interrelate were to continue doing child-inclusive practice, they’d have to secure a lot more funding – not just for allowing a really strong period of engagement and trust-building with the parents, but to have that entry and exit very beautifully done. They’d also need to allow for that child consultant to be a participant – an active participant and guide during the mediation. I think that’s the only way that you can keep it going. Olivia

5.7.2 Improved resources for different aged children and for parents

A small number of comments were made regarding the need for some improvements in the resources provided for children within the FRC because, in the view of some parents, resources were targeted at young children and that there should be more for older children:

[I thought]... this is not the right environment for their age group. I understand what the doll house is there for. It’s so that they can place family members in the house and all that sort of stuff and reconstruct the family unit or whatever but I really don’t think that would really tickle their fancy. Sue

Other parents highlighted the need for information about the child consultation processes for parents and children:

One thing that comes to mind is when my son – was caught up in an awful situation and incredibly unfamiliar and my son’s not good with strangers. They showed him a video about exactly what it was going to look like from his perspective. It was amazing, he could see someone down on his level, an adult saying, you know, lets talk about what do you like doing at school. And showing that there’s no direct questions, its just one person in a room. There are toys there. Barb

I would’ve liked a little bit more... explaining in a child way. A pamphlet actually for them, explaining things. That’s probably hard because you’d have to do it at age groups, but I knew it was the right thing to do for him to understand. Bianca

Parents also suggested that some further resources would be useful for them too:
I think some case studies may be a good idea... with short movies... how it works with some families, one family which work under one schedule and another family that shares the kids equally like we do, a third family where they spend every second weekend with one parent, something like that to show them what’s involved and what the pros and cons are. Maybe even let the kids talk about what they like about the arrangements, what they don’t like. Peter

5.7.3 Recommendations for other parents and for children

When participants were asked to provide other parents with advice, they focused primarily on the importance of listening to children, and taking what they said into consideration:

I reckon listening, hearing them out, even if it hurts and letting them have that whole say. Whereas a lot of parents do interrupt and they don’t get to say or express. Bianca

I would just encourage other parents to take up the opportunity for the child consult. You’ve got to listen to what the child wants and not what you want. You’ve really got to take into consideration. You can’t really think about your anger with the other person, you’ve got to think of what’s going to be best for the child. Barb

I think instead of putting themselves first they’ve got to put their children first, and not put themselves last but put themselves on the same level as their children. Think of what they’re doing in relation to what it’s going to do to the kids. Don’t overreact. Just shut up and listen to the kids. Don’t try and give kids their ideas. Let the kids form their own ideas and listen to those and take them into consideration when you’re making decisions. Because the kids only know so much about life and sometimes their considerations might knock you off and think ‘whoa’. But at the same time you might not want to implement that because it’s not practical. But you’ve got to listen to them in any case because it lets them unload and it lets them know where you stand with them. Matthew

Parents also offered some advice for children, with a key theme being to encourage children to find someone they can trust to talk to:

Take a deep breath. Remember that your parents love you. I’m sure of that. And talk to your parents. Don’t bottle it up and if you can’t talk to them you talk to someone close to your family or something like that - your school teacher or something like that. Talk to somebody. Don’t bottle it up. Sonny

Don’t bottle things up. It’s mainly got to be said to male kids because girls have got that tendency to be able to talk anyway - women network all the time, whereas guys hold it in and explode and that’s why we’ve got such a big suicide rate in Australia amongst guys my age. And if you internalise everything it’s like a pressure cooker where you let the pressure off, it’ll pop its lid. Luke

Yeah just letting them know that they can go out and talk to someone, because I know a lot of kids, boys and girls just [want] to be able to talk. Maybe schools should mention that there’s counselling a lot more. Because it doesn’t even have to be that your parents are fighting or if it’s just personal too. I think talking is really expressing yourself, and maybe education needs to know that people do get depressed and down out. That’s probably a thing that just every day life is now and it’s not something to be embarrassed of or hide. Maybe [if] the kids learnt that from when they were young. Bianca

I guess speak up. Don’t be afraid to speak up, speak up to mum and dad. That’s the ultimate if you can. If you can’t there’d be a lot of times where you can’t, you just don’t feel comfortable to speak up and say....so if you’re game enough ask to speak to somebody who’s specially trained to listen and record what you’ve got to say, and then let the mum and dad know what you’ve said in a space where maybe they don’t have to sit and listen while they’re being told, away from that so they’re not frightened. Lily
5.8 Parental views on research

Of the 17 parents asked, all were positive about involvement in the research project described in this report. Some parents reported that they enjoyed participating and having the opportunity to talk. Others commented that the interviews were professional and easy to understand. A number of participants commented that the interview assisted them to reflect on their involvement in the dispute resolution process:

It helps me reflect… it’s a good counselling tool for me to relive some of the history or the path I’ve taken. It would be good to see the outcomes - of how it helps the kids… will it end up kind of opening doors for others? If not many people have participated, they need to, otherwise, there’s nothing to learn from lessons learnt. *Olivia*

It's good. I’ve never had an opportunity to talk about the process. *Pauline*

Some parents did acknowledge that they were reticent to participate, or for their children to participate, but that they could see the benefits and importance of doing so:

I was very reluctant. I didn’t really want to go there again, you know. Once you’re through the whole process you sort of happy to leave it behind, you know, move forward. And doing this kind of thing always makes you go back there into those times and feelings and, you know, you don’t voluntarily want to do that too often. *Meg*

When I first got the letter I thought oh what’s going to be involved here. I was a bit scared for them I think. I didn’t want them to feel pressured. So I thought about it and when [the mediator] rang me and she sort of said, you know, how do you feel. And I thought I read it but I didn’t understand. And she sort of said … a bit like what she did with the other consultant. And I thought oh well that’s not too bad and I said if this is going to help that’s fine by me. And I just spoke to [her daughter] about it so she was forewarned. *Janice*

I told them it was in aid of helping other children, you know that basically they’re just going to ask you some questions relating to your experiences and they can use that information to help other children. *Leyla*

Others commented that the research was likely to inform the work that FRCs were doing and hoped their feedback would inform the future direction and planning of the FRC:

I think it’s great that somebody’s doing that on behalf of them and it will only improve their services, *Sallie*

You can only read so many books or journal articles theorising about what could happen or could be not happening. I think it’s really important to actually talk to the people. It’s really the only way to really find out what’s going on - actually face to face. Also I think it’s important to try and – not telling you your job or anything but [ascertain the] backgrounds from people because my point of view is going to be totally different to someone else’s point of view. It could even just be purely because of experiences growing up or social experiences but definitely, this is the number one way to go. *Marion*

I think the way you’re doing it is good because you’re actually getting it from the people, the people who’ve gone through it, and if you’re interviewing children…. well that’s even better because you’re getting it from them first hand. *Olivia*
5.9 Chapter summary

This chapter has reported the narratives of 27 parents talking about their views regarding children’s participation in family law decision making, in particular, in child-focused and child-inclusive family dispute resolution. The chapter reveals parents were supportive of children’s participation and focused on participation as being about listening to children and taking their views into account. The parents in this study considered that, as a general rule, children have a right to be heard and are able to contribute positively to decision making processes in ways that benefit both children and parents.

It is perhaps not surprising, then, that parents were also strongly in favour of child consultations in FRCs. The parents in this study identified a number of significant benefits of child consultations, including learning their children’s views so as to inform their own decisions, as well as benefits for children, such as being recognised as part of the decision making process, being able to talk to someone and to have their views heard. Parents also spoke highly of child consultants, describing them as welcoming, friendly, warm and able to make children feel comfortable so as to participate in the child consultation.

However, while parents were positive, overall, about the child consultation process, they also expressed a number of concerns about the process. These included: the child consultation process appearing to be separate from the dispute resolution process; concerns about balancing children’s participation with their protection; lack of follow up – for both children and parents - following the child consultation; the confidentiality of the process for children; the short amount of time allocated to child consultations; the lack of support for parents to hear their children’s views; children’s uncertainty about the purpose of child consultations; and that child consultations should have been offered when they were not.

Having explored parent views about participation and child-inclusive practices in FRCs, the chapter reported parent views on how to best support children to participate as well what barriers exist that prevent children’s participation in family law decision making. Foremost amongst the barriers identified by parents was underestimating children’s competence to participate and fear both for children - in terms of hurting their parents or of retribution for speaking up - and for parents – concerning what children might say. The chapter concluded with recommendations from parents for the FRC, children and other parents, as well as a summary of parent feedback about their experience of participating in the study.
Chapter 6: Staff Views about Children’s Participation in Family Law Decision Making.

6.1 Introduction

In this chapter we present the views of 10 staff members interviewed for the study (eight female, two male). The semi-structured interviews focused on how staff viewed the participation of children in the FRC, including in child-focused and child-inclusive family dispute resolution. A range of issues concerning both children’s participation generally, and the child consultation process specifically, were explored and recommendations made concerning ways in which children’s participation could be enhanced in the service provision of the organisation.

6.2 What is children’s participation?

When asked to define children’s participation, a number of staff members emphasised that children’s participation represented a strong focus on relationships and a more holistic approach to practice:

In this sense, child participation was defined by staff in relation to FRC processes, specifically child consultations, and accordingly, children’s relationship to parent mediation sessions:

The majority of staff defined children’s participation as a model (the ‘Jen McIntosh model’). For example Staff 4 identified children’s participation as more of “an underlying philosophy in what we do in order to get parents past their conflict if they focus on the children’s needs”. Another staff member described children’s participation in terms of their professional role – that of advocate rather than mediator:

In this sense, child participation was defined by staff in relation to FRC processes, specifically child consultations, and accordingly, children’s relationship to parent mediation sessions: “Child inclusive for me is bringing in the voice of the child and that happens through the child consult” (Staff 4). Yet defining children’s participation in this way also highlighted the limitations and selectiveness by which it was applied:
Consistent with the child-focused and child-inclusive framework developed by Jen McIntosh, staff distinguished between child-focused and child-inclusive approaches to facilitating child participation. Child-focused processes were clearly seen by staff as pivotal in FRC’s dispute resolution processes:

FRCs promote what they think is in the best interest of the children and that may not be in the best interest to the parents. That, to me, is being child focused. Staff 5

Being child focused is the whole way through the process. We're asking parents to have a look at the decisions that they make and the behaviour that they're choosing and the impact that that's going to have on their children and how these groups are going to work for the children, and what are the responses going to be for the children. How can we make this whole thing better for the children? Staff 4

Child-inclusive family dispute resolution was identified as presenting or “bringing in” the voice of the child in the dispute resolution process; making parents aware of their children’s views. While staff described the principle of child participation as important, their responses revealed tensions in perceptions regarding the balance between family dispute resolution process and children influencing outcomes. Thus, facilitating child participation in family dispute resolution was, on the one hand, about providing an opportunity to challenge parents’ perspectives on family law decision making: “effecting a change in the parent’s heart and their head” (Staff 7). In this sense, child participation was as much about parents, and their openness to hearing the voices of children:

I’ve got to come back to the parents again because, for effective child participation - the child can participate all it likes and say what it really wants to say but parents have to be open to hear all of that - even if it goes totally against the agenda that they want. Staff 6

Hence, an important aspect of children’s participation in family dispute resolution was seen to be an educative role for parents - assisting parents to see the impact of conflict on kids and to provide tips and tools that parents could draw upon. The resources developed by staff in particular were seen as playing this role:

[In] a lot of the conflicts we see parents have been unable to focus on their kids and are so caught up in the conflict between them. That's our child focus part of what we do... (to) get these parents to look beyond their own needs to their kids' needs. Staff 4

On the other hand, staff expressed the importance of giving children an opportunity to contribute their views so that children’s views might be taken into account and/or acted on (“someone’s going to do something about it”). One staff member emphasised that child inclusivity meant “giving children some say over what becomes of them... seeing the child as an equally contributing person” (Staff 5). This focus on outcome was explicitly countered by another staff member:
In presenting their perspectives on child participation, and the role it played (or should play) in family law decision making processes, staff also were firm in contextualising and qualifying their comments around ‘appropriateness’. Staff clearly emphasised a perception that participation was not appropriate in some circumstances, heralding issues and tensions around balancing participation and protection (an issue which is discussed in some detail later in this chapter). Staff also highlighted that acceptable practices in regards to child inclusiveness had changed over time:

Initially, say 15 or even 18 years ago, children’s participation wasn’t viewed as very important, and when it was used in terms of case work the safety issues of children were totally disregarded. It was like it was a process but there was no kind of theoretical underpinning around why you did it and how to make it safe. Over time that’s changed significantly and I would say my understanding is that it needs to be well considered whether it’s actually in the child’s best interests and that’s number one - and then we look at it in terms of making a shift for parents, and I’m talking mainly through the mediation process. But there needs to be those safeguards and the screening assessment tools and the assessment skills that you need with the parents to determine whether it’s going to be safe.

Participation was also contextualised in terms of age appropriateness: “I would limit the youngest at I think about six. I wouldn’t go any younger than six and with no limit obviously with kids beyond 16” (Staff 4).

6.3 Why children’s participation?

Given that most staff defined children’s participation in the context of FRCs, it follows that the rationale for children’s participation was also contextualised within current child-inclusive and child-focused processes. Most staff indicated that children’s participation was important as it provided benefits for both children and families. Yet staff also problematised the policy context driving FRCs which might make the practice of child participation more problematic. This section explores these issues as described and discussed by staff.

6.3.1 Benefits for children

Staff described children’s participation in the form of the child consultation as a positive experience: “They might come in a little bit nervous but often will go out skipping down the corridor. So that to me is a really big sign that that it was a really good experience for them” (Staff 1). The process was seen as affording children the opportunity to talk about their experiences: “that in itself is beneficial for the child to just be able to be heard by someone who’s neutral to the situation” (Staff 1); “I think that in many ways the kids having that ability to
unload things and get things off their chest is a huge benefit” (Staff 4). Very tangible benefits were also identified, including instances where the consultation process provided the opportunity for children to work out that the family difficulties were not their fault. The process was also attributed to helping children to identify coping strategies: “...because Mum and Dad aren’t giving them any coping strategies; Mum and Dad don’t have any coping strategies, you see” (Staff 7).

Staff clearly felt that providing children with a say could be empowering and that just being able to express themselves and be heard was really beneficial:

> Kids get that opportunity to actually say to somebody this is what's happening for me and have that somebody take it somewhere useful and say to mum and dad well this is what we can do. It's very practical and it can have an enormous impact on kids' lives. So it works on a couple levels, it's able to give kids some relief... not only is it off your chest but someone's going to do something about it. Staff 4

> When some of their ideas are taken up by the parents for children that's like being an active agent in the world and actually being able to have some say. A lot of children that I've seen feel very, very powerless in the world. They're often not doing very well at school. They've often got very low self esteem and their social networks are usually quite small. So often they don't feel successful in a whole range of activities.... in the community, in their school, even in their family. So it can be very powerful for those children. Staff 8

Conversely, a number of staff were keen to express that there could be negative implications for children when they do not have a say, or feel they are not being listened to or included:

> If parents aren’t hearing them, or only hear what they want to hear and twist the rest of it, you know... what was the point? Kids will become distrustful of that - what was the point of having a say... Kids hate it when they are not heard and not understood. They're angry, the kids that come in, and just say it doesn't matter – they're not listening to me. It just diminishes them as a person. I'm thinking mainly girls here - the angry ones. All they want to do is sever ties and move on. Staff 6

### 6.3.2 Benefits for families

Staff also identified a number of benefits of children’s participation for families. Once again, when understood as a child consultation, staff reported that the process was seen as stimulating parents to work together more collaboratively: “getting good things happening for their kids” (Staff 1). Staff emphasised that although most parents want the best for their children, they can’t know what children want without asking them:

> I think they're all caring people and all want the best for the kids. How much they take their views into account? Well, on so few occasions are those views known directly. It’s only when you do a child consult that you could even know their views. I've no doubt that every single one of them has the best at heart for the kids, if only they knew what the kids actually wanted. Staff 2

> But the focus is to basically take the blinds off their eyes. Every parent loves their child, they want their child to be healthy and strong and happy. That's always the positive thing. Staff 9
Most people love their children. Most people want their children to be happy. Most will listen to their children and most will take on board at least something, or even they might feel a bit closer to their child, like the child’s disclosed something and so they’re supportive around that. That can lead to a better relationship with that parent. Staff 8

While staff did note the potential benefits for some parents in reducing conflict or achieving resolutions in their disputes, data from staff also highlighted that these benefits were highly dependent on the circumstances and contexts of the parents:

A certain segment of families, and the certain segment that we deal with, are often poorly resourced in a lot of ways. They have limited educational ability. A lot of our clients have left school quite early. Their reflective capacity to evaluate how their parent’s parented them and what are those generational issues for them, they’re often not able to reflect back on that and to make changes. That’s one of the crucial points around child inclusive practice. It works, from my perspective, for people who have a high level of understanding of concepts and things like that... we have a lot of people come in and they want black and white, it’s either right or it’s wrong. Staff 8

6.3.3 Staff views on policy issues concerning the establishment of FRCs

Staff were asked to comment on government policy surrounding the establishment of FRCs. Views were generally mixed. Many staff praised the underpinning concern for children’s and families’ wellbeing, seeing this as having longer-term benefits for the community and society as a whole:

I’d like to give them some credit that they were concerned about the effect on children and the detrimental effect of parents leaping into the court system once there was a breakdown in the family and the children simply became a weapon or a tool. Staff 10

It’s a huge cultural shift in terms of Family Law - that they’re asking people to have a go at mediation before the Family Law Court. So it’s actually putting the responsibility back to parents as having parental responsibility of their children, for the children. So I think the intention of government is very much child-focused. Staff 8

However, staff also expressed differing degrees of cynicism about the policy context driving the establishment of FRCs, seeing the approach as “saving them a lot of money in the court system” (Staff 10):

Before I came to work here, I read everything, the senate inquiry the whole lot, and I found it really great. But I think the establishment [of FRCs is] just a... token gesture. I don’t like the whole model, frankly. Staff 7

Although staff believed the government genuinely thought the Centres were focused on children, issues such as time and resource allocation (which are considered later in this chapter) contributed to staff’s diminished satisfaction with the model and their (often) view that the approach was about saving money through Family Courts:
Currently [support for children] is not our brief. If we’re really serious about looking at the needs of children and children’s rights and views and how that is expressed through the parenting arrangements and their needs and feelings in relation to that, then I think we probably should go into that [longer term follow up]. But we certainly couldn’t do that within our existing funding. So we do it as part of the package but are not necessarily funded for it and this is the big dilemma. So to go in and do something for children - unless it was funded by the government - would be a really difficult thing to do. But it does make sense to work in a holistic way, it’s the child, it’s the school, it’s the child’s community, the parents but also the extended family and it’s kind of like assistance. Staff B

A number of comments were made throughout the interviews regarding points of dissonance between the conceptual/policy context of FRCs and the reality of child-focused and child-inclusive service provision. One example concerned the nature of family conflict FRCs were dealing with:

When I first came here I thought it was all very black and white - high conflict [cases] off to court - that we’d have nothing to do [with them]. Honestly we would have nothing to do. Be twiddling your thumbs. Reality is that often people don’t have the resources to go to court - don’t have the finances. If they are not entitled to legal aid, I mean there are women coming in here in high levels of domestic violence who might own half of the family property, which excludes them from access to legal aid so therefore we are going to run a shuttle. Staff 7

6.3.4 Purpose of child consultations

Staff were asked to describe what they saw as the purpose of child consultations. As previously flagged in section 6.3.1, an oft mentioned purpose of child consultations, from the staffs’ perspective, was to provide children with the opportunity to talk to somebody – to “get things off their chests”. This perspective saw listening to the child’s views as in and of itself important, regardless of whether it led to action or to the child’s views being taken into account:

Where it’s appropriate, children feel as though they’ve got a voice. The children actually often feel heard, even if that doesn’t go as far as we’re not able to provide information and feedback in an FDR session. Children have been heard by the counsellor in a sense and their experience has been validated and they’ve been believed. So even if it doesn’t go any further than that - I mean, that is the benefit for the child. If it does go further and the parents are receptive to listening to what the needs of the children are it can have huge benefits for the child’s voice being a real part of the parental decision making. So children feel really important about that and feel that their concerns are listened to or validated. Staff B

These views were often at odds with other comments which emphasised that the purpose of child consultations was for children’s voices to be heard and conveyed to parents via the mediation, and as such the nature of what was discussed in the consultation sessions should be around matters which could be shared with parents:

The purpose of a child consult is to give the kids a voice and to have that as part of the decision making and getting the parents to really support them and focus on the kids because there’s so much they’re dealing with as well. It’s really hard. So to keep that focus there and keep that balance. Staff 1

This latter perception as to the purpose of child participation, in the form of the child consultation, placed a stronger emphasis on children’s roles in decision making:
I think they need to be made to feel like they’re part of it. Like they are part of the decision making process. They’re not the decision makers but they’re part of the process. So yes that reassurance, because quite often in a lot of families, they’re nothing. They don’t get a say at all and they’re used to that, so why bother. Ultimately the decision has to be made by responsible adults. But we’re not talking about the children making decisions, we’re talking about the children giving input about how they feel and what they want. That’s a big difference from making the decision and I think we need to know that. Staff 2

Staff were asked whether the child consultation process would have benefits if it didn’t necessarily involve sharing the information back with parents, and staff responses to this question emphasised the intrinsic benefits of the consultation session:

At least having one person acknowledge that I understand what you’re going through sort of thing can be of benefit. I always think that that in itself is beneficial for the child to just be able to be heard by someone who’s neutral to the situation. Staff 1

Importantly, staff made a point of highlighting that the child consult was not the same as counselling, even though they were using counselling skills. Two points of difference were highlighted. Firstly, that there was no opportunity for an ongoing relationship: “you don’t set a child up to think that this is going to be an ongoing relationship. Because you don’t want to think oh they want to come back and see you and then you let them down” (Staff1). Secondly, the issue of confidentiality was highlighted:

If you’re doing counselling with children that’s totally confidential unless you say to them I think mum and dad (should know) – that’s different from a consult. A consult is mainly about what’s going to go back to mum and dad. A counselling session is just for them. And to feel totally safe in a counselling session they need to know that I don’t go out and talk to mum and dad after the session. Staff 1

Clearly staff were positive and enthusiastic about child consultations and believed they could made a difference, although staff also commented that one of the barriers to child consultations was that parents might not share these same views of the consultation process.

One staff member felt it important to emphasise that the child consult was not about directly asking children whether they preferred to stay more with their dad or mum:

We don’t ask them directly about how they want it. They sometimes come up with it and if they do I follow their lead... it depends what the issues are. They’re all different. The parents want to know because it helps them with what decisions they make. I’ll put it that way. Staff 1
That said, this is not reflected in the following quote:

Look if the child's views are saying an adamant thing about a particular... I will put that across, because I think that is worthy. Because there are reasons behind maybe not wanting an overnight visit or something... and also they are talking about kids liking a certain stability... like they know that every second weekend and every Tuesday night they go to blah blah's place and the other times they stay there and that seems to be the best... that is what they are saying works for them. So usually the kids will tell me... you know I say what is your set up now - what do you do... what's that like... and they will tell me whether they like it or not - they are pretty up front whether they like it or they don't like it. I am find when Mum and Dad are not in the room they seem to be genuine in their feedback telling me - whatever form they have got - whether it is shared - you know half half or whether it is a bit of this and a bit of that... or whether its “I don’t see my mother at all and I am very happy about that”

Staff 6

6.4 Children’s participation in FRCs: Staff views and concerns

While staff were all positive about the potential benefits of child-inclusive practice for children and families it was clear that staff also held a range of reservations about some aspects of the process.

6.4.1 When to include /not include a child consult

Interviews with staff sought to better understand issues surrounding the decision as to whether or not a child consultation should be conducted. Factors influencing staff decisions to conduct child consultations included:

- parents being open and willing to hear what the kids have to say;
- both parents consenting to the child consultation;
- it being considered safe for children;
- when there are transitional issues or changes for children such that children’s views can be incorporated into the agreement;
- where children haven’t had the opportunity to be heard; and
- when children were considered to be at the right age.

As previously indicated, appropriateness of child consultations was a major issue for most staff interviewed. Staff emphasised the importance of being sure of the appropriateness of the consult:

“If I’m in doubt about this being a really positive thing for a child I won’t do it” (Staff 1). While circumstances were referred to where parents had said no to their children being involved, the main reason cited for child consultations not being appropriate was perceived safety of children.

Elaboration on safety issues ranged from circumstances where an AVO was in place (“It’s not an uncommon experience you know” – Staff 7) to contexts where it was felt children would be pressured to express particular positions:

Mum is keen to bring the kids in for child consult or Dad’s keen to bring them in because they are wanting them to tell Mum’s side of the story and Dad’s side of the story and the kids may feel quite torn. Staff 7
As one staff member elaborated:

> You can put the kids in a worse situation by doing [a child consult] if you haven’t got parents that actually can get the point of the feedback. It actually can make things worse for kids, especially people who say “no choice, spend time with me”. Those kids would just get tortured. They’d be too fearful to come because they know this war’s going on and they’re not game to speak up clearly because mum says this, dad says this, and they say that it’s only that the father told them to say that, or the mother did. *Staff 1*

A number of staff indicated that there had been a small number of incidents where, despite careful established processes, children had become involved in child consultations, perhaps inappropriately. Such reservations related to parents perhaps misinterpreting feedback and potentially children being exposed to difficult or dangerous situations as a result of being involved:

> I had a few - not disturbing - but reservations - where children’s voices were heard and I could see from the parents that it wasn’t received in the light that I was expecting. So then I became more reserved, thinking I’ve got to protect the children because I don’t know what’s happening out there. I’ve seen some responses from the parents in terms of listening to the feedback that I was concerned about. *Staff 3*

Staff clearly felt that decisions around whether a child consultation was appropriate or not were highly problematic and difficult:

> I don’t want to be bringing a child consult into mediation if the parents are unable to hear that information and if there might be like a negative impact on the kids when they go home. So if the parents are going to go home and say well why did you say this, or why did say that, that’s going to be a negative. *Staff 4*

> There are some cases, with violence especially, I think probably the best things the kids can do is keep their mouth shut and don’t bring attention to themselves. *Staff 2*

One staff member highlighted the issues related to age appropriateness:

> A lot of new conflict is around very young children - a new born babe at some times, or two year old, three or four year old. So there is not the opportunity there to have that child inclusiveness. That’s the other side of it. How do we deal with those tiny little ones. *Staff 7*

Another staff member (Staff 5) made it clear that he asks parents to defer decisions about whether they involve their children in a child consult until they are introduced to Building Connections and until such time as the staff member has a clear understanding of their level of conflict. The rationale for this delay was so that the staff member could determine whether the consultation process might put a child in a vulnerable position. It was also emphasised that this provided the opportunity to clarify to parents that kids aren’t asked who’d rather live with, nor are they encouraged to criticise either parent, but rather to explore their experiences and what it is like “having a relationship with two people that they had under the same roof, under separate roofs and sometimes with blended families and new relationships”.

Yet staff were also quick to note concern that their conservative and wary approach was diminishing the number of children involved in the process. Frustrations were expressed by some staff about the **number of times a child consultation wasn’t “appropriate”**.
I wish I had more cases where child consult are more appropriate, I just really don’t... I love the child consult and I want to use it, but can’t. You know it is very rare to find a family that that model is going to work.  Staff 7

This same staff member indicated that they had used child consultations only three times in twelve months. There were evidently tensions for staff around the balance of protection and participation. This tension is highlighted in the following two quotes from Staff 2:

I know we’re very cautious about revealing anything the kids might’ve said that might get the kids in trouble, and we should be. But somehow we’ve got to find a way of showing the parents what’s going on their kid’s head, what they’re feeling. Because it’s not only what they want, it’s what they’re suffering. Quite often that’s overlooked.

I think we treat them too gently, kids. We treat them like they’re made of glass and I don’t think they are. I think they’re a hell of a lot tougher than we give them credit for and I think any bit of discomfort they might feel in being in the situation is counterbalanced by the sense of being heard, you know giving them some sort of control over their lives. So I think we worry too much, oh poor Johnnie we don’t want to put him under stress. I’m sure they’re under far more stress having to keep silent in a difficult situation and having only their mates to tell, and nobody that hears them or understands them is going to make any difference. I’m sure that’s far more stressful than being asked tell us ‘what you think’.

Clearly, staff were also concerned that decisions on whether to conduct child consultations were being made solely on the basis of readiness of parents, with no opportunity for advanced contact with children themselves:

What information do we know about that child before we get them in touch with child consult? We don’t. We book them in with a child consult. We know nothing about the child, the child’s history. We don’t know any of that. So we sort of put them in that environment without really knowing, Staff 4

6.4.2 Inviting children to be involved and seeking their consent

Several staff members discussed the process of children being introduced to, and invited to participate in, a child consult. Staff 7 reflected that letting children know about the process ahead of time might provide them with an opportunity to think about whether they really wanted to participate and how they could use the opportunity to their best advantage. Yet staff indicated that children had little or no direct involvement in this process:

It is up to the parents to tell the kids why they are coming in. Until the child gets into that child consult room, they haven’t had any information from us what so ever. With other people [adults] we are doing an intake to see if they want to participate in the process and to find out what is going on, but with the kids they are just arriving. They can say “no they are not going to participate” but I wonder whether they would feel okay to do that? Staff 7

Although it was hoped that parents would have talked to their children before bringing them along to the FRC, several staff explained that this wasn’t always the case: “Often the parents really don’t know the right way to talk about it, so when the kids come in they are pretty well in the dark. When they walk into the room they really don’t know what is going on” (Staff 6). Staff also related
instances where parents had raised their concerns and asked for guidance about how they should talk to their children about being involved:

**Quite often parents say well how should I tell my kids they’re going in there for an interview? I say well for a start don’t call it an interview, rephrase it in a way that says we’re just going to pop over and have a chat to such and such. So how you present it to them is important and that’s all done by the parents. Staff 2**

The timing of the child consult in the family dispute resolution process was questioned by one staff member who indicated that perhaps children needed to be involved and provided with information much earlier in the process “so they understand where mum and dad are going and what they’re doing and what the aims and possibilities are and what they might be able to do to make it better” (Staff 2). Staff 2 also pointed out that four - six weeks could pass between initial contact of parents with the FRC service and the children becoming involved.

The process of talking to children about the consult process, once they were beginning the session, was described by Staff 6:

**Sometimes if they are smaller kids I will read them a story - one of our FRC books - so they understand it that way. If they are a bit older, I just talk about... basically... you are probably holding on to stuff you don’t want to tell Mum or Dad - you want to protect them. I talk to them about what it was like for me at that age - I always wanted to protect my mum and dad...and this is an opportunity for us just to talk about stuff... and I am going to write a few things down, and if there is anything you don’t want me to say to Mum and Dad that’s cool... So I try to make it pretty informal so that they understand that all we are talking about is what it is like in their family now... that other things might come up and sometimes you want to talk to me about it but you don’t want mum or dad to know about that bit so that is OK... so that is how they get it explained.**

Staff indicated that most children seemed “pretty relaxed” and that, although they were conscious that it may be necessary to put children at ease so they don’t feel threatened, they didn’t feel many children felt this way: “Maybe they’re looking forward (to it). Somebody wants to ask me something” (Staff 2).

**6.4.3 What do kids expect from participating in a child consultation?**

When asked what they perceived children expect from the child consultation process staff provided diverse responses. Staff 1, for example, felt children expected that it “will improve the situation. That their needs will get out there and hopefully get met”. Staff 4, however, felt that they expected “Not to come out worse than when they come in... that their lives aren’t made harder by having their voice heard”. Similarly, Staff 7 voiced a personal perception that children should expect that whatever is fed back to parents is with their consent, and that they should expect outcomes. Staff 6 in contrast, highlighted a perception that many children didn’t know what to expect:

**A lot of kids have just come to the [process] naïve really - they haven’t really got expectations. When I [say] there is probably some stuff that is really hard to say to mum or to say to dad, but it is in there and you do not know what to do with it... I can see a little bit of the light bulb come on then like ‘oh yea... there is probably stuff there that I do want to get out’.**
Even though they might not verbalise it, they see it as an opportunity. I say, ‘look, I am your voice. I am the one who is going to go in there and tell mum and dad’. I can word it in such a way that they can actually hear what you say. So they see there is an opportunity they can get what they really want to say across without having to be face to face with mum and dad... and maybe see their tears or see the thing they are very frightened would happen if they said it. I have had some kids who are really forthright and they know... they have already worked out their own parenting plan and they have a specific goal - they want me to let them (parents) know and agree to it! They are not as frequent.

6.4.4 The question of confidentiality in child consultations

Confidentiality in child consultations was an important but problematic issue for many of the staff. Staff were committed to ensuring that children felt confident to talk to them, but were clear that the main purpose of the consultation session was to discuss matters to share with parents:

I think children should have confidentiality as well and if they feel that certain information is going to put them at risk I don’t think you should share it. On the other hand, if there is information there that I think the parents absolutely must know, even if the child does not want it known, I think they should know. So it’s a very hard balancing act. Staff 2

The difficulties arising for the child consultant when a child is unwilling to share any information were also raised:

I have had kids in the room and within 30 seconds they are basically on the floor almost crying over specific abuse that they have received. It’s unsafe to feed that information back to mum or dad - but I am in a terrible situation then because both parents know a child consult is taking place and they know feedback is going to take place and I know... because of what they are telling me about that particular parent...I have already worked out they are not going to listen to this...but I have to do something about it now because they already know it is taking place and if I say no feedback that child might be unsafe. Staff 6

Again, a contrast was drawn to counselling contexts:

See if you’re doing counselling with children that’s totally confidential unless you say to them I think mum and dad [should know] – that’s different from a consult. A consult is mainly about what’s going to go back to mum and dad. A counselling session is just for them. And to feel totally safe in a counselling session they need to know that I don’t go out and talk to mum and dad after the session. So there’s a different boundary around that. Staff 1

Despite these concerns, feedback from Staff 6 highlighted the sensitive way in which issues of confidentiality were discussed with children:

I haven’t had a kid yet said to me I don’t want to go on with the process. Let them be reassured that whatever I write down, I am going to read it back to them when we are finished and if there is anything in there (no kid has said none of it) that they don’t feel...so I am trying to empower them within the session the whole time -that they are in charge and I am going to feed back what is cool.
6.5 Supporting children’s participation

Interviews discussed with staff the strategies they used to support children’s participation. These included:

- child friendly books that spell out, in child-friendly language, why they are coming to the Centre and normalise what’s happening to them;
- the physical layout of the offices and the rooms and the equipment provided;
- embedding processes that give children the ability to say no, or I’ve had enough;
- providing children with strategies for saying to their parents that they don’t have to talk to them about the child consultation process;
- talking to parents about how they should behave toward their children after the child consultation:

  ...giving the parents clear information about what the child consult is all about and informing the parents at that stage that it is really important not to drill your kids on the way home. What they say you will hear in the feedback. Don’t even say anything. So getting that point across there. That is setting up, hopefully, a safe environment for the kids and then of course the child consult being totally supportive of the child throughout the whole process. *Staff 6*

The child consultation room was seen as an important aspect of the child-inclusive model of participation promoted by FRC’s. Staff were very positive about these spaces, viewing them as child-focused, friendly and safe: “I’ll tell you what I would’ve loved my bedroom to be like that as a kid. You know like all the cuddly toys and just all these bright things. Kids would have a field day in there. They’d just absolutely love it” (Staff 9). Beyond aesthetics, these spaces were seen as critical in conveying to children and their families the focus of the centres:

  The minute the children walk in the door it’s then that they begin the process. So the way the children are greeted, made to feel that they are important and respected and not patronized. That’s really important. I think the child-focused approach is critical to getting positive and long standing results in children’s welfare in the context of the parents with plans and the work that we do. *Staff 10*

A key aspect of supporting children in the child consultation process were *strategies for engaging them in conversation*. Staff were asked what a good conversation with a child in this context required. Staff described strategies they used to relax children and get them to be comfortable with the process:

  If a child’s stumbling I’ll say is dad a bit of a pain in the neck sometimes? And then they go, yeah. And then we’re away. It’s almost like an admission to be honest in saying this is between us. And so a little bit of that sort of giving permission to be honest... They start to do the materials or pick the cards, or sometimes we don’t get a chance to do anything with the materials because it’s just talk, talk, talk. *Staff 1*

  You’ve got to speak in their language. That’s a universal truth. Whoever you talk to you’d better be talking in their language... I unconsciously change the way I speak. And that’s what you’ve got to do with kids, just communicate with them in their own language. It’s harder said than done. *Staff 2*
Another aspect of supporting children was staff’s consideration of their potential need for referral to other services – a point which is considered later in this chapter. The sensitive way in which such matters were dealt with by staff is exemplified in the following quote:

I sometimes say do you want to tell mum ...it’d be good to talk to someone, or do you want me to? And we look each other. And so I do ask their permission about that. If they’re younger I might say something to them like I’ve really enjoyed talking to you today. This wasn’t too bad, was it? Would you like to meet someone else who might be able to see you a few times because I can’t because that’s not the job I do here?  

6.5.1 Feedback to parents from the child consultation

Staff talked about the sensitive way in which they explained to children the process of sharing feedback back to parents during the mediation session:

Sometimes with children who are a little bit nervous about some of the feedback, I tell them that things are okay with me sharing... I work with them about how I always gauge mum and dad and if they’re really open to hearing I’ll put a little bit more in. But if they can’t handle that little bit very well then I don’t share the rest of it. So I always reassure them of that. And sometimes they’re worried that mum and dad might say something to them afterwards or not be happy with something that they’ve said. I mean that’s always an indicator to be very cautious.  

Staff also emphasised that there were times when children didn’t want anything to be passed on to parents, but that this did not diminish the benefit for the child of having someone to share their story with:

The freedom of being able to let loose and share in the room is great for them and you can see the benefit of that. You know even if there’s no follow up with the counsellor, at least having one person acknowledge that I understand what you’re going through can be of benefit. And that’s up to me then as to how I will approach this and how I put to parents that the child does not want anything fed back. And how to do that really carefully and try and generalise that sometimes this happens - to make really sure that that’s not going to backfire on the children. That one of them goes “how come you didn’t, you know, you didn’t say anything?” That sort of thing. So I often say to kids now if mum and dad sort of ask you and you’re a bit uncomfortable just say [name of the child consultant] said that we don’t have to discuss this... As long as the kids don’t get confused about what’s going back to mum and dad.  

This issue was also touched on in relation to confidentiality.

6.5.2 Time and Resourcing

Staff were concerned about the time and resources available for child consultations. While emphasising that they gave child consultations the time that they needed, staff noted that, officially, the process was allocated about half an hour to 40 minutes. This time allocation was questioned and staff indicated that sometimes the process would take an hour to an hour and a half. One staff member described the child consultation process as adding to the pressure of the job and clearly these time pressures influenced their attitude toward engaging in child consultation:
The pressure of the job is just so much easier if you don’t have to deal with the kids. That’s extra hours that reduces your output. And that’s a real consideration because every time you do a child consult you’ve got to do a feedback, and that’s hours out of your day, that’s less people that you can see, less people that you can help... So we talk about child inclusiveness but the practicalities of running an organisation like this on a limited budget, with limited staff, means that you can only be so inclusive, and like so many things it will become at catch-all phrase but not be reflected in your practice.  

Staff felt pressured to work toward signing of parenting plans as efficiently as possible and (given their need to meet targets) indicated that lack of resourcing was a direct, contributing factor to staff not encouraging child consultation to be conducted.

### 6.5.3 Lack of follow-up with children

Related to issues of time and resourcing were comments concerning contact with children after the child consultation session. Staff indicated that currently there is no, or very limited, follow up of children. Although contact is maintained with parents to determine how the parenting plan was working there is no opportunity for children to express their perspectives. Staff, therefore, had limited information on the impact on kids of participating in a child consultation. This raised concerns for staff:

> My sense is we put them in that situation and they get an hour with child consult and they don’t really know, I guess, what gets fed into the mediation. Do they go home, do they worry, do they get all anxious now? Do they feel guilty? We don’t know. There’s no follow-up.  

Staff also indicated that currently there were limited opportunities to involve children in evaluating child consultations.

Staff generally felt that there should be follow-up as part of the standard process, such as a second session with the child a few weeks later providing “closure”, providing it was with the same person for consistency:

> I think it’d be a good thing because then, for the child too, you’ve been interested in what the outcome was for them. Not just feeling like they’ve had their say and they’re out of here... And to be able to say to parents, you know, your kids are just so thrilled. That just reinforces so much.  

Yet staff commented that this was difficult to achieve because it was not part of the brief for FRCs and was not “measurable for government”:
Another related issue concerned instances where staff had felt it was important for children to be referred to counselling, and had conveyed this to parents and provided references, but had limited opportunity to follow-through to see whether this occurred. Concerns were also expressed that children are required to seek the consent of both parents if they want to talk to the child consultant again:

So we do say to a lot of the parents and kids, especially older kids ‘if you need to come back and talk to that consultant that you can with the consent of the parents’. That’s a real gap I feel in the services I think, child wise. I mean that’s part of our role here in that we try and tap into services for ongoing support - family services. Jenny

6.6 Recommendations

A range of tangible recommendations were made by staff related to some of the processes and issues discussed in the previous section. For example:

- Providing children with more information earlier on
- Preparing parents as to how they introduce the idea of child consultations to their children
- Conducting follow-up sessions with children, or other child-focused support programs such as Seasons for Growth

Four further recommendations warrant exploring in further detail in the following sections, namely:

- The need for more information and training for staff about child consultation processes
- The need for a stronger focus on education for parents about child participation
- The need to evaluate the cultural appropriateness of the service
- Issues around extending the consultation process to reach more children

Following exploration of these four points this chapter explores some more fundamental issues and recommendations raised by staff about children’s participation in the FRC as it currently stands.

6.6.1 More information and training for staff about child consultation processes

Perhaps the most strongly and frequently mentioned recommendation regarding FRC practice was in relation to training. A number of staff felt they needed to be better informed about what happened in the child consult process. It was felt to be important that all staff were well positioned and informed to respond to parents’ questions about the process and to reassure them about what might happen. This was expressed by frontline staff as well as mediators.
Family dispute resolution practitioners generally felt very under-prepared in relation to children’s issues and recommended the need for all mediation staff to have specific training and more dialogue and reflection around child consultation issues and what to look for in terms of parent readiness. These staff members also felt that this would better inform their practice:

6.6.2 More focus on education for parents about child participation

A second recommendation concerned FRC’s role in parental education. Staff clearly felt that the service should place more focus on education about child participation. Of key importance was educating parents, around focusing on, and listening to, the interests and needs of their children and “actually making that part of their lives” (Staff 8). The limitations of the short term involvement with families was identified as an issue, particularly given the needs of many of the families the Centre were dealing with, such as parents with limited educational backgrounds.

The Building Connections program was seen as very positive for parents:
However, it was also noted that the program focused more on communications between parents and how the communication between parents impacts on the children. Staff indicated that there was a need for the program to focus on communication between parents and children, and also on basic parenting skills to support children to have a say and to support parents to hear them:

There are a lot of people coming through here that just don’t get it - don’t understand what is appropriate to talk to their child about and what is not appropriate and how might they communicate with their child. There’s not that level of understanding. Staff 7

Again, staff qualified these recommendations by pointing to structural and resourcing limitations:

...we certainly couldn’t do that within our existing funding. If it’s Building Connections, that wasn’t part of the tender for a whole lot of organisations like RA and other bodies. So we do it as part of the package but not necessarily funded to do it and this is the big dilemma for a lot of other organisations. Staff 8

6.6.3 Cultural appropriateness of the Services

Interviews also discussed considerations related to working with Indigenous families and those from other cultures and how well FRC’s might be meeting their needs. Generally staff felt that the service wasn’t engaging or providing an appropriate service for these groups. One staff member indicated that their FRC hadn’t had many Indigenous families access the service. Staff 8 was quick to indicate that although their practitioners were very good and “have a real understanding and sensitivity” that they would tend to refer such cases out to an Aboriginal child counsellor or other appropriate place:

I question how appropriate the child consultations are because Indigenous communities have their broader family... and the children are the responsibility of their broader family... I mean we do have Indigenous families coming in but actually whether they’re actually going through the child consult process I’m not sure. I could think of two cases most recently where it would not have been appropriate.

Some staff didn’t feel in a position (being non-Indigenous themselves) to comment on how they could improve their services for Indigenous families, however one staff member made the following comment:

I think we certainly don’t have an Aboriginal child consult and we’re currently, I understand, recruiting for an Aboriginal mediator. I’d be interested when we get an appointment of looking about what we could do to draw Aboriginal kids out... I think that there is a need for cultural sensitisation if you were to be asking Aboriginal kids or kids from other cultural backgrounds about the sort of question that come up with a child consult. So I’d like to have that feedback if we could get a person on strength that can guide us that way. Staff 5

Staff 8 also commented on the cultural appropriateness of the Building Connections program:

Building Connections is a great program. There’s no doubt - it’s recognised within the sector. But how culturally appropriate [it is]. I wouldn’t be surprised if they were looking at that because it’s something that’s been brought up previously.
6.6.4 Extending children’s participation in FRCs

Staff were prompted to reflect on whether more, or a broader group of, children should be involved in child consultations. Generally staff seemed ambivalent on this issue. They recognised that children who were not involved weren’t provided with the opportunity to experience the benefits of the process (as outlined in section 6.4) yet they were also very aware of the risks where family situations were not appropriate:

My mind splits in two with that. On one way I think we could be protecting those kids. So I come back to that again. I think that in many ways the kids having that ability to unload things and get them off their chest I think is a huge benefit. So the kids that aren’t able to do that are missing out. *Staff 4*

Staff were certainly concerned that these children - perhaps those most in need because they were perhaps least likely to see a peaceful resolution - were not being heard. Yet they also emphasised that they didn’t think they had the skills or the resources to support them:

It seems to me there is a whole lot of stuff missing. Whenever I look at those families [example given of where there is an AVOs] I’m sure there are lots of things they have to say about what they would like, and how they would like things to be. I don’t see how just allowing them to have a voice in that is going to change anything for them. It’s really clear to me that the parents don’t have the resources to change their behaviour; even when they’ve heard. I don’t think hearing the children is going to change anything for them because the parents, for what ever reason, can’t change their behaviour. I suppose a lot of the families are incredibly dysfunctional and a whole lot of resources need to go into anger management… drug and alcohol rehabilitation, you know just basic parenting that other people take for granted… *Staff 7*

Staff spoke of their role in referring children and families to services such as DOCS, Kids Helpline and Reconnect, but they also listed a range of barriers and limitations to their clients accessing these services:

Our clients don’t have any money, so we could send them off to all the great programs under the sun but unless they are free, then they are not going to access them. *Staff 7*

Staff also reflected that there may be other ways, aside from the child consult, of FRC’s engaging children. For example, providing more opportunity for children to actively contact the Centre:

More of a place where the children themselves can contact our office especially in teenage children, which we have had but under our bandwagon we’re not to see children without the parent. *Staff 3*

Even if they’re not taking part in the child consult just raising that awareness. Bringing the child focus back into focus from that first point right through to the next stage. We just hope there’s some follow-up for them to some other intervention and support. *Staff 10*

Programs such as *Seasons for Growth*, were mentioned as contributing positively and potentially being able to play a greater role in FRC’s for children not able to be involved in the consultation process. The strong focus of *Seasons for Growth* on the child and the safety afforded by the group situation were mentioned:
the kids can be with other kids who are going through similar things and just explore their own grief and loss or hardships. **Staff 6**

Staff also spoke of the potentially invaluable role that FRC’s could play in the community context, and by linking to other organisations such as schools:

Maybe we can go into schools and do interactive workshops with the children with our puppets. You know the puppets are there. Maybe other areas do it differently but in Lismore there’s nothing happening in this area. **Staff 10**

I really believe in working in a holistic way. It’s the child, it’s the school, it’s the child’s community, the parents, but also the extended family, and it’s kind of like assistance approach to the child - the child being in the centre and all the assistance that support them and family relationships. But I think it’s got to go even further than when parents actually come and see us, it’s got to be, I believe, early intervention around children, quality preschools and quality parenting courses. **Staff 8**

How are we connecting with children generally in the community, because there are far more children out there experiencing these kind of stresses than simply come through our doors. So what are we doing to get out there and offer some hope to the children out there; going into schools, pre-schools. Let’s use our imagination and see what else can be done because there’s a lot more can be done. **Staff 10**

These suggestions were, however, qualified:

I imagine it would be quite hard for kids to be singled out maybe to do those programs. I don’t know - they might see that as “I’m now attached to this group of delinquents”. I don’t know how kids would go with that. But maybe some sort of program or activity that allows kids to explore those feelings; maybe art therapy or something creative for kids. **Staff 4**

We can only do so much, we try to do a lot more... [example provided] No matter what we’ve done for this family it’s not been right, from one partner’s perspective. So it makes me feel we should just stick to our brief, we have only a finite number of hours and workers and we have these specific targets we need to meet so of course we do do things like we ring up the Migrant Resource Centre, we do heaps of referrals out and then we follow them up as well. But we can’t. We’ve got a specific number of parenting plans and we have outcomes that we have to achieve. **Staff 8**

If you brought every kid in... you know... sort of dragged them in... when do you start abusing... they might be very resistant to wanting to have a voice and you are sort of throwing it onto them and trying to distinguish between the two is a hard one. And even throwing it open... again I am thinking of children’s protection of parents, even throwing it open, hey we are having a forum or group on Thursday afternoons for you just to say your views if you want to come along. Then they got to actually say to their parents that they want to do that. And that could lead to their parents saying “How Come?”... I wouldn’t want to say yes, I think every single child should come into the centre and have an opportunity to see whether they want to be involved. **Staff 6**

**6.6.5 Child inclusive approach should be integral not isolated**

Underpinning many of the staff comments was, however, a more fundamental issue. Staff certainly saw the service as “child-friendly” and “child-focused” as exemplified in the following quotes:
It's child friendly enough I suppose. It depends how you define child friendly. The people are nice, the kids are made to feel welcome. They've got the TV and all the bits and pieces. I think it's friendly enough. *Staff 2*

I think that all of the material that we create is child-focused. All of the processes that we do incorporates it. And the way that we practice as practitioners - well the way I practice, I guess I can't speak for everyone - the way I practice - it's almost an underlying philosophy in what we do is in order to get these parents past their conflict. *Staff 4*

However, staff were forthright in recognising that current practice within FRC’s did not place child participation and child inclusiveness as central and integral. Comments clearly indicated that there were perceived limitations in what was understood and practiced in terms of child participation and inclusivity within the FRC structure:

*Well in my experience as a practitioner there'd probably be 90 to 95% of cases that I'm mediating without any reference to the child’s voice. The child's not having a say in that in any way, shape or form other than what the parents are bringing. So that's a big proportion of mediations where the children are not having a voice in those mediations because of all those reasons... the child focus we're doing fantastic. We're working with parents on that and I think that is going great. But the child inclusiveness is actually for me, is the use of the child consult which I use with discretion. *Staff 4***

The children are never called upon to contribute unless the parents insist on it and then only if the practitioner agrees to it. So we talk about child inclusiveness but in actual fact they're not really included. It's a nice phrase, it sounds good over the coffee table, but I'm a little pragmatic and I think a lot of it's a load of shit. We get trapped by our phrases but we forget that we're not actually following through. I don’t think it’s anybody’s fault, it’s just the way it works out. *Staff 2***

There needs to be a clearer understanding around that philosophy and practice. I know the practitioners that work with here all have their own expertise and strengths in working with different cases. And they've all experienced some fantastic results in very difficult situations, at least in terms of getting a parenting plan and mediation happening. But there isn’t a lot of talk at either a more formal level, such as a team meeting, or just everyday talk about the children. I don't know how much awareness there actually is of the children. They are a third party that is really in the background somewhere, and it’s the parents issues that are constantly in our faces, if you like. But I think we really need to pull our socks up and to rethink our vision, our focus and our practice around how we care for each person involved in the process - especially how we care for the children; that this is about the children, for the children and we need to be a lot more effective about that, a lot more intentional, a lot more creative.*Staff 10***

Staff recommended that the child inclusive approach should be integral to FRCs. Currently child consultations were perceived as being treated in isolation or as a discreet part of the process, and (as indicated earlier) there was some reticence to engage in child consult processes:

*[The child consultation is] treated as an isolated or a discreet part of the process. So it almost happens from my perspective in isolation. The child comes in and goes to the other room to have their consult, comes out, and... we don't really engage.* *Staff 10***

Evidently there was a real struggle for staff with negotiating the balance between protecting children and supporting them to be heard:
The focus though is always in terms of protecting their children, but the difficulty, in terms of protecting, is how far do we go in protecting them with the need that they need to be heard. **Staff 3**

6.6.6 Need to better understand child-inclusive practice and the participation/protection balance

Staff clearly desired more information (some mentioned research) on child-inclusive practice itself:

In some sense 'child focus' has almost been like a mantra. I know that some practitioners are very interested in being more child-focused and want more information and to look at some better models and the like to get that happening. I still think there is a way to go in really understanding what a child focus approach looks like, what it could look like and what the children actually need or want or are best served by at this point in their life. **Staff 10**

Staff felt that further research on the outcomes and benefits of the process might better inform their concerns around the participation/protection balance:

I would like some research along the line of whether we’re being overprotective and whether, unless there’s clearly identified serious risk to kids, that we should look at hearing from them. **Staff 2**

At the moment it’s only my own instincts and my own experiences that have said be careful with this process. It would probably be useful to see some research on that. **Staff 4**

6.6.7 Need for further research and evaluation

There was also an expressed desire for more research on the overall success and outcomes of FRCs in order to refine their practices and processes:

We’ve got practice standards and I think we need to know whether those practice standards need to be revised along the way. Are we being too protective? Are we not hearing enough from kids? Are we baulking at things that we feel would increase a child’s vulnerability? Should we be more directive? Should we be more inclusive of kids? I think anyone who’s working in an imperfect world like we are possibly needs to realign their values and they need to know whether the things that they’re doing are providing the maximum benefit or should they go about things a different way. **Staff 5**

Staff were very positive about the study reported in this document, their involvement in it, and in particular they felt that gaining feedback from the children would be highly beneficial:

Feedback from the kids is what will be great. You know that’s the trickiest part obviously to get. **Staff 1**

Staff commented that being involved in the research project had helped them to clarify some of their own views around child consultations:

It reaffirms in my mind that it’s my safety concerns that have limited, for me, the child’s voice in the mediation room. That’s probably an important thing for me. [It made me] wonder what happened with that research, what was the outcome, what’s the organisation now going to do, has my role now changed, do I need to change what I’m doing, how can my practice be better? **Staff 4**
When asked, staff (Staff 1) also indicated that there would be many benefits in them (as practitioners) being involved in research themselves. They identified that being able to support or challenge their intuition about what works well and what doesn’t with evidence-based data would support quality service for children and families:

And it’s reassuring that what you’re doing is good practice and that it just keeps evolving and new things coming out and thinking oh yeah that’s a great idea. Staff 1

Staff perceived significant benefits and importance in involving children in research, both the research reported in this document and research more broadly:

Yes, I think you’d have to [include children in the research]. We’re talking about whether or not to bring a child’s voice into a process. I think that they should definitely have a say in that. And I think that we’d be, as adults, quite enlightened by the things that they say and the insight that they give us. Staff 4

6.7 Chapter summary

This chapter introduced the narratives of ten staff members talking about their views regarding children’s participation in family law decision making, in particular, in child-inclusive family dispute resolution processes. The chapter reveals that the staff were evidently personally committed to child-focused and child-inclusive family dispute resolution and clearly articulated its importance:

I believe that in this service children are absolutely listened to and their experience is absolutely believed and validated. Staff 8

I think at a staff level here when it comes to the child consult they [children] are taken seriously. Certainly in terms of policy and then the public promotion they communicate that and produce those little booklets and things that can be used for children. Staff 10

Yet their contributions highlighted that tension exists for staff in relation to a number of issues, including in relation to the purpose of child-inclusiveness, the extent to which child inclusiveness is integral to FRC’s processes, and how to straddle the tension between child protection concerns and inviting children’s inclusion in decision making processes. The chapter also reports a number of recommendations from staff as to how to address some of their concerns, including providing children with more information about the child-consultation process, and following up with children and parents after a child consultation. In addition, staff suggested the need for more information and training for all staff about the child-consultation process, the need for a stronger focus on education for parents about the importance and value of children’s participation in family dispute resolution, the need to evaluate the cultural appropriateness of the service and issues about extending the child consultation process. The chapter concluded with a summary of staff feedback about their experience and views of participating in the research.
Chapter 7: Executive Views about Children’s Participation in Family Law Decision Making.

In this chapter we present the views of the FRC Executive and Board, drawing from interviews with 6 individuals – 3 Executive and 3 Board Members (three females and three males). The semi-structured interviews focused on how members of the Executive viewed children’s participation in family law decision making, including in child-focused and child-inclusive family dispute resolution. A range of issues concerning both children’s participation generally, and the child consultation process specifically, were explored, and recommendations made concerning ways in which child-centred service provision could be enhanced. For ease of reading, the term ‘Executive’ will refer to Executive and Board members collectively.

7.1 What is participation?

When asked to explain their views on, and understanding of, children’s participation, Executive often described participation in relation to child and family relationships:

As a broadly relational concept, participation should be understood in the context of families - in particular parents ability/capacity to hear from children in ways that are safe for the child. Because where there are children involved, as a relationship organisation, we are involved. Greta

I think there is an embedded culture of this [as being] about the relationship. So it’s about the between. It’s not just about individuals, it’s about the between - whether that’s parent and child or both parents. Mandy

Others defined children’s participation in terms of the well being of children:

It’s everything we do about the child’s wellbeing, moving forward for children. Mandy

The goal would be child focused, child development, child safety, long term child health, child inclusive where that could be seen to be of great value to the ongoing development of this child in this family, and child exclusive when it would be considered not in the child’s best interest or safety. Lewis

Executive also described participation as about taking the views of children into account:

I think it is important for the voice of the child to be heard. Rose

Like the staff interviewed for this study, Executive views of participation were shaped largely by their experiences of child-focused and child-inclusive approaches to family dispute resolution, and many of the comments and descriptions made were directly and predominantly referring to children’s participation in the context of the service provision of Interrelate FRC’s. Accordingly, Executive emphasised participation as a process, and as therefore offering a range of opportunities for service provision to enable a focus to be brought to the child. In other words, a combination of child-focused and child-inclusive practice:
I think [children’s participation is] about engaging children right from the word go. That could mean anything from the child’s play area or pictures on the wall or paintings from other kids that would engage children, appropriate toys and that sort of thing. To ensure that our rooms are child friendly... the setting up of our child consult rooms. I make it a point of saying to my staff, look, I think it’s really important sometimes for you people to walk in the front door on your knees and to know what it feels like for a child. Robert

Child participation will not work unless it is embraced from the ground up. Mandy

Being child-focused begins with hello. It is the way in which we engage any member of a family group. We have children, mums and dads, who want the best for their children. So we are always assuming that strength based approach, the children come in with mum and dad, the kids play, they draw on the wall, they put their pictures up on the wall, we have theme days around Easter, with a great big wall at the front of the building. We have the listener soft puppet family that they can move around and play with, so all of those things where children are there from the word go. Greta

It was interesting that two Executive members mentioned inclusive fathering and children having contact with both parents as intrinsic to their definitions of children’s participation.

Most evident from the interviews was that Executive viewed participation as integral to the organisations long history – that Interrelate had been established as part of the organisation’s vision over 80 years ago as part of their purpose of supporting family relationships. Child participation as they saw it, therefore was a strong concept underpinning the philosophy of the organisation. In this way child participation and family relationships were seen as inextricably linked, and Executive were evidently personally committed to its centrality in the organisation. In this sense Executive defined participation as a cultural commitment within the organisation to a child-focused and child-inclusive approach:

So children first, and the parents are next. We focus on children. Their participation goes across a whole spectrum of things. They can either just come into the Centre and draw a picture and leave, or write their story, they can come into the Centre and read a book, one of our listener books, put on a DVD and listen to that, come to a programme, go to counselling or they can be involved in a child consult. Greta

[Children’s participation is] very important to me. I guess in terms of having that child-focus approach to everything we do, really. In my role it is essentially to be able to deal with parents who come into the centres as parents rather than ex-spouses. And constantly trying to get them out of that war zone into focusing on the children. So, my priority, my focus, is this is about the kids. Everything that we do. And that’s why specifically we are not dealing with financial matters, it is all about the parenting arrangements or parenting plans for the children. So the perspective that I have is to ensure that everything we do within the FRC’s is centred around the needs of the children. Robert

Child-centred practice is at every layer of what we do. It’s the staff we employ, how we employ them, the way we engage with parents, the rooms, the resources, the questions that we ask, the way we engage someone at interview. ...it’s about the overarching philosophical framework that we have. It’s about being child centred. And that needs to be our philosophical framework and that needs to be communicated down. Mandy

It is important to note that one Executive member highlighted their view that debates about differences and relative merits of child-focused and child-inclusive processes may not be helpful…
The debate about child-focused versus child-inclusive practice....I think that is a very unhelpful debate. I think it divides and has the potential to be sold to people in power as one being the answer. Greta

7.2 Why children’s participation?

A number of themes emerged from Executive and Board members data concerning the rationale for children’s participation. Firstly, respondents noted that children want to, and should, have a say, and that adults have a responsibility to provide children with the opportunity to do so:

I have a personal responsibility to meet a child where they are at and show them some options or give them the possibility to write their story, as opposed to having it imposed on them. Mandy

A second theme concerned the perception of children as competent:

Children are incredibly interesting and perceptive people and we underestimate what they pick up and how they process. I come from a position I guess that children are very resilient and actually very cluey. Mandy

I am usually surprised that it is more than I think. I think to myself there is no way this child is going to want me to say that, and more often than not I get the child that will up the ante. Greta

I think they're people. They just need to get on with their lives. You know, so other than the fact that generally kids would be saying look... they are doing fine, you know, they are doing OK. They've dealt with it, it's just the parents who haven't dealt with it. Robert

As with staff members, Executive also mentioned the issue of age appropriateness when considering the rationale for child participation:

Age is relevant, [as is] the developmental stages of the children or young people. That’s got a bearing. I guess, on a whole range of things. The age relates to developmental stages and you'll always have to look at the individual child - the profile, the circumstances of the individual child. I’m sure you can work at a general level in terms of what you expect from children within particular age ranges but you must always look at the specific profile of the child. Mitchell

7.3 Purpose of child consultations

Executive and Board members were also asked about their perceptions of the purpose of child consultations. Evidently, one key purpose was to hear what the child is saying and to present this back to the parents. However as Greta emphasised, this wasn’t a simplistic view on the consultation process:

But, we've fought long and hard in the agency to say, no it isn't about that, it's about the ability, about the timing, it's about engagement, it's about checking reflective capacity and it's about putting in a piece of information in the right way, at the right time, at the right level...

Greta
Executive, like staff, qualified that child consultations could only occur where it was appropriate to do so – where the family dynamic had been screened first. They also recognised the problematic nature of determining what, from the child consultation, was suitable and appropriate to relay back to the parents:

There is a danger with some child consultations, if they are not done mindfully with the basis in mind that this is about their wellbeing. It is not about trying to find something to feed back into a decision making process. I think it informs how decisions are made because it looks at their developmental stages, their capacity to be aware of what is actually happening for them and around them. I am not here to make them make decisions, I don’t really get to make decisions either, part of what I am going to do is go back into the room and kind of, be you. Mandy

Some members of the Executive expressed the view that child consultations were limited in their value for those children unable to speak frankly for fear of upsetting their parents:

Some children really don’t want to say much. They are so caught in the pleasing mum and dad. I understand that because that is where I come from. They are so trapped in that. ‘I don’t want to upset anybody, I don’t want to be in the middle’ that they actually can’t give a message. Or they just give a nebulous nothing. Greta

Like staff, Executive also talked about the value of children having the opportunity to talk to someone independent in a safe environment as an important purpose of child consultations. In other words, to engage with children in a therapeutic way:

To be able to talk to somebody who is outside the family. The purpose is essentially twofold. One is to give the child the opportunity to talk to somebody independent or outside of the situation, as to what it is like for them. You know, being involved in a family that has broken up or mum and dad are now wanting to come to the Centre to work out some sort of a parenting plan, so for them, they are aware of that. So one part for me is for the child to be able to be heard as to what it is like for them, and the second part is to be able to relay back to the parents anything they would like taken back to them in terms of any concerns. Robert

It’s about giving the child up to an hour of non-anxious, engagement, full presence, in that time the child who is not seen as a patient who is not identified as a patient, just gets to say and do whatever they like. Greta

For the continuing wellbeing of the child as well as perhaps assisting them to refocus on their circumstances with the parents - either they are living with or spending time with. I think that, in turn, could make a difference to the parental alliance. Mandy

Executive also mentioned the value of the child consultation for parents:

It seems now to have become mainstreamed on the basis that it can be a good way of getting parents to stop fighting, to stop the war between themselves... it can be a circuit breaker for that conflict, on the basis that the parents are assessed prior as being not so, you know, mad, bad or sad, to be able to take the feedback, on board. Mitchell

Benefits are, really, in the reduction of conflict. Rose
7.4 Children’s participation in FRCs: Executive views and concerns

A significant amount of time was spent in interviews with Executive discussing the processes and issues emerging in relation to the practice of children’s participation in FRCs.

7.4.1 Balancing protection and participation through the child consultation

Executive, like staff, voiced concerns and tensions around the balance between children’s protection and participation in decisions in family dispute resolution, in particular, in child consultations. Executive had similar views to staff members about the circumstances where it was appropriate or not appropriate to conduct child consultations, placing a particular emphasis on the importance of ascertaining the level of vulnerability of children:

It's about the vulnerability of the child at the time. How great is the vulnerability of this child. Would being one-on-one with them in a session enhance that, or will it actually make the child more vulnerable. Greta

Executive also emphasised that the tension arising in relation to children’s participation and protection was especially evident in relation to issues surrounding the readiness of parents to receive feedback and being sure that “both mum and dad have some sort of reflective capacity. So that their child is as safe as they possibly can be” (Greta).

I think the sensitivity around feeding back information, both to maintain the safety of the child and the risk to them, as well as to try and avoid some sort of a blow up in the mediation room. Robert

I come from a place of ‘it’s always a good idea to look at the merits of it’. And then each case must be considered. So, if the reflective capacity of the parent was that there's no way they are going to hear it. Or if there were severe cases of mental health - because that's going to impede the capacity of the parent to really hear... or if there is a distinct lack of attachment between the parent and the child. Mandy

Risk was evidently a primary concern to Executive, and they were very aware of issues surrounding the need for appropriate assessment processes to determine whether and when it was suitable to involve children in the process. In discussing this, at least three Executive members referred to the life-threatening risk/deaths of children. Comments reinforced their awareness that the balance between protection and participation had swung most recently to a primary focus on protection:

The responsibility [of child consultations] is that it is a huge risk. I think there is a risk, a considerable risk if it is not done mindfully and carefully and really in terms of having the child at the centre. I guess some of the reservations are maybe, beliefs and value systems like, you're putting this child so far at risk they are going to die. Mandy

These comments about the risk associated with child consultations were, however, qualified in the following quote:
Things will necessarily go wrong in any of these processes. Things go wrong in litigation-judges make aberrant decisions or get things wrong along the way. There is inevitability about human error. *Mitchell*

7.4.2 Strengthening processes surrounding mediation and child consultations

Executive made a number of suggestions concerning potential areas for improvement in Centre processes surrounding mediation and child consultation. These included suggestions regarding more preparation for parents via pre-mediation sessions, including “preparing parents for some feedback from the children” *(Robert)*:

*When they come to mediation, whilst that part of the process can at times be very outcome based, outcome driven, my concern is ‘what am I going to do now, with these parents once they have heard that feedback’... Is there something we can do to maybe capture the fallout, if there is any fallout. Robert*

As with staff, Executive noted that it would be beneficial to provide opportunity for further follow-up with children:

*Child-inclusive session can be so intense, I think, depending on where kids are at of course, for me it would be great to have a continuing sort of contact with those kids in terms of follow up. Robert*

They also noted the fundamental concern regarding the reduced frequency with which child consultations were occurring, but raised questions about the reasons why this might be occurring:

*It worries me at a fundamental level. Is it that people are afraid? Is it people are actually not suited to that role? That’s about a child consultant, and their work in the FDR framework and we have to look at these people. I think at the moment there can be a silo-ing of ‘this is our precious little process, and it needs to be about having the child at the centre - what’s going to be able to create and sustain a workable parenting alliance and create wellbeing for the child. Mandy*

7.4.3 Pressures on FRCs affecting implementation of child participation

A number of comments made by Executive emphasised that they felt that FRCs had faced an enormous rate of change which had placed considerable pressure on the organisation in terms of its capacity to effectively implement child participation, consistent with its historical commitment:

*We had 50 new practitioners on board in under a year. They came from diverse backgrounds. And we assumed that they were entrenched in the same culture, and they weren’t. We became aware that there wasn’t a lot of child-focused strategies happening and thought - where’s all these little nuances that we’ve been using for years? Greta*

*I think one of the difficulties is that it has grown at such a rate. I mean, I think that it’s just been huge - the growth - I’m concerned at the huge work loads of, particularly, our Executives. I mean they like it and they thrive on it, and it’s wonderful, but I think we need to be aware of that. Rose*
Executive felt that this rapid change had meant that the new approaches to children’s participation and processes for implementing the framework were taking some time to settle throughout the organisation:

I think we did a pendulum swing. I think like a lot of other agencies saw that child inclusive, actually getting the child in and having a consult, feeding back to the parents, was probably the answer. And then, what I noticed was a lot of practitioners... didn’t have to concentrate on the other things. We’ve tried to get some balance and I think unfortunately it has swung the other way. Greta

...this is an evolutionary process. I think it’s a massive social experiment. A very good one. There’s lots of risks in it and it probably needs another 12 months. We need about another 18 months yet before we’ve got practitioners who can look at a couple or a person and say ‘oh yeah’. Lewis

They also discussed their realisation of the need to provide further professional development and training for the staff involved in service delivery:

We did a five day induction training for the 50 new staff that threaded the child focus - our whole philosophy of how the organisation works. We are very particular about how we set up premises. So, we have a check list for child focus... have you crawled through on your knees, have you looked at it from a child’s point of view? What we need to do is just keep going. Which is why we pulled in the two days training, we brought the 50 staff back in again. We did two days on child focused mediation. How to embed children in everything we do. It's strange for us, because we were surprised that we had to do it. And it was a little bit of humbling. Because we are so much like that that we had forgotten that we needed to keep going, particularly with new staff. Greta

Like some staff, Executive had some concerns that the child consultation process would lose something of its integrity if it were to become “institutionalised”:

One thing I have a concern about is the sort of institutionalisation of the process...[which] can limit or dampen the flexibility and the receptiveness to being flexible in these situations. Mitchell

7.4.4 Confidence in FRC practitioners

Although Executive evidently recognised the need for staff, particularly new staff, to receive training and further reinforcement regarding child inclusive practice, Executive clearly took the opportunity to express confidence in staff and the work they were doing:

The reports back to me haven’t shown a great deal of problem in working therapeutically with kids. There’s been a lot of tears, there’s been a huge show of emotion in some kids, you know, as we work with them, but I think we’ve got some really gifted and qualified practitioners who can deal with that. It’s trying to cope with the reaction of the parents in the room. Robert
7.4.5 Concerns regarding the ‘rhetoric’ of child inclusiveness across the sector

Some Executive members noted their observations of the growing use of child inclusive approaches across the sector and reflected on their concerns about whether various organisations were effective and appropriate in their implementation of such approaches:

I’m noticing that everyone, from family support through to the Court, has now decided that the research around child inclusive and child consultations is really good. A sort of ‘we’ll just grab it’ approach. Lots of people are asking for training. It really bothers me, because I don’t know how well it is being done. Some of the child consultation that is occurring is much more interrogation than a fun thing for the child. Greta

I think of some of the conferences that I’ve attended and I’m actually really distressed by what I hear. Interrelate is so careful and mindful and embracing of a child centred approach that I think that there are some practitioners, possibly some organisations, that see it as a cog in the wheel or see it as an outcomes driven for the purpose of family dispute resolution - as opposed to, in and of itself, a therapeutic outcome for a child. Mandy

Concern was also expressed that perhaps some sectors inappropriately believed that they were engaging in child inclusive practice:

Children’s participation is almost the flavour of the month and that really bothers me. The rhetoric doesn’t have depth and I don’t know that they know what they are talking about. That really scares me. I hear a lot about the best interests of the children, and I hear it in a very legalistic, matter of fact, arrogant sort of way. But I don’t hear a child in there…. that’s what bothers me. Greta

7.4.6 Policy-level concerns

Executive were generally positive about the Government’s agenda and intentions surrounding FRC’S:

There’s been a very, very positive response from the government, I think, generally bipartisan government, in terms of the importance of, you know, child centred practice all round. I, obviously would like to see a greater emphasis on that. I think governments are sensitive to the needs of kids. Robert

Clearly there was concern about the uncertainty surrounding future policy directions and funding, and whether this would continue to allow FRCs to deliver child inclusive family dispute resolution:

The bonus payments have been removed from the Family Relationships Centres, we won Lismore and Sutherland, but as payment for best practice service delivery under the old Attorney. I don’t know what criteria they are using to do that. Are they using best practice child focus service delivery? Are they using the number of people were happy and the amount of people got jobs? Don’t know. I think we are in a very difficult position and while idealistically I can say Interrelate will always abide by child focus parenting and all of that, really, if the money says, you don’t go here, you’re not going to get it. I don’t know. Greta

As highlighted by one Board member, policy itself could run the risk of leading to decisions that weren’t in the interest of children:
A lot of the talk about child safety seems to be leading to bureaucratic decisions that are abusing of children, and I fear that the government will just decide it’s all too hard. Lewis

7.4.7 Dichotomy between funding FRCs and post separation programs

One Executive considered that a challenge facing Interrelate, in particular, its practice of children’s participation, concerned the way FRCs and post separation programs are currently funded:

The barrier that springs to mind straight away is this dichotomy that is set up between the FRCs and our other post separation services. Federally funded post separation programmes, are funded separately and just the question of entry points... you know, if they come in here well can they stay here or do they have to go over there because it is not what we do here, our funding doesn’t permit it. Mitchell

7.5 Recommendations

7.5.1 Extending opportunities for supporting children’s well being

Executive clearly were committed to maintaining and extending the existing emphasis in the organisation on child-focused and child inclusive dispute resolution. They recommended that the arguments for extending recognition of children should move beyond the role in disputes and decision making to a focus on participation in its own right and its importance for the wellbeing of the child:

I want to take the recognition of children a step further and say it isn’t about just allowing them to have a voice, it is about their ongoing wellbeing. I think there are schools of thought you know, the United Nations Convention for Children which say children should have a voice. That’s limited. If you use it in that context it will have limited use, I believe. So it is about the assumption that this is about preparing children to be as healthy and well as possible. Mandy

It was recognised that now Interrelate FRCs were established, and the initial resourcing and set-up issues overcome, that there was an opportunity to focus on the future direction of the FRCs and to extend their services to provide new opportunities, spaces and programs to support children’s participation and well being:

We’ve had money now to really imbue child focus in every premises. What we do need now is look at the strategies we can implement, [child participation] like ... writing a Building Connections for children, implement Seasons in every Centre. Greta

...just constantly trying to create spaces where children can get a sense of themselves and some educational difference. Creating a space where adults start to get a much clearer sense of what it means to be a child. I think that’s one of the goals of the things. Lewis

That there’s literature available ... that it is the library that the previous Attorney wanted it to be. That it has information available on anything a child wants to find out about relationships, about divorce, about parenting. That they have the ability just to access it because it’s normal. Greta
I think it would be about increasing the tools that we have. So whether that’s having counselling; whether that’s having Seasons and Building Connections for children. It’s about maximising the number of resources or the number of interventions that we have available to best suit the developmental stage, the parental advice stage of each of the families that we are working with. **Mandy**

As one Executive member reflected, ideally policy and practice would see “That every child comes into the centre” (Greta). Related to this was a recommendation for extending the number of FRCs generally:

I would like to see it more available to the people. I would like to see more centres. I’m talking in a broad sense now, there will be some people geographically that find it difficult to come to these centres. **Rose**

### 7.5.2 Enhancing and extending support for Staff

Executive spoke of the importance of enhancing support for staff. While acknowledging the work that had already been done there was evidently a need to provide more, and ongoing, opportunities for training:

I do think that there’s training we need to do to assist our mediators, in some circumstances, to become a little more therapeutic. And that’s what we worked on in those two days, but we’re not there yet. **Greta**

One Executive member spoke of the need to establish advanced child consultation training for practitioners:

So not just supervision, which they get, but I guess advanced practice discussions... it is not a static thing... I think we need to almost pull back and say, what are the really intrinsic skills that a person needs to have. I think we need to do a bit more work on articulating what they actually are. **Mandy**

One area mentioned specifically as requiring more professional learning concerned the developmental needs of children:

That whole understanding of the developmental process 0-25 or pre nine months to 25. **Lewis**

The matter of qualifications was also broached as an issue for the organisation:

I think [the issue of finding qualified staff] is probably something the industry is struggling with. What are the base line qualifications? But to me it’s not actually about the qualifications. You can have the most qualified person in the world. **Mandy**

**Remuneration** of staff, and its relationship with the attraction and retention of quality practitioners, was also mentioned as a point for continuing focus:

Remuneration. Adequate reimbursement. Recognition - affirming them in their role. Affirming what they do, making sure that they are looked after, psychologically, physically, monetarily. It is an area that is a highly professional area and not easy to get staff for. I think that we need to remunerate staff well. **Rose**
Supervision was also mentioned by one Executive member:

> I guess if there is anything more that I can do it is to provide more regular supervision for our practitioners. And not necessarily waiting for the end of the month, where they have their scheduled in one hour supervision, but opportunity for debriefing immediately after that [the child consultation]. Because those sessions can be quite powerful. Robert

Ultimately, the clear goal was to ensure that Interrelate was resourced with highly committed and competent staff:

> [Interrelate needs] in the long term, well trained, well supported people a family knows they can trust. Families under stress need a long term, safe, reliable, consistent, empathic, aware, present person that they can call on whenever they need to, and who can go to them sometimes with authority when needed. Lewis

> We need an advanced training workshop - to sort out the people who still really want to do it. Because you want people who are passionate. Mandy

### 7.5.3 Promoting FRC’s and child inclusiveness in the broader community

Several Executive members also mentioned that FRC’s might have a broader role in promoting child inclusiveness in the broader community, and supporting relationship education throughout the community:

> The other thing that would be great would be if we could, if the community could, know more about it, what happens. Robert

> That we are doing relationship education at a very early age. That it's part of their natural core curriculum of every child. We need to come back to that, teaching relationship skills, talking about what it, what a relationship looks like, how we need those skills from a young age. Greta

> I love the old statement ‘the best psychiatrist any child can have is two parents who love each other’. So probably early intervention of a supportive educational nature around pregnancy and birth and the first two years of life. And Interrelate’s playing with [that] a bit... that new program they're planning. Lewis

Related to this was the need to keep lobbying government about the importance of child-focused practice:

> Interrelate’s become pretty good in recent years at lobbying government and having an impact on government decision making, so if it keeps that ability it would just become strong in that role. Lewis

### 7.5.4 Changes to the outcomes-based focus

Executive felt that policy makers needed to reconsider the fundamental nature of the way FRC’s were evaluated. They recommended that there needed to be a decreased emphasis on outcomes concerning parenting plans and a stronger emphasis on building family relationships in processes underpinned by a commitment to child-focused and child-inclusive processes:
The biggest risk factor is that the outcomes of the Family Relationship Centres need to be based on parental style. [Evaluation outcomes] needs to be on how much we have influenced parental working together brought into their lives. How much have we influenced people’s ability to get a parenting plan that sticks, that is focused on the child? We need to measure that. I would embed that and never let it go. Greta

We need to be able to lay out maybe five key objectives that say, what is it that children need from this process. And then we need to allocate the funds to be able to deliver against those two, three, five key objectives. Let’s make a whole policy around children. Mandy

7.5.5 A strong focus on research

Like Staff, Executive spoke of the importance of continued research on children’s participation in family dispute resolution. They highlighted the need for further funding to support such initiatives. When asked to provide feedback on the research reported in this document Executive were very positive about the project and the work of the Centre for Children and Young People generally. They recognised the importance of external and independent researchers in being able to identify opportunities for service provision:

I think as independent evaluators and researchers you can give us information that we would not necessarily be able to know of ourselves. So, other than the fact that we would like to think of ourselves as very much a child centred agency, organisation, it still would be great to have that professional input to say, look, what can we do better. It could help us make decisions. Because we’ve got a basis to make more informed decisions. And I think it can influence our Board’s, decisions. It can influence training - there might be some training gaps that are needed. I guess the most important thing about it is that it can change the lives of children, and assist children, because children from young to even teenagers. So it is empowering, getting empowering children and adolescents to help them in dealing with some of the life situations that they have. Robert

Executive also talked about the importance of publishing and disseminating findings:

I would like to see that published. I would like to see it quoted in the paper. And I would like to see it go to government. I would like to see it go to the Institute of Family Studies. Because I don’t think anything has ever been done along those lines before, to my knowledge. So again, it is the voice of the child being heard. Rose

7.6 Chapter summary

This chapter introduced the narratives of six members of the Interrelate Executive talking about their views regarding children’s participation in family law decision making, in particular, in child-focused and inclusive family dispute resolution processes. The chapter reveals that Executive members were deeply committed to the principle of children’s participation, including to existing models of child-focused and child-inclusive family dispute resolution practice, describing it as consistent with the organisations long history of working with families and children so as to enhance their wellbeing. Indeed, some members of the Executive saw the organisation’s commitment to the principle of children’s participation as being consistent with it’s broader commitment to children’s wellbeing.
At the same time, Executive, like Staff, identified a number of tensions in relation to the participation of children and young people in decision making processes. Such tensions were identified as arising both within the organisation as well as in Government policies and existing models of child-focused and child-inclusive family dispute resolution practices.

Executive also reported high levels of ambivalence, both personally and within FRC staff, in relation to how to best balance children’s protection with their participation. This complex issue was acknowledged by Executive as going to the heart of how to progress children’s participation in FRCs. The chapter concluded with a number of recommendations and a summary of feedback about the study, including discussion of Executive’s views about taking part in it.
Chapter 8: Discussion of Findings and Recommendations

The aim of this study was to explore how children’s participation is understood and facilitated in the context of Interrelate FRCs, with the site for the research being the Lismore FRC. The previous four chapters have presented the findings in response to this aim and the research questions as outlined in Chapter 1. These earlier chapters (4-7) have detailed the views of children, parents, staff and Interrelate Executive in relation to a) what children’s participation is in the context of family law decision making; b) whether and why it’s important; c) issues and concerns in facilitating children’s participation in FRCs; d) effective approaches to supporting it; e) barriers to implementing it well; and f) overall advice in relation to progressing the idea of children’s participation in this context.

This chapter discusses these findings in more detail with a particular emphasis on identifying the key issues for consideration in future policy and practice. These issues include the central importance of recognition and respect for children in post-separation decision making processes; supporting and developing the achievements of the FRC in promoting the well-being of children through their participation in post-separation decision making; addressing ambiguities in the way children’s participation is described and practised in post-separation decision making; attending to the tentative relationship between the protection of children and their participation in post-separation decision making; continuing to refine procedures and processes around child consultations given the value placed on these by children and parents.

The chapter concludes with a comprehensive set of recommendations aimed at addressing the key issues arising from the study.

8.1 Key findings for policy and practice

8.1.1 Children in post separation decision making processes want recognition and respect

While children acknowledged their involvement in family law decision making was complex, difficult and not always what they wanted, this did not diminish their variously expressed desire to be recognised and respected. For these children, the most tangible way of conferring such recognition and respect was to listen to them and to take their views into account in decision making processes. When their participation is approached this way, the children identified three important elements at work for them: the likelihood their involvement might 1) effect change; 2) include choice; and (3) shape important relationships in their lives. Conversely, when the children felt they were not recognised and/or their views not respected, they perceived the effects as negative – most frequently expressed as feeling angry, sad, frustrated and lonely. The children’s calls for recognition and respect did not necessarily extend to having a determinative say in the final decision. Rather, they viewed their participation, particularly opportunities to have a say about how arrangements might work for them, as something that needed to be ongoing – a process where
their views were valued and respected. Such nuanced understandings of participatory processes co-existed, however, with the fundamental premise very evident in both the children’s individual and focus group interview data, this being that all children should have a say, and that there are many benefits for children and parents when children are afforded the opportunity to do so.

Adult stakeholders largely shared with children the value and importance of recognition and respect as a central guiding principle for children’s participation in post separation decision making. Parents, staff and Interrelate Executive all spoke in broad terms about the importance of recognition and respect for children, also emphasising the need to listen to children and to enhance opportunities for children to be included in decision making. Some parents spoke of the child’s right to have a say. Others drew on the language of citizenship to express their belief that recognition and respect were integrally linked with children’s participation. Like the children themselves, this did not mean adults thought children should carry the burden of a final decision on complex matters such as parenting arrangements but that they should be part of the process, depending on the age and maturity of the child as well as the child’s willingness and desire to be included. The benefits of doing so were highlighted extensively, most notably that involving children in decision making gives them the opportunity to talk to someone about their experiences, affirms their competence to make a worthwhile contribution, encourages and empowers them to speak up about the issues most concerning them, and likely results in better decisions as a result of their involvement.

8.1.2 Stakeholders strongly affirmed Interrelate’s approach with and for children

A second key theme emerging from the data was the consistently positive comments made about the work of the Interrelate FRC, Lismore, in relation to children. The children reported that they felt welcome and comfortable at the FRC, staff members were caring and helpful, and the FRC space itself was child-friendly and well resourced. Most children were very positive about the opportunity to have a say through the child consultation (discussed further at section 8.1.5 below). For parents, the FRC was viewed as a source of support and assistance, playing an instrumental role in helping them to negotiate post separation parenting arrangements. Parents described FRC staff as kind, concerned and committed to their work. Attending the FRC, for the most part, affirmed them as good parents and helped them to normalise some of the difficulties arising from the experience of separation. Parents whose children had participated in a child consultation were also strongly supportive of the role child consultations play in family dispute resolution processes. Whilst this finding may be partly explained by the participants recruited for the study (possibly skewed towards clients providing consent if they had a relatively good relationship with staff at the FRC) it is nonetheless very evident that both children and parents viewed the organisation, specifically the staff and resources, very positively.

In terms of Interrelate’s ongoing commitment to good practice, parents made a number of suggestions worthy of further consideration. These were primarily linked to what the FRC might provide by way of more extensive support in building parent confidence to facilitate the participation of their children. Suggestions included more assistance with identifying the developmental needs and capacities of children, help with managing their own issues and fears so as to better ‘hear’ the feedback from the child, strategies for reflecting and acting on the feedback and communicating with the child afterwards, better preparation to help them decide whether or not to
provide permission for their child to be involved in a child consultation, and advice on how to talk to their child about this involvement. The proposed further support could be embedded in the consultation/mediation context, or by including or extending further workshops such as the ‘Building Connections’ program.

The FRC staff and Interrelate Executive were generally also very positive about the contribution of the FRC to effective post-separation family dispute resolution. Staff were proud of the philosophy and work of the organisation, their personal level of expertise in helping parents to resolve conflict, their sensitivity to the needs of children, the resources of the FRC and of the physical space of the Centre itself. Executive members conveyed a deep commitment to children through the work of Interrelate, both in terms of improved outcomes for children themselves, as well as in relation to ensuring staff can work skillfully and respectfully with children and their families.

Overall, the study shows that the Interrelate FRC at Lismore, despite its relatively short history, is developing a very positive reputation with children, parents and staff in providing a welcoming, caring, effective service.

8.1.3 Ambiguity evident in the way children’s participation is described and practised in post-separation family dispute resolution

A third key theme emerging from the various data sources was an obvious ambiguity in the language and practice of children’s participation, especially evidenced in conflicting understandings and inconsistencies regarding the role and purpose of child consultations. Specifically, there were significant differences in stakeholder understandings about the purpose of the child consultation, variously crossing between a focus on parental alliance, for children to be heard by their parents, for children to be assessed, to reduce parental conflict, for children to have someone to speak with, and to ensure the child’s voice was included as part of the decision making process. Perspectives also varied as to the weight to be attributed to the views of the child within the context of the child consultation, indeed, whether their views on parenting arrangements should be sought at all. Some stakeholders stated that children should never be asked questions about their views and wishes for post separation parenting arrangements, whilst others perceived these as a critical element of the family dispute resolution process.

These conflicting accounts were not directed towards the value or importance of the child consultation since children, parents and staff all spoke highly of their experience of these. Instead, the ambiguity appears to be linked to confusion around the rationale for children’s participation in the decision making process i.e. whether the intent is therapeutic, evidentiary or advocacy based. These three approaches envisage a very different role for the child and for the decision making process.

A therapeutic approach assumes the primary purpose of inviting a child to have a say is to provide the child with an opportunity to talk to someone about his or her experiences (in the case of child consultations, a trained counsellor) and to provide the child with information and coping strategies. In a predominantly therapeutic approach, there is little, if any, opportunity or intent for the child to influence the outcome of the dispute resolution process. In an evidentiary approach, the primary purpose of inviting a child to have a say is to achieve a resolution for parents and for successful family transition (for example, a parental alliance, a parenting plan and/or greater capacity to focus on their child’s needs). While the reduction of parental conflict is clearly in the best interests of
the child, the role of the child in the decision making process is directly linked to dispute resolution and hence to an outcome for the parents. In an advocacy approach, the rationale for inviting a child to have a say is predominantly linked to recognising and respecting their agency and competence in offering perspectives on post separation parenting arrangements. Children play an active role in the decision making process, if they so choose.

The ambiguity in the way participation is described by various stakeholders interviewed for this study, appears to reflect a hybrid understanding and application of these three approaches. Whilst children, parents, staff and Interrelate Executive variously emphasised the therapeutic potential of participation, they also referred to its evidentiary intent and also to its potential as an advocacy outcome insofar as it might work to enhance the recognition and respect of children. Yet, the underlying rationale for the child consultation does not envisage advocacy for children and there appeared to be confusion when stakeholder expectations for such an outcome were not met. Compounding this confusion was a blurring between the language of ‘child-focused’ and ‘child inclusive’ practice, where these were sometimes understood to be specific and particular interventions developed by McIntosh et al., (2007), and at other times as a cultural or philosophical standpoint more akin to ‘child-centred’ practice that incorporates scope for a range of interventions.

8.1.4 The tentative relationship between the protection of children and their participation in decision making

A fourth key theme emerging from this study relates to the complex tensions evident for all key stakeholders as they simultaneously endeavoured to involve and protect children as part of the dispute resolution process. The data suggests that staff and Executive, in particular, were tentative about proceeding with a child consultation in many instances. Some staff conveyed a lack confidence when it came to assessing the implications of participation in relation to the safety and protection of the child. Hence, the two (protection and participation) were often enacted as if they were mutually exclusive activities. The pragmatic view of some staff and Executive was that it was better for children living in high conflict situations not to be involved, although they clearly recognised the disadvantages as well as advantages for the child in taking this position. Parents, on the other hand, were more likely to suggest that children should be involved in decision making processes where there was violence, abuse or neglect. Not to do so was viewed as potentially more risky for the child.

In making explicit this recurring theme in the data, it must be acknowledged that the issue of child safety and protection is intensely complex with no clear answers or ready solutions. At the same time, however, concerns about child protection remain a major consideration in whether particular children will ever know or experience the benefits of participation, especially in relation to having a say regarding post-separation parenting arrangements. Given the National Framework for Protecting Australia’s Children has recently identified children’s participation as an underlying principle associated with their improved protection, it may be timely to focus on whether and under what conditions it is possible to implement and safeguard both priorities.
8.1.5 Procedures and processes around child consultations

The fifth theme evident in the data is linked to the opportunity that now exists for refining the procedures and processes around child consultations given a) the very high value placed on these by all stakeholders and b) the ambiguity evident in the language and practice concerning children’s participation. As signalled previously, parents and children reported child consultants to be warm, friendly and understanding and the consultation to be a positive and beneficial experience for the child. At the same time, parents and children perceived a need for greater clarity of purpose, more information (about both the purpose and process of the child consultation) and more provision for follow up with children at the conclusion of the dispute resolution process. Refining these aspects of the child consultation process would address various issues raised in the study including:

- Children’s reports that they were not well enough prepared to take part in the child consultation, nor was there any follow up to inform them of the outcome of the decision;
- Children’s views and expectations about their participation (which envisage an active role for children) contrasting with their confusion as to the weight to be attached to what they had to say;
- Parent reports that the child consultation was separate to the family dispute resolution process, and that the child consultant should be present during the negotiation of parenting arrangements, rather than to merely feed back the child’s views;
- Parent concerns that they are not well enough supported to ‘hear’ and respond to children’s feedback;
- Parent concerns that child consultations were not offered to all families;
- Staff reports that the child consultation was not an integral part of the dispute resolution process;
- Staff reluctance and ambivalence about children’s involvement in child consultations;
- Executive concerns in relation to the small numbers of children deemed to be ‘appropriate’ to participate in decision making processes.

8.2 Recommendations

The findings of this study point to the critical importance of maintaining and developing opportunities, processes and procedures in FRCs that facilitate children’s participation in post-separation family law decision making. The following recommendations are framed with the intention of assisting Interrelate to builds on its considerable strengths in this area.

**Recommendation One:**

That Interrelate clarifies and further develops its current emphasis on the participation of children, including the role of child-focused and child-inclusive interventions, so as to help ensure children are recognized and respected as key stakeholders in post-separation family law decision making. Particular consideration should be given to the language used to describe Interrelate’s overarching philosophy concerning children’s participation so as to delineate this from particular interventions used in achieving its objectives.
**Recommendation Two:**
That Interrelate examines the ways in which its current practice in FRCs already aligns with the National Framework for Protecting Australia’s Children so as to highlight how its commitment and approach to children’s participation comfortably co-exists with the aspirations and objectives of the national child protection agenda.

**Recommendation Three:**
That Interrelate continues to build strategically and systematically on the progress it has made in relation to children’s participation in FRCs, including a review of its processes and procedures for the intake of children into the service, information and resources available to children and parents, the provision of a range of services to children and appropriate and timely follow up after child consultations.

**Recommendation Four:**
That staff employed by Interrelate in FRCs are provided with a program of professional development that includes regular, mandatory in-service in relation to Recommendations One, Two and Three above.

**Recommendation Five:**
That Interrelate consider the participation of children and young people in the design and development of any resources aimed at assisting them during post-separation transitions.

**Recommendation Six:**
That high quality, intensive education be provided to parents to assist in building their confidence, understanding and skills regarding their child’s participation so as to better support them in listening to their children and taking their views into account when making decisions about residence and contact.

**Recommendation Seven:**
That the Interrelate Board clarifies the strategic importance, including the likely financial implications, of positioning the organisation as a national ‘lighthouse’ in developing, implementing and evaluating a distinctive child–centred approach in FRCs.
References


**Legislation**

Family Law Act 1975 (Cth)

Family Law Amendment (Shared Responsibility) Act 2006 (Cth)

Family Law Rules, 2004 (Cth)

**Treaties**

Lismore FRC 01/07/06 to 30/6/07

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Lismore FRC 01/07/07 to 30/6/08

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<th>New Clients</th>
<th>Intake Sessions</th>
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## Lismore FRC 01/07/08 to 31/04/2009

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