Exploring the promises and possibilities for children’s participation in Family Relationship Centres

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The idea that children and young people should have their views considered when important decisions are made about their lives has become an important principle in Australian policy and practice. The recently announced National Framework for Protecting Australia’s Children 2009–2020 describes children’s participation as “a principle to guide our actions” (Council of Australian Governments, 2009, p. 12), thus drawing attention to the idea that the safety and wellbeing of children are inextricably linked with developing opportunities for their participation in decision-making processes that affect them. Other key policy imperatives, such as those to be progressed through the Commonwealth’s Family Support Program (FSP), have also recognised the central importance of children’s participation vis-à-vis a commitment to the promotion of social inclusion. Built into the social inclusion policies of the FSP is the provision of child-focused and/or child-inclusive services that aim to elevate the voices of children into decision-making processes, including in the family dispute resolution processes of Family Relationship Centres (FRCs). As major providers of family services in Australia, FRCs potentially play an important role in embedding the key principles of children’s participation in family dispute resolution processes.

Such policy support for involving and recognising children is well founded in the broader research and international law context. At its most basic, children’s participation is a right through which children are able to lay claim to the status of citizen (Cairns, 2006; Lansdown, 2006). Further, the Childhood Studies movement has prompted a shift in investigating children’s experiences of family transition from a predominantly harm- or risk-based perspective to a strengths-based approach (Flowerdew & Neale, 2003; Taylor, 2006). A key principle is to aim to do research “with children rather than on or about them” (Smart, Neale, & Wade, 2001, p. 14). As a result, there is now substantial evidence suggesting that when children’s voices inform policy and practice, resulting programs and initiatives are more likely to be sensitive to children’s needs, thus increasing the potential for better decisions and greater durability of any agreements and orders (Davis & Hill, 2006; Parkinson & Cashmore, 2008; Taylor 2006).

While support for the principle of children’s participation and acknowledgment of its benefits for children and families is growing, its application in family law decision-making remains contested (Taylor, 2006; Tisdall, Bray, Marshall, & Cleland, 2004). Serious concerns exist as to whether, and to what extent, children and their views are taken seriously in family law processes, even in those initiatives intended to promote their participation (Davis & Hill, 2006). Research seeking the views of children has further revealed that their involvement in the formulation of initial or ongoing residence and contact arrangement remains limited, especially when their parents are in
agreement about post-separation arrangements (Chisholm, 1999; Taylor, 2006). Of the studies available internationally, low levels of consultation with children in relation to residence and contact have been reported in research in the UK (Butler, Scanlan, Robinson, Douglas, & Murch, 2002; Smart et al., 2001) and New Zealand (Smith, Taylor, & Tapp, 2003). Similar findings have been demonstrated in Australia (Bagshaw, Quinn, & Schmidt, 2006; Parkinson & Cashmore, 2008). Children further report that they are not well prepared for their parent’s separation, nor are they adequately informed about the processes involved (Butler et al., 2002; Taylor, 2006).

However, negotiating a sensitive, appropriate balance between children’s protection and participation rights in family law settings is complex and problematic. While there is, for example, evidence that children are capable of, and want to, exercise their agency and utilise their own resources and strengths so as to participate in decision-making and in the development of strategies for their own protection, a number of concerns have also been raised in relation to the appropriateness of such involvement. These concerns include: the implications of placing children centre-stage in their parents’ conflicts, parents unduly attempting to influence them, children being burdened with the responsibility of decision-making, and concerns that involving children potentially undermines adult, particularly parental, decision-making (for further discussion of these debates, see Humphreys, Houghton, & Ellis, 2008; Lansdown, 2006; Parkinson & Cashmore, 2008; Tisdall et al., 2004).

Finally, there is the growing realisation that actually doing the listening and responding to what is said about parenting arrangements following separation is not straightforward. Children’s views and perspectives are sometimes ambiguous and children do not always convey easily discernable accounts, or tell a story that is consistent with what adults want to hear (James, 2007; Komulainen, 2007). Adults are also often unclear about the purpose of children’s participation, confusing giving children “a say” with giving children “what they want” (Parkinson & Cashmore, 2008).

Such research points to an emerging complexity surrounding the principle and practice of participation in the context of family law. The blurring of distinctions between political intent and social benefits, a lack of clarity in regard to the purpose, form and frequency of children’s participation, as well as an increasing conflation of the language of children’s “participation” with that of “consultation”—two related but different terms—further add to such complexity. Hill, Davis, Prout, and Tisdall (2004), for example, defined “consultation” as “seeking children’s views” and “participation” as “the direct involvement of children in decision-making” (p. 83). A key challenge, then, for family law policy and practice in Australia is to refine how children’s participation is understood and facilitated by key stakeholders involved in family dispute resolution (children, parents and service providers). The study described in this paper set out to gain such insights.

### The study

Semi-structured interviews were undertaken with 55 key stakeholders involved in the resolution of family law disputes in one FRC located in a regional area of NSW. Twelve children from 6 families aged between 7 and 18 (6 boys, 6 girls) were interviewed for the study. All children had attended a child consultation in the preceding 24 months. A total of 27 parents (9 fathers, 18 mothers) were invited by FRC practitioners to participate in the study. Of these, eleven were parents of the children interviewed and thus had experienced the feedback of child consultants in one dispute resolution session. Interviews were also conducted with 10 members of staff and 6 members of the Executive and Board of the governing organisation.

Interviews with all participants concerned their understanding, views, experiences, expectations and advice about children’s participation in family law decision-making, including in FRCs. Themes were identified in response to these broad issues. Pseudonyms were chosen to ensure confidentiality and anonymity. All interviews were recorded and transcribed. Data was 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 focus group was later conducted with 11 of the 12 children to seek their feedback in relation to the findings. The development of a resource for younger children, based on the research findings, was also discussed as part of this focus group and subsequently developed for wider dissemination.

### Findings

The following findings provide a snapshot of key stakeholder understandings of children’s participation in one FRC, including their views and experiences of such participation in the context of family dispute resolution.

#### Children’s views

All children interviewed considered that children should have the opportunity to “have a say” in decision-making...
processes that follow parental separation. When asked to describe what having a say meant, children identified three key interconnected themes. The first was that having a say is about change. Being listened to was seen as the first step towards adults taking children’s views into account and hence for children to potentially influence the outcomes of decisions made on their behalf:

[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)

A second consistent theme evident in the children’s narratives was the idea that children’s participation results in some degree of choice and flexibility:

We all should have a choice … just a say. Then we can make a decision. I would like to be treated like everyone else. (Timothy)

Importantly, children clearly distinguished between being given a “choice” and having to “choose”. While all children indicated that they wanted a say in how they spend time with both parents, few wanted to “choose” between parents:

Sometimes you just get told, “Oh well, 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)

Thirdly, children viewed their participation as being bound up with important relationships. Communication, flexibility and openness to the views of other family members were key to children having a say, with children’s view of participation closely linked to the needs and wishes of their parents:

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

Children identified a range of reasons as to why having a say in post-separation decision-making is important, including that there are benefits for children, there are benefits for parents, children learn how to make good decisions by participating and it helps adults to know more about children and their lives. Children were also quite explicit that not participating has negative implications, with many children reporting how being kept out of decision-making processes left them feeling “cranky and upset”, “angry”, “horrible”, “sad and bad”, “frustrated”, “an outsider” and “left in the dark”:

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. (Toby)

However, while children clearly were supportive of the idea of having a say, this did not mean that they considered having a say to be easy, or something they always necessarily wanted:

Sometimes if you don’t know what you want … or you want to stay or you want to go, but you don’t … can’t choose … it’s alright if they choose … because you don’t have to make the choices yourself. (Brooke)

Despite its difficulties, however, the positives associated with having a say seemed to outweigh the concerns of most children:

I think it’s better off for parents 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)

In terms of their participation in family dispute resolution, the majority of the children interviewed in this study (11 of 12) enjoyed some aspect of their experience of a child consultation and strongly encouraged other children to take up the option. Children identified an array of reasons as to why they attended a child consultation, including to help improve their parents’ relationship, talk to someone, influence parenting arrangements and be provided with information. Two children differentiated between child consultations and counselling, suggesting counselling positions children as “having a problem”, whereas child consultations position children as “helping fix a problem”.

However, the children also identified a number of difficult or confusing aspects about participating in a child consultation. Children described how they were not well prepared or informed about the purpose of the consultation, their role and the implications of their involvement, thus limiting their contribution and leading to some feeling “scared” in the lead up to the consultation:

I don’t suppose I had any preparation … you’re just like “what’s going to happen?” And you go … I don’t want to talk to some person. (Maddie)

Children were also disappointed that there was no feedback to inform them as to what arrangements had been agreed upon and whether, or how, their views had influenced the agreement:

I thought she [child consultant] should have rung us because if they [parents] would have told us themselves, they could have told us the wrong things … The lady should have told us the right thing and should tell us what’s happening. (Gabby)

Four children were unhappy with existing arrangements and conveyed disappointment that things did not change as a result of the child consultation having taken place. For one child, the consultation was not worthwhile, as “they did not talk about the important things”.

Parents’ views

All 27 parents were supportive of children’s participation in the context of post-separation decision-making processes. While this finding may be partly explained by the way in which participants were recruited for the study (potentially skewed towards clients providing consent if they had a relatively good relationship with staff at the FRC), the detailed accounts provided by these parents point to a considered view about the meaning and purpose of children’s participation.

When asked to define what children’s participation meant to them, parents emphasised a number of common themes, of which listening to children was most prominent:

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 can 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)

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

I think it’s also to do with … 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)

Parents emphasised that children's participation is about relationships, requiring the need for a balance between the views and needs of parents and children. Some parents felt that participation is a child's right and acknowledged that children are capable of contributing to decision-making processes without necessarily diminishing existing or continuing parent–child relationships.

Parents also identified a number of benefits of children being involved in decision-making, both for children (children are happier, gives children an opportunity to express themselves, provides children with the experience of participating in decisions) and for parents (better decision-making, helps parents understand their child's perspective). Most parents readily identified a number of negative implications when children aren't provided with opportunities to participate, including children feeling hurt, stressed and frustrated and experiencing a level of rejection and a sense of abandonment.

In relation to children's participation in family dispute resolution within the FRC, those parents whose children attended a child consultation were all highly positive about the process, with many suggesting that all children should have the opportunity to participate in this way:

I think all children should go. I would have been lost without all this. (Janice)

Parents identified a number of reasons for allowing children to participate in the child consultation, both in terms of benefits for their children (to be able to talk to someone about what was happening, feel part of the process, have a voice and have an advocate) and for themselves (to know their child had been heard, and obtain a professional assessment about their child's psychological and emotional wellbeing). However, parent data also revealed some negative aspects associated with the child consultation. Firstly, for some parents, the child consultation appeared separate from the family dispute resolution process:

The reporting back was not adequate—she [child consultant] 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. (Olivia)

Secondly, parents spoke of the difficult balance between the protection of children and their participation in decision-making processes. Contexts where there was violence drew particular mention, although views differed on whether children should have a voice in such circumstances. Some parents thought children should be heard in situations where there is violence:

I was in a bit of denial of what was happening at home. If they had have spoken to the kids, I think they would have got the true situation, and really—it is about the kids—it shouldn’t be about the parents. (Mary)

Others felt children in violent situations should still be included in a child consultation, as long as there were no repercussions for the child:

I think that kids should be included as long as there’s no danger to the kids. If we’re 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)

A third concern raised by parents related to the lack of support in assisting them to hear and respond to feedback provided by the child consultant. Notably, the parents interviewed were those who had agreed to allow their children to participate in a child consultation, and yet this did not prevent the experience of hearing what their child had to say from being upsetting and painful:

I got upset, I cried because I felt the pain for them and when it came from the lady who was talking to us, I just thought, “You poor things”. (Janice)

Finally, a number of parents commented that they didn't know themselves how to prepare or advise children about the purpose of the child consultation, primarily because they were not given enough information about the process nor its implications for themselves and their children. This concurs with the children's views that they weren't well supported or scaffolded to participate in the child consultation process.

Staff views

The majority of staff defined children's participation in terms of a particular model now widely applied in family dispute resolution (frequently referred to in interviews as “the Jen McIntosh model”); that is, an approach based on a child-focused or child-inclusive intervention. One staff member 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”.

While staff identified children's participation as important (e.g., affording children the opportunity to talk about their experiences, helping children to identify coping strategies and empowering the children), their responses revealed tensions in balancing the family dispute resolution process with benefits for the children themselves. On the one hand, facilitating children's participation was about providing an opportunity to challenge parents' approach to family law decision-making; “effecting a change in the parent’s heart and their head” (Staff 7). An important aspect of children's participation was therefore seen as having an educative role for parents—assisting parents to recognise the impact of conflict on kids and to provide tips and tools upon which parents could draw:
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. (Staff 1)

In this sense, children’s participation was as much about challenging parents, particularly their openness to considering the needs and views of their children, as it was about the child:

I’ve got to come back to the parents again because, for effective child participation—the child can participate if it likes and say what it really wants to say, but parents have to be open to hear all of that. (Staff 6)

On the other hand, staff emphasised the importance of giving children an opportunity to contribute their views:

Giving children some say over what becomes of them … seeing the child as an equally contributing person. (Staff 5)

The main purpose of the child consultation cited by staff was to provide children with the opportunity to talk to somebody—to “get things off their chests”. Listening to the child’s views was seen as important in its own right, 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 … So even if it doesn’t go any further than that—that is the benefit for the child. (Staff 8)

In presenting their perspectives on child participation, staff were firm in contextualising and qualifying their comments around notions of “appropriateness”, stating clearly that children’s participation was not appropriate in a range of circumstances, thus signalling issues and tensions around balancing participation with protection:

I don’t want to be bringing a child consult into mediation if the parents are unable to hear that information and there might be a negative impact on the kids when they go home. If the parents are going to go home and say, “Why did you say this?” or “Why did you say that?”, that’s going to be a negative. (Staff 4)

At the same time, frustrations were expressed by some staff about the number of times a child consultation wasn’t deemed to be “appropriate” and some staff raised concerns that their conservative and cautious approach was diminishing the number of children involved in the process:

I wish I had more cases where child consults 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)

Staff were concerned that the decision to conduct child consultations was made solely on the basis of readiness of parents, with no opportunity for prior contact with children themselves to determine their readiness, need and consent:

Until the child gets into that child consult room, they haven’t had any information … With [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 [the adults] can say “No they are not going to participate”, but I wonder whether they [the children] would feel okay to do that? (Staff 7)

Finally, staff expressed concerns that FRCs were not funded to prepare even those limited numbers of children who are deemed “appropriate” to participate in a child consultation, nor to follow up with them:

My sense is, we put them in that situation, they get an hour with child consult, they don’t really know what gets fed into the mediation. Do they go home? Do they worry? Do they get anxious? Do they feel guilty? We don’t know. There’s no follow-up. (Staff 4)

While staff identified children’s participation as important, their responses revealed tensions in balancing the family dispute resolution process with benefits for the children themselves.
Executive views

When asked to explain what they understood by children’s participation, members of the Executive emphasised it was about 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. (Executive 1)

Executive members emphasised how children’s participation potentially supports their wellbeing by taking their views into account. As with the other key stakeholders, the Executive members cited a number of reasons for supporting children’s participation, including that children want to, and should, have a say and that they are competent to do so.

Executive members were unanimous that the key purpose of a child consultation was to hear what the child is saying and to present this back to the parents. Executive members were also unanimous regarding the value for children in having someone independent to talk to in a safe environment. Like staff, Executive members qualified that child consultations could only occur where it was appropriate to do so—where the family dynamic had been screened prior to consultation:

There is a danger with some child consultations, if they are not done mindfully, with the basis that this is about the child’s wellbeing. It is not about trying to find something to feed back into a decision-making process. 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. (Executive 2)

A related concern arose around the balance between children’s protection and participation. Risk was a primary concern, and the Executive members interviewed emphasised the importance of ascertaining the level of vulnerability of children and the need for appropriate assessment processes to determine whether it was suitable to involve children in the process. Comments suggested that the balance between protection and participation had shifted considerably toward a concern with protection:

The responsibility [of child consultations] is that it is a huge risk. I guess some of the reservations are [that] you’re putting this child so far at risk they are going to die. (Executive 2)

As with parents and staff, Executive members suggested more funding was required to adequately prepare all stakeholders for children’s participation, as well as to enable respectful and appropriate follow-up with children.

Discussion

All key stakeholders in this study were strongly supportive of the principle of children’s participation in family dispute resolution processes in FRCs, although views differed as to how the principle should translate into practice. For children, having a say was understood fundamentally in terms of recognition—of themselves as persons in the process and of what they have to say. Irrespective of the processes for facilitating participation, children suggested that the starting point for any decision-making should be a deeper regard for the child and the contribution they are capable of making. In this way, the children’s views were consistent with those of others in divorcing families reported both in Australia and overseas (Butler et al., 2002; Parkinson & Cashmore, 2008; Taylor, 2006). Less well reported in the literature are the negative effects when children feel unrecognised and/or their views not considered—a matter frequently raised by the children in this study and expressed as them feeling angry, sad, frustrated and lonely. This issue of the importance of recognition and its corollary, mis-recognition, is the subject of further ongoing work (see, for example, Fitzgerald, Graham, Smith & Taylor, 2009).

The children’s call for recognition, however, was a nuanced one, requiring that both their agency and capacity to participate, as well as their vulnerabilities and fears, be taken into account. On the one hand, children were quick to point out that “having a say” goes further than merely being listened to, and should signal some degree of change and choice regarding post-separation parenting arrangements. On the other hand, children’s calls for recognition did not necessarily extend to having a determinative or final say. As well, the children frequently referred to the idea that having a say is not easy and not always something children want, for fear of upsetting or hurting a parent or telling a story parents did not want to hear. Such layered understandings of the complexity of participation comfortably co-existed with their strong and unanimous view that all children should have a say and that there are many benefits for both children and parents when they are afforded the opportunity to do so, a view which is echoed in national and international literature (Parkinson & Cashmore, 2008; Percy-Smith & Thomas, 2009).

Adult stakeholders largely acknowledged the importance of recognition and respect as a central guiding principle for children’s participation in post-separation decision-making. All spoke in broad terms about the importance of listening to children and enhancing opportunities for them to be included in decision-making, with some drawing on the language of citizenship and rights to express such support. Like the children themselves, this did not mean adults thought children should carry the burden of a final decision, but that children 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 can result in better decisions. These parent views are largely consistent with others interviewed in a recent study by Parkinson and Cashmore (2008), which focused on children’s experiences of participation in the Family Court.

However, notwithstanding widespread support for the principle of children’s participation, the current study points to persistent ambiguity in the language and practice of children’s participation in family dispute resolution in FRCs, especially evidenced in conflicting views regarding the purpose of child consultations. Specifically, there were significant differences in stakeholder understandings about whether the main emphasis and intent of the child consultation was on establishing a parental alliance, for
The parents. In an advocacy approach, the rationale for linked to dispute resolution and hence to an outcome for the best interests of the child, the role of the child is directly involved in family relationship services. While the reduction of parental conflict is clearly in the parents' and children's interest, for children to have someone to speak with—or all of the above. Perspectives also varied as to the weight to be attributed to the child's experiences and to provide the child with information and support, including the opportunity to talk to someone in a safe environment.

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. Rather, the ambiguity appears to be linked to confusion around the rationale for children's participation in FRC processes, since stakeholders were unsure whether the purpose of the child consultation was based on therapeutic, evidentiary or advocacy approaches. 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 (in the case of child consultations, a trained counsellor) about his or her experiences 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 dispute resolution process and outcome. In an evidentiary approach, the primary purpose is to achieve a resolution for parents and for successful family transition (for example, a parental alliance, a parenting plan and/or greater parental 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 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 their agency and competence, and children play an active role in the decision-making process, if they so choose. The confidentiality afforded to the child will also differ depending on which approach is emphasised.

The ambiguity in the way in which participation is described by various stakeholders interviewed for this study lies in the hybrid understanding and application of the above three approaches. While children, parents, staff and Executive members variously emphasised the therapeutic potential of participation, they also referred to its evidentiary intent and 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, with the purpose primarily being to “assist parents to re-establish or consolidate a secure emotional base for their children after separation” (McIntosh, et al., 2004, p. 89). While all stakeholders perceived a need for greater clarity of purpose in relation to child consultations, confusion appeared when stakeholder expectations for advocacy-related outcomes were overshadowed by evidentiary imperatives (for example, through concerns expressed about why only a limited number of children “qualify” for a child consultation, the weight to be given to children’s perspectives, why children are not provided with information about the purpose and process beforehand, and why there is no provision for follow-up with children).

This emerging disjuncture between the principle and practice of participation appeared to be further compounded by blurred understandings of how “child-focused” and “child-inclusive” practice functions to progress the participatory objectives and aspirations of the FRC. As it currently stands, children’s needs and priorities are conflated with those of their parents, such that the benefits for children remain tenuous. Importantly, the experiences, difficulties and challenges negotiated by the majority of children, including those children subjected to violence and abuse, remain unheard and their views about future parenting arrangements overlooked. Despite research suggesting the need to involve and protect children as part of the dispute resolution process (Humphreys et al., 2008), the two (protection and participation) were portrayed in this study as mutually exclusive activities. In many instances, staff and Executive members were tentative about proceeding with a child consultation, stating 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.

The fact the issue of violence was not raised by the children doesn’t diminish its importance. Rather, it likely points to the power of the child consultation process in “screening” those children affected by family violence, thus maintaining their voices outside the decision-making process.” Yet it is very evident that family violence does shape and constrain the activities and interactions of those working in the delivery of family relationship services in FRCs.
We’d have nothing to do. Honestly we would have nothing to do. Be twiddling your thumbs. When I first came here I thought it was all very black and white: high conflict—off to court. 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 own half of the family property which excludes them from access to legal aid, so therefore we are going to run a shuffle—huge conflict—you are not going to go talking to the kids. (Staff 7)

Finally, the data suggests the need to refine the procedures and processes around child consultations so as to align them more closely with the broad principle, articulated in the United Nations Convention on the Rights of the Child (UNCRC), that all children have a right to have their views heard and taken into account. Given the National Framework for Protecting Australia’s Children 2009–2020 has recently identified children’s participation as an underlying principle of their improved protection, it may be timely to focus on whether, and under what conditions, it is possible to implement and safeguard both priorities.

Conclusion

This paper reports some key findings from a recent study that explored how children’s participation is understood and facilitated in one FRC. These findings point to the central importance of the recognition and respect of children in post-separation decision-making processes; supporting and developing the achievements of FRCs in promoting the wellbeing of children through their participation in post-separation decision-making; addressing ambiguities in the way children’s participation is described and processes around child consultations so as to align them more closely with the broad principle, articulated in the United Nations Convention on the Rights of the Child (UNCRC), that all children have a right to have their views heard and taken into account. Given the National Framework for Protecting Australia’s Children 2009–2020 has recently identified children’s participation as an underlying principle of their improved protection, it may be timely to focus on whether, and under what conditions, it is possible to implement and safeguard both priorities.

Endnotes

1 For ease of reading, the term “children” is used to refer to both children and young people.
2 While the development of child participatory processes in family law dispute resolution is still in its infancy, the contribution of Jen McIntosh and her colleagues has been most influential in FRCs to date. This approach comprises two “treatments”: a “child-focused” intervention is concerned with finding the child’s voice in the absence of the child, and “child-inclusive” in the presence of the child (McIntosh, Long & Moloney, 2004).
3 The findings related to these participants are grouped under the term “Executive”.
4 Numbers have been allocated to staff data only, and the ages of children have not been included, due to the gender composition of the sample and consequent concerns to ensure adequate de-identification of data.
5 A booklet titled Having A Say … When Your Parents Separate reports the narratives of the children and will be published in 2010. For further details, contact Anne Graham or Robyn Fitzgerald at the Centre for Children and Young People, Southern Cross University at www.ccpp.scu.edu.au.
6 A separate report details the overall research findings and includes extensive interview data supporting the research claims summarised in this paper (see Graham, Fitzgerald & Phelps, 2009).
7 In this study, the concept of participation was approached in interviews with children from the standpoint of “having a say”, since it was considered most children across the age bracket interviewed could relate to the notion of “having a say” as being participatory in intent.
8 See footnote 2 for a description of how child consultations “fit in” with broader understandings of the participatory processes of FRCs in an Australian context.
9 And consequently screening them out of research examining children’s experiences of family dispute resolution, such as our project.

References


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