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Children and young people in separated families: Family law system experiences and needs

FINAL REPORT 2018

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Contents

- Acknowledgements v
- Executive summary vi
 - Key findings vi
- 1. Introduction 1
 - 1.1 Background 2
 - 1.2 Research methodology 6
 - 1.3 Ethical issues 9
 - 1.4 Structure of this report 12
- 2. Sample and demographic profile 13
 - 2.1 Demographic profile of families 13
 - 2.2 Characteristics of children and young people and their families 16
 - 2.3 Parenting and financial arrangements 21
 - 2.4 Engagement with family law system services 25
 - 2.5 Summary 28
- 3. Issues important to children and young people in making post-separation parenting arrangements 29
 - 3.1 Listening to and supporting children and young people throughout the process of separation 29
 - 3.2 Experiences before, during and post-separation and their impact on parenting arrangements 32
 - 3.3 Communication during separation 35
 - 3.4 Relationship development post-separation 37
 - 3.5 Flexible parenting arrangements and the ability to change 39
 - 3.6 Ongoing communication and a meaningful say in parenting arrangements 42
 - 3.7 Summary 43
- 4. Children and young people’s experiences of family law system services 44
 - 4.1 Acknowledgement of the views and experiences of children and young people by services 44
 - 4.2 Children and young people as direct beneficiaries of service provision 47
 - 4.3 Engagement with service providers and experiences of participation in decision making 50
 - 4.4 Distress and harm arising from perceived inaction on the part of service providers versus effective participation 59
 - 4.5 Experiences of non-participation in the decision-making process 63
 - 4.6 Summary 68
- 5. What children and young people found to be of assistance when dealing with parental separation 69
 - 5.1 Services and support 69
 - 5.2 Effective professional practice 79
 - 5.3 Summary 86
- 6. Summary and conclusions 87
 - 6.1 Summary of family characteristics and access to family law system services 88
 - 6.2 Summary of findings relating to the experiences and needs of children and young people 88
 - Research question A - What are the important issues from the perspective of children and young people when making parenting arrangements after separation? 89
 - Research question B - What is the nature of the experience of children and young people whose families have used various family law system services? 91
 - Research Question C - What are the services that children and young people find to be of assistance? 93
 - Research question D - What is effective professional practice from the perspective of children and young people? 95
- References 97
 - Case law 97
 - Legislation 97
 - Other material 97

List of tables

Table 1.1:	Summary of study registration sample	9
Table 2.1:	Sample demographics	13
Table 2.2:	Parent demographics	14
Table 2.3:	Child/Young person demographics	15
Table 2.4:	Separation details	16
Table 2.5:	Child wellbeing: Overall health	16
Table 2.6:	Child wellbeing: Get along with people same age	17
Table 2.7:	Child wellbeing: Felt confident	17
Table 2.8:	Child wellbeing: Lose temper	17
Table 2.9:	Child wellbeing: Happy with life	17
Table 2.10:	Child closeness to parents	18
Table 2.11:	Ease of seeing parents	18
Table 2.12:	Ease of seeing parents	20
Table 2.13:	Time with each parent	20
Table 2.14:	Decision making in the family	21
Table 2.15:	Parents report of current safety concerns	21
Table 2.16:	Children and young people's reported parenting arrangements	22
Table 2.17:	Parenting arrangements by child's feeling of time with mother	22
Table 2.18:	Parenting arrangements by child's feeling of time with father	23
Table 2.19:	Frequency of daytime visits with non-resident parent	23
Table 2.20:	Frequency of non-face-to-face contact with non-resident parent	24
Table 2.21:	Frequency of phone contact with non-resident parent	24
Table 2.22:	Frequency of SMS contact with non-resident parent	24
Table 2.23:	Changeover arrangements	25
Table 2.24:	Child reports of family law services accessed by parents	25
Table 2.25:	Family law services accessed by parents and their children's recall of each	26
Table 2.26:	Main pathway for sorting out parenting arrangements	27
Table 2.27:	Participating parents' perceptions on main pathway	27
Table 2.28:	Parenting arrangements	27
Table 2.29:	Used the courts: Court outcome	28

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Executive summary

This report sets out findings from the Children and Young People in Separated Families: Family Law System Experiences and Needs project, a qualitative study commissioned and funded by the Australian Government Attorney-General's Department (AGD). This study aimed to investigate the experiences and needs of young people whose parents had separated and had accessed the family law system.

The study was comprised of in-depth, semi-structured interviews carried out between May 2017 and April 2018, with 61 children and young people aged between 10 years and 17 years (supplemented by interviews with 47 parents of these children). The interviews with 47 parents of these children were undertaken by telephone to enable the collection of demographic information by way of background to the data provided by the children and young people. These data enabled the research team to understand the services accessed by the parents and the pathways used to resolve their family law matters. Against this backdrop, the data from the interviews with children and young people provided rich insights into the experiences and needs of children and young people whose parents had separated and had accessed the family law system.

In this report, the authors make extensive use of direct quotes in order to provide a direct voice for participating children and young people and to ensure that, as far as possible, their perspectives are made available in their own words. This enables a deeper understanding of how children and young people articulate their views and experiences in this context.

Key findings

Sample and demographic profile of families

- The participating families in the study lived across four states: Victoria (36%), New South Wales (34%), Queensland (19%) and South Australia (11%) and had an average of two children.
- Among the children and young people in the study, just over half were male (56%) and the average age of participants was 13 years. Most were in the process of completing secondary school (74%), with a further 27% in Years Four to Six at primary school.

Characteristics of children and young people and their families

Children and young people reported fairly positively regarding their overall health and wellbeing over the previous six months:

- More than half of the children and young people rated their overall health as excellent or very good (55%) and a further 32% rated their health as 'good'.
- Eighty-four per cent reported feeling happy with their life in general all or most of the time.

Parenting arrangements

- Most children and young people were living in 'shared-care' arrangements (26%) or spent most or all nights with their mother (64%). Around one in five participants never saw one of their parents (18% never saw their father and 3% never saw their mother).
- Twenty-one per cent of young people saw their non-resident parent at least once per week.

It is worth noting that 50% of parents reported that they held safety concerns for themselves and/or their children as a result of ongoing contact with the other parent. The main issues of concern were: emotional abuse (64%), mental health issues (61%), violent or dangerous behaviour (32%) and alcohol or substance abuse (21%).

Engagement with family law system services

When asked about contact with family law services during and after separation, parents had accessed an average of eight services when finalising parenting matters, with the main services including:

- lawyers (96%)
- counselling, family dispute resolution (FDR) and/or mediation (94%)
- court services (83%)
- family consultants/report writers (60%)
- independent children's lawyers (ICL) (36%).

The main pathways parents used to finalise their parenting arrangements were:

- courts (62%)
- counselling/FDR/mediation (21%)
- lawyers (11%)
- discussions with the other parent (6%).

Issues important to children and young people in making post-separation parenting arrangements

Listening to and supporting children and young people throughout the process of separation

- Most children and young people (76%) wanted parents to listen more to their views in relation to parenting arrangements and regarding the separation more generally, to provide them with space and time to process events, and for their parents to respect their views as their own even if they disagree with them.
- Of those children and young people who indicated that they felt both parents listened to them (21% of participants), all except one felt either quite close or very close with both parents.

Pre- and post-separation events shaped participation in decision making about parenting arrangements

- Experiences of separation were important in shaping the child or young person's views on parenting arrangements and their support needs throughout the process.
- Young participants sought support from parents and others as they processed the change in their living circumstances and relationships.
- Participants wanted their views to be taken seriously by family law and related services, in particular when safety concerns were raised.

Foster communication and relationship development

- Parent-child communication emerged as important in helping children and young people to accept their new living circumstances, build new post-separation relationships with their parents and better understand what the separation process and the making of parenting arrangements involved.
- Participants needed time to build/rebuild relationships with each of their parents post separation. This process required their parents to listen to them, take interest in their individual lives and invest in quality time with them.

Allow flexibility to change, ongoing communication and a meaningful say in parenting arrangements

- More than one-third (38%) of children and young people described wanting ongoing communication with parents and others to understand more about what was going on in the post-separation context.
- Children and young people indicated that they would like to be kept informed regarding various aspects of the legal process. This involved knowing more about who was representing their parents; who was (if anyone) representing them; what the possible outcomes were; who was determining the parenting arrangements; what the steps were in the decision-making process; when would matters be decided; and when and how they would be able to express their opinion on matters.
- In the longer term, children and young people valued flexibility in their arrangements.
- Parenting arrangements need to reflect safety concerns and may require change to better reflect the best interests of the child or young person.

Children's experiences with family law system services

Children and young people participating in this study were asked about their experiences of any legal (including courts, legal services (including ICLs) and family reports/assessments), or non-legal (such as FDR, Children's Contact Services and counselling services) family law system services that their families engaged with when separating.

Children and young people's responses varied in the degree to which services engaged with, listened to and acknowledged their views and experiences

The quantitative data together with the qualitative descriptions of service experiences from participants suggest that there were mixed experiences in relation to the extent to which children and young people identified service providers as acknowledging their views and experiences. Specifically:

- Most participating children and young people who could recall accessing an ICL ($n = 14$), reported meeting their ICL ($n = 11$), with almost half of these participants indicating that their ICL acknowledged their views.
- In relation to family consultants/report writers, of those children and young people who could recall engaging with these professionals ($n = 20$), half indicated that their views were not acknowledged ($n = 10$), although some reported that they were acknowledged or somewhat acknowledged ($n = 9$).
- Although only a small proportion of participants whose families accessed FDR could recall doing so ($n = 12$), only three reported that they had met the FDR practitioner or mediator, but each of these participants reported that their views had been acknowledged by these professionals.

Some children and young people identified as direct beneficiaries of family law system services but positive experiences were more likely to be described in relation to non-family law related services

- Most children and young people who discussed engaging with these family law system professionals described feeling negatively towards the court process ($n = 11$), the family consultant/report writer ($n = 11$) and the ICL ($n = 7$). Most children and young people were also dissatisfied with either their level of input, or awareness, of the decision-making process or the final parenting arrangements.
- On the other hand, participating children and young people were more likely to describe being direct beneficiaries of post-separation counselling, and more commonly reflected positively on the support that they received from counsellors.

Mixed views and experiences of participation in family law system services

- Some participants described their engagement with these family law system professionals as facilitating participation in the decision-making process regarding parenting arrangements.
- The responses of a substantial proportion of children and young people with experiences of the family law system, however, suggested that the approaches adopted by the service professionals with whom they interacted, operated in a way that limited their practical impact or effectively marginalised their involvement in decision making about parenting arrangements. In particular, children and young people were more likely to describe feeling excluded from parenting arrangements made pursuant to family law proceedings if they did not have the opportunity to speak with or meet with the legal professionals or court personnel in their cases.
- Perceived inaction on the part of family law system professionals, particularly in response to safety concerns raised by children and young people, was identified as causing distress by a number of participants who reported some level of engagement with family law system professionals.

Services and supports that children and young people find to be of assistance

- Most participants ($n = 43$) found family (one or both parents, grandparents, siblings or other extended family) to be of some assistance in coping with the circumstances of their parents' separation, while just over half of the participants ($n = 33$) identified friends and peers as part of their important support structure in the context of their parents' separation.
- Approximately half of the participating children and young people described receiving support from their school during or after their parents' separation ($n = 30$), with this support primarily from interactions with counsellors ($n = 13$) or teachers ($n = 17$).
- A majority of participants had some engagement with mental health professionals and services ($n = 38$) such as psychologists or psychiatrists, Headspace and Kids Helpline. More than three quarters ($n = 30$) of these young participants described these services as helpful in some capacity.

Moving forward with effective professional practice: 'Give children a bigger voice more of the time'

Key characteristics of effective professional practice from the perspectives of the participating children and young people included:

- space to speak and more effective listening to their views and experiences (64%)
- that professionals take steps to build trust with the children and young people with whom they interact (including via qualities such as patience, empathy and respect), as well as be more mindful of children and young people's needs (46%)
- that professionals engage in open communication by providing more information relevant to the decision-making process in their cases (38%)
- that professionals act protectively and address and respond to their concerns and keep children and young people informed about issues affecting them.

The data in this current study suggest that a child-inclusive approach be adopted incorporating the features of effective professional practice outlined above and following an approach that:

- enables the relevant children and young people to contribute to and be accurately heard in the decision-making process and to be kept independently informed of the nature and progress of this decision-making process
- provides a clear and accurate explanation of the decision made
- provides access to ongoing therapeutic support and assistance as required
- accommodates the potential for flexibility to change parenting arrangements and have ongoing and meaningful communication.

While further research may inform the development of professional practice and service delivery specific to particular judicial, legal and non-legal professionals and service providers, a commitment to this approach would importantly be a step towards meeting the loud and clear calls from participating children and young people to 'give children a bigger voice, more of the time'.

1 Introduction

This report presents the findings of the Children and Young People in Separated Families: Family Law System Experiences and Needs project. This qualitative study was commissioned and funded by the Australian Government Attorney-General's Department (AGD) and conducted by the Family Law and Family Violence team at the Australian Institute of Family Studies (AIFS).

The aim of this project was to investigate the experiences and needs of children and young people whose parents had separated and had accessed the family law system,¹ focusing on children and young people's experiences of these services and how the family law system may better meet their needs. In responding to this research aim, the research questions explored were:

- In making parenting arrangements after separation, what are the important issues from the perspective of children and young people?
- What do children and young people find of assistance in dealing with parental separation; for example, services, peer support, family support?
- What is the nature of the experience of children and young people whose families have used various family law system services in relation to:
 - how the experiences of children and young people are acknowledged in the services and the extent to which children and young people are themselves the direct beneficiaries of services
 - whether engagement with these pathways supported their participation in decisions about parenting arrangements
 - what their experience of participation or non-participation was in this context
 - differences and similarities in the experiences of children and young people using these different pathways
 - what the characteristics are of effective professional practice from the perspective of children and young people.

Limited insight was also provided from this cross-sectional approach in relation to the following questions, although these questions were predicated on longer-term insights being available from the future implementation of a longitudinal approach:

- What characterises the lived experience of children and young people growing up in separated families and what are their experiences of different kinds of parenting arrangements, relationships with fathers, mothers, siblings and step-families (parents and children)?
- What are the dynamics underlying changes in parenting arrangements, and whether they are child or adult focused?
- What do children and young people find of most assistance when they are growing up in separated families (e.g. services, peer support, family support)?
- How do children and young people experience change in parenting arrangements, and the extent to which use and reuse of services is positive, negative or mixed from the perspective of children and young people?
- What are the differences and similarities in the circumstances of, and outcomes for, children and young people using the different pathways over the longer term?

¹ The term 'family law system services' incorporates both legal and non-legal services and includes: the Family Court of Australia, the Federal Circuit Court of Australia, the Family Court of Western Australia, lawyers (including Independent Children's Lawyers (ICLs)), family consultants, single experts, family dispute resolution (child-inclusive and child-focused), individual and family post-separation counselling, domestic and family violence services, children's contact services and the range of post-separation parenting programs.

When developing and implementing the project methodology for this research, the AIFS team liaised with over 500 legal and non-legal organisations, and more closely with over 70 of these organisations to circulate recruitment materials on an ongoing basis. The fieldwork interviews based on these recruitment activities were carried out between May 2017 and April 2018, with 61 children and young people aged between 10 years and 17 years participating in this study by way of in-depth interview, and with data also collected via in-depth interviews with 47 parents.

1.1 Background

The best interests of children and young people are central to the design and operation of Part VII of the *Family Law Act 1975* (Cth) (FLA). Section 60CA of the FLA requires the court to regard the 'best interests of the child' as the paramount consideration when making orders pursuant to Part VII in parenting/children's matters. Legislative guidance is provided for decision makers when determining the best interests of the child or young person, with the court required to consider two primary considerations stipulated in the FLA, namely, the benefit to the child of having a meaningful relationship with both parents (s 60CC(2)(a)) and the need to protect the child from physical or psychological harm and from being subjected to, or exposed to, abuse, neglect or family violence (s 60CC(2)(b)). Where these considerations are in conflict in a given situation, the protection from harm consideration in s 60CC(2)(b) is to be prioritised over the meaningful relationship consideration (s 60CC(2A)).

Regard is also to be given to the additional considerations outlined in s 60CC(3) and, of particular note in the context of this research, one of these additional considerations requires the court to consider 'any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight that it should give to the child's views' (s 60CC(3)(a)). Importantly, children and young people cannot be compelled to express a view in the context of Part VII proceedings (s 60CE).

Amendments to the FLA came into operation in 2012,² arguably placing more emphasis on the representation of children's best interests in family law proceedings with the introduction of s 60B(4) which specifies, 'An additional Object of Part VII is to give effect to the UN Convention on the Rights of the Child' (UNCRC). The UNCRC, to which Australia is a signatory, recognises the rights of children/young people to participate in decisions relevant to their care (Article 9) and to make their views known in administrative and judicial proceedings affecting them (Article 12). More specifically, Article 12 emphasises the provision of the opportunity for a child/young person to be heard in these proceedings (directly or through a representative) and obliges States Parties to ensure that a child/young person who is capable of forming their views is afforded the right to express those views freely, and that their views be given due weight in accordance with their age and maturity. In practice, section 60B(4) provides legislative clarification that the provisions of Part VII are to be interpreted in light of these UNCRC principles.³

Seminal case law such as *In the Matter of P and P* (1995) 19 Fam LR 1, *Harrison v Woollard* (1995) 18 Fam LR 788 and *R and R: Children's Wishes* (2000) 25 Fam LR 712 provide guidance in relation to the weight that may be accorded to the wishes (now views)⁴ of children and young people when determining their post-separation parenting arrangements.⁵ In *Harrison v Woollard* (1995) the Full Court of the Family Court of Australia outlined certain factors as being of assistance to the court in assessing the weight to be placed on a child's wishes/views, such as the strength, duration and basis of the child's/young person's wishes/views, and their maturity, including their understanding of the implications of the relevant issues. While Fogarty and Kay JJ identified that the

² *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).

³ Explanatory Memorandum for *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth). Note, however, that Parkinson (2014) argues that the listing of the provision as an 'additional object' suggests that it has a more limited role than the objects in s 60B(1).

⁴ Prior to the 2006 FLA amendments, the equivalent section 68F(2)(a) referred to 'any wishes expressed by the child ...'. The Explanatory Memorandum to the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) indicated that this change from 'wishes' to 'views' was to capture a broader understanding of a child's 'perceptions and feelings', which may not necessarily relate to (but does not otherwise exclude) a wish as to which parent the child wants to live with or spend time with (see also Chisholm, 2009). The Explanatory Memorandum further noted that this change was consistent with Article 12 of the UNCRC and Chisholm observes that the purpose of the change from 'wishes' to 'views' was to encourage those in the family law system to consider children's experiences and how they feel about a situation. In *Mestronov v Mestronov* [2007] FamCA 1672, Bennett J referred to previous jurisprudence relating to the assessment of children's wishes, while noting that the concept of a child's views is broader as it refers to the child's thoughts and feelings. However, Chisholm acknowledges that the wording of the section, and the emphasis on maturity and the court's discretion as to the weight to be placed on the child's views, still suggest a narrow focus on the desired outcomes of a child even as the views may contribute to a more holistic determination of parenting arrangements and assessment of the best interests of a child (Chisholm, 2009). For more recent consideration of the distinction see, for example, Voight (2017).

⁵ The leading case was *In the Matter of P v P* (1995) 19 Fam LR 1. See also *In the Marriage of Bennett v Bennett* (1991) 17 Fam LR 561; *DS v DS* (2003) 32 FamLR 352 and *R v R: Children's Wishes* (2000) 25 Fam LR 712 and Fogarty and Kay JJ in *In the Marriage of Harrison v Woollard* (1995) 18 Fam LR 788.

weight to be given to a child's wishes/views 'will depend upon the children's cognitive age and level of maturity in each particular case', and that this exercise was subject to the best interests of the child principle (in s 60CA), the court did state that 'the research supports a rebuttable presumption that children of the age of seven are capable of making a considered decision, a decision in which reason is employed' (p. 823). More generally, the importance of giving appropriate and proper consideration to a young person's wishes/views was clearly expressed in this case:

A child's wishes must not only be considered, but must be shown to have been considered, in the reasons for judgment of the trial judge. Furthermore, if the trial judge decides to reject the wishes of a child, then clear and cogent reasons for such a rejection must be given, particularly if the separate representative submits that the Court should give effect to such wishes. The wishes of the children should not be discounted simply because they are expressed by children. (Baker J)

These seminal cases, together with more recent case law including an appeal to the High Court, *Boldemonte and Boldemonte* [2017] HCA 8, also provide that the views of children/young people 'are but one consideration of a number to be taken into account in the overall assessment of a child's best interests', and are not otherwise decisive or determinative in and of themselves.

For more than 15 years, concerns have been raised about the extent to which existing legislative and practice measures are sufficient in fulfilling Australia's obligations as a signatory to the UNCRC with respect to the participation of children and young people in decision making in the family law context that affects them (e.g. ALRC, 1997; Australian Child Rights Taskforce, 2011; Kaspiew et al., 2014). The FLA currently provides that the court may inform itself of any views expressed by the relevant children and young people in Australian family law proceedings by: (1) the appointment of an independent children's lawyer (ICL) (s 60CD (2)(b); s 68L); (2) an order for a s 62G family report or a s 11F memorandum from a family consultant (s 60CD(2)(a)); and (3) 'by such other means as the court thinks appropriate', subject to the rules of the court (s 60CD(2)(c)), which may include meetings between judicial officers and the relevant children and young people. Although each of these mechanisms will be considered in the substantive chapters of this report, each will be briefly outlined below.

Independent children's lawyers

Prior to 2006, the role of the ICL or 'child representative' (as they were previously known) developed through case law and practice guidelines.⁶ Legislative reform of the FLA in 2006 enshrined the role and obligations of ICLs in proceedings pursuant to Part VII. Section 68L of the FLA⁷ facilitates the appointment of an ICL by providing that a court may order that a child be independently represented by an ICL who will represent their interests in the Part VII proceedings. Section 68LA outlines the role of the ICL and provides that while an ICL is not obliged to act on the child's instructions in relation to the proceedings, they must ensure that any views expressed by the child in relation to the proceedings are fully put to the court.⁸

While there is no express legislative requirement in the FLA for the ICL to meet with, or speak to, the relevant child or young person, s 68L(5) provides that the court may make such orders as to allow the lawyer to ascertain the child's views, unless such enquiry would be inappropriate due to their age or maturity; or some other special circumstance (s 68L(6)). The ICL Guidelines (National Legal Aid, 2013) indicate that although it is expected that the ICL will meet the child, this is not required if the child is under school age, where there are exceptional circumstances or if there are significant practical limitations.

In practice, differences have been identified in the approaches that ICLs take towards representing the best interests of children and young people, with a substantial proportion of ICLs indicating that they viewed direct consultation for the purpose of eliciting views to be beyond their role and expertise (Kaspiew et al., 2014). In addition to examining these varying approaches to representing the best interests of children and young people and facilitating their participation in the proceedings, research including Kaspiew et al. (2014) and earlier by Ross (2012a, 2012b, 2013a, 2013b) and Parkinson and Cashmore (2008) has identified other functions forming part of

⁶ *RCB as Litigation Guardian of EKV, CEV, CIV and LRV v The Honourable Justice Colin James Forrest, one of the Judges of the Family Court of Australia and Others* [2012] HCA 47; *State Central Authority v Best (No. 2)* [2012] FamCA 511; *State Central Authority v Young* [2012] FamCA 843; *Knibbs v Knibbs* [2009] FamCA 840; *McKinnon v McKinnon* [2005] FMCA Fam 516; *T v S* (2001) 28 Fam LR 342; and *T v N* (2003) 31 Fam LR 257. Note also National Legal Aid. (2013). *Guidelines for Independent Children's Lawyers* <www.nationallegalaid.org/assets/Family-Law/ICL-Guidelines-2013.pdf>.

⁷ See also section 164 of the *Family Court Act 1997* (WA).

⁸ See also *Sawyer v Sawyer* [2015] FamCA 982. For a further discussion of the role of ICLs, policy context and practical considerations relevant to ICL, see Kaspiew et al., 2014.

the ICL role that relate to their evidence gathering and litigation management functions (see also more recently Bell, 2016a, 2016b).⁹

AIFS research (Kaspiew et al., 2014) examining the use and efficacy of ICLs in the Australian family law system, identified that ICLs brought a ‘child focus to proceedings that would otherwise be conducted bilaterally and adversarially’ (p. xii). Nevertheless, concerns were raised by both professional and lay participants in that study, about the ‘capacity and commitment’ of some ICLs, with both ‘individual and systemic issues identified as impacting on effective ICL practice’ (Kaspiew et al., 2014, p. xii). Most children and young people (and their parents) participating in that study described their disappointment at the limited interaction with, or failure to meet, the ICL appointed in their case. Together with the absence of, or limited interaction with the ICL, young participants raised concerns about the failure to obtain and/or communicate their views to the court, and the lack of ongoing communication regarding the progress of the litigation or explanation of the outcomes when describing their experiences of ICLs (Kaspiew et al., 2014, Chapter 8). This research, together with that undertaken more recently including by Anderson et al. (2016); Bala, Birnbaum, & Bertrand (2013a, 2013b); Beckhouse (2015a, 2015b, 2016); and Bell (2016a, 2016b, 2017) will be considered in greater detail in Chapter 4.

Family reports and memoranda

As noted above, a court may order parties and/or children to the proceedings to attend meetings with a family consultant (in-house or court-appointed (external) psychologist or social worker)¹⁰ to enable the family consultant to prepare a family report (s 62G) or a memorandum (s 11F) that will inform Part VII proceedings. A family consultant directed to prepare a report must ascertain the views of the child/young person in relation to relevant matters in the proceedings and include these views in the report (s 62G(3A)), with exceptions provided for those cases where it is inappropriate to ascertain the views due to the child’s age or maturity, or any other special circumstance.

The *Professional Standards of Practice for Family Assessments and Reporting* (2015) establish minimum standards for the conduct of family assessments and reports ordered under s 62G or commissioned privately. Proper engagement with children and young people is emphasised, providing that they be advised of the purpose of interviews and informed of what will happen with the information that they provide (including the advice that what they tell the family assessor/consultant is not confidential). The Standards also stipulate that family assessors/consultants should be trained and skilled in interviewing children. The findings of family assessors/consultants and recommendations in their reports are often highly influential in determining court outcomes but recent research and commentary suggests that there are significant variations in their preparation and quality.¹¹ The perspectives and experiences of the participating children and young people when engaging with family assessors/consultants and in the family report process will be examined in Chapters 4 and 5 of this report in the context of research relating to the intersection of social science expertise and family law (e.g., Banham, Allan, Bergman, & Jau, 2017; Birnbaum, 2017; Birnbaum & Bala, 2017; O’Neill et al., 2018).

Judicial interviews

There are currently no provisions in the FLA or in the Family Law Rules (FLRs) relating to judicial officers meeting or speaking with children and young people to ascertain their views. Previously, Rule 15.03 of the FLRs (which was removed in 2010) stated that judicial officers could interview a child who was the subject of proceedings under Part VII of the FLA. When this provision was removed, it was noted that such cases did not generally occur

⁹ The *Guidelines for Independent Children’s Lawyers* (National Legal Aid, 2013) provide guidance for ICLs in performing their role. The guidelines state that the ICL should seek to provide the child/young person with an opportunity to express their views and that the ICL should ensure that the child is able to be advised about developments in the matter if they wish to receive this information. Legal aid commissions in Queensland and New South Wales have also formulated practice guidelines and standards for ICLs and National Legal Aid has developed a web resource specific to ICL practice and now conducts the training required to be undertaken prior to a lawyer’s appointment to the ICL panel: Legal Aid Queensland, *Best Practice Guidelines for Independent Children’s Lawyers (ICLs) Working With People who Have Experienced Domestic Violence*; Legal Aid NSW, *Practice Standards for Independent Children’s Lawyers in Family Law Matters*.

¹⁰ Family consultants are psychologists and/or social workers and are defined in FLA s11B as being appointed by the Family Court of Australia (pursuant to s 38N), by the Federal Circuit Court (pursuant to the *Federal Circuit Court of Australia Act 1999* (Cth)), by pursuant to the regulations (specifically Regulation 7 of the *Family Law Regulations 1984* (Cth) or by a law of a state, and their primary functions are set out in FLA s11A. Their primary functions include the provision of services in relation to proceedings under the Act, including assisting and advising people involved in the proceedings, helping the parties to resolve disputes, assisting and advising the court, and giving evidence and reporting to the court under s 55A and s 62G. Practitioners who provide services under Regulation 7 are based in private practice, are not employed by the court and are engaged when an internal family consultant is not available.

¹¹ See further, for example, O’Neill, Bussey, Lennings, & Seidler (2018) and House of Representatives Standing Committee on Social Policy and Legal Affairs (2017).

and where they did arise, they could be covered by specific orders.¹² While in Australia it is rare for a judicial officer to meet and speak with a child or young person directly, it is an option that remains available despite the removal of the express reference in the FLRs.¹³ In *ZN and YH and Child Representative* (2002) FLC 93-101, Nicholson CJ noted that, in some instances, it may be appropriate for a judicial officer to meet with a child/young person, particularly when the child is older. Further, where children/young people expressly indicate their desire to directly speak with the judicial officer, it may be argued that the court should be mindful of Article 12 of the UNCRC. Both Australian and international research will be noted in the context of an analysis of reflections from children and young people participating in this study regarding their direct communication with decision makers (e.g. Bala, Bertrand & Birnbaum., 2013; Bala, Birnbaum, & Cyr, 2015; Beckhouse, 2015a; Birnbaum & Bala 2014; Caldwell & Taylor, 2013; Dunbar, 2017; Family Law Council, 2016; Fernando, 2012; Fernando & Ross, 2018; Hunter, 2007; Parkinson & Cashmore, 2007; Young, 2017).

Options for participation in out-of-court decision making

Provision is made in s 60I of the FLA for compulsory attendance at family dispute resolution (FDR) prior to filing applications pursuant to Part VII, except in cases involving a risk of or substantiated family violence or child abuse (s 60J). Families may engage with FDR in fulfilment of this obligation or as the primary means by which to resolve their post-separation arrangements. FDR practitioners (and lawyers and counsellors) are required to provide parties with information about non-court-based family services (s 12E and 12G) and family services outside the court system. They are also required to advise parents that the best interests of their children are to be regarded as the paramount consideration and that children's protection from harm is prioritised over maintaining meaningful relationships with both parents (s 60D).

While the FLA does not specifically require the expressed views of children and young people to be obtained when engaging in FDR, 'child-focused' and 'child-inclusive' approaches to FDR have been developed to accommodate consideration of the views and best interests of children and young people when engaging in decision making in this non-court context. While child-focused practices reflect the consideration of these best interests by FDR practitioners and parents participating in this FDR process, child-inclusive practice involves the child or young person participating in the FDR process via a child consultant who liaises directly with them. The child consultant is then able to communicate the views and experiences of the child or young person to the parents so as to directly inform and specifically focus the parties' engagement in FDR on the best interests of their children.

Some insight into children and young people's experiences of FDR is provided by participants in this current study, which will be considered in Chapter 4, noting relevant literature, including more recent action research conducted by UnitingCare Queensland (Williams, 2016), as well as earlier research (see e.g. Ballard, Holtzworth-Munroe, Applegate, D'Onofrio, & Bates, 2013; Bell, Cashmore, Parkinson, & Single, 2013; Brown & Campbell, 2013; Ewing, Hunter, Smithson, & Barlow, 2015; Graham, Fitzgerald, & Cashmore, 2015; Harris, 2012 regarding the KidsTalk program implemented by Victoria Legal Aid; Inder, 2014; Kelly, 2014; Kaspiew, Lewington, Lynch, & Field, 2013; McIntosh, 2007; McIntosh, Long, & Wells, 2009; Moloney & McIntosh, 2004; Taylor & Gollop, 2015; Walker, 2013; Webb & Moloney, 2003; Yassenik & Graham, 2016).

Perspectives on participation from children and young people

Previous Australian and international research in the family law context¹⁴ has established that it is important from the perspective of children and young people to be provided with an opportunity to participate in the decision-making process after separation by having their views heard and considered in this process.

Relevant Australian and international studies have also identified the importance of children and young people being kept informed of the nature and progress of the decision-making process and having decisions and outcomes explained to them as part of this process.¹⁵ While prior research suggests that children and young

¹² *Explanatory Statement, Family Law Amendment Rules 2010 (No. 1)*. It is noted that children under 18 years of age are not permitted to swear affidavits, be called as witnesses or be present during family law proceedings unless the court makes a relevant order: FLA s 100B(1),(2).

¹³ See, for example, Fernando (2012).

¹⁴ See e.g. Bagshaw et al., 2010; Bell, 2017; Birnbaum, 2017; Birnbaum & Bala, 2009, 2017; Campo, Fehlberg, Millward, & Carson, 2012; Fitzgerald & Graham, 2011; Graham & Fitzgerald, 2006, 2010; Kaspiew et al., 2014; Lodge & Alexander, 2010; McIntosh, 2009; McIntosh, Wells, Smyth & Long, 2008; Neale, 2002; Parkinson & Cashmore, 2008; Qu & Weston, 2015; Quigley & Cyr, 2017; Sheehan & Carson, 2006; Smart, Neale & Wade, 2001. See also: Cashmore, 2011; Cashmore & Parkinson, 2016; Parkinson, Cashmore, & Single, 2005; Sheehan et al., 2005.

¹⁵ See e.g. Kaspiew et al., 2014; Thomas, 2002; Birnbaum, Bala, & Cyr, 2011; Birnbaum & Bala, 2009; Taylor, 2006; Smith, Taylor, & Tapp, 2003 and Taylor, Gallop, & Smith, 2000).

people tend to locate responsibility for the ultimate decisions relating to parenting arrangements with the relevant adults, some differentiation on this point has been identified on the basis of age and or risk/harm profile (e.g. with some older children expressing their views of the appropriate arrangements with particular vehemence and with less reference to the difficulties arising from divided loyalties: Campo, Fehlberg, Millward, & Carson, 2012; Sheehan et al., 2005). More specifically, previous research highlights the importance of facilitating opportunities for children and young people to express their views in relation to the general effects of their parents' separation as well as regarding their preferences for post-separation parenting arrangements (e.g. Birnbaum & Saini, 2013, 2015; Fehlberg, Natalier, & Smyth, 2018; Fernando & Ross, 2018; Fortin, Hunt, & Scanlan, 2012; Mackay, 2013; Marschall, 2017; Qu & Weston, 2015; Quigley & Cyr, 2017; Sadowski & McIntosh, 2016).

The analysis of data from interviews with children and young people in the substantive chapters of this report will be considered against the backdrop of this prior Australian and international research, together with the research outlined earlier regarding the interaction of professionals with children and young people in the family law context. In doing so, the discussion will provide insight into the expectations and experiences of children and young people when engaging with family law system services. It will also explore how listening to the views and experiences of children and young people is critical to the improvement of family law system services.

The discussion and analysis in this report will also explore participating children and young people's perspectives of improvements that may be made to the mechanisms currently used to identify, assess and respond to their views and experiences in the context of post-separation decision making. In doing so, the discussion will have regard to recommendations for reform that seek to address both the representative and therapeutic needs of children and young people (see e.g. Beckhouse, 2015b; Family Law Council, 2016; House of Representatives Standing Committee on Social Policy and Legal Affairs, 2017; Taylor, 2017; Young 2017; Young Peoples Family Law Advisory Group (SA)¹⁶).

1.2 Research methodology

As noted at the outset of this report, the core research question for this project was: to investigate the experiences and needs of children and young people whose parents have separated and have used the family law system, with a focus on their experiences of these family law system services and how the family law system may better meet their needs. A series of more specific research questions were also specified for exploration via a qualitative research approach, with the option to accommodate a longitudinal approach at a later date (outlined on page 1).

Semi-structured, in-depth interviews were conducted with children and young people ($n = 61$) and with one of their parents ($n = 47$), with interview schedules developed to cover the key themes emerging in the project research questions. Parents and young people were recruited using multiple strategies through family law services and online communications (see further below). Although children and young people and their parents self-selected to participate in the research, the researchers collaborated with key stakeholders to use a sensitive and targeted recruitment method to engage with families who were using or had used their services. The ethical clearances obtained for this project (see further below) required interviews with children and young people aged 10–11 years of age to take place at least 12 months after the final resolution of their parents' family law matters and at least three months after final resolution for children and young people aged 12–17 years.

Face-to-face interviews were prioritised for children and young people but interviews via an online application (Skype) were undertaken in a small number of situations where geographical access was a consideration, the participant was sufficient in age, they had access to the internet and both the young person and their parent were comfortable with the use of online technology for the purpose of the interview. Interviews with parents were undertaken by telephone to enable the collection of demographic information by way of background to the data provided by children and young people. These data enabled the research team to understand the services accessed by the parents and the pathways accessed to resolve their family law matters.

The interview schedule for children and young people included both a structured and unstructured component. The structured component of the interview was developed to capture data that would provide insight into child and adolescent wellbeing and to facilitate a comparison of the wellbeing of children and young people in this sample to the adolescent sample in the Longitudinal Study of Separated Families (2009), and to the samples in Waves 5 and 6 of the Longitudinal Study of Australian Children. For parents, the structured component was integrated with the open-ended interview schedule and enabled data relating to the nature of the post-separation arrangements and family law system services accessed to be collected by way of background context to the data collected from children and young people. The open-ended component of the interviews

¹⁶ See further <www.pathwaysnetworkssa.com.au/ypflag>.

supported an in-depth, sensitive and responsive exploration of issues, experiences and perspectives in a context where the participants' views, experiences and circumstances varied within the sample.

The interviews with parents and children and young people commenced in May 2017 and concluded in early April 2018. Interviews were audio recorded on a password-protected, encrypted digital recording device and all recordings were transmitted to the transcription service using a secure electronic transfer. Transcribed interviews were de-identified and stored on the AIFS secure server and then data from the transcriptions were entered into a programmed survey instrument (on AIFS secure internal server) to assist with analysis.

While the primary focus of this report is presenting qualitative findings on children and young people's experiences with family law system services and supports, a secondary, quantitative component is also presented to provide some context within which to examine the qualitative insights and experiences of children and young people. The quantitative data analysis was undertaken using Stata software and is presented unweighted.

Underpinning the research design of this study was an exploratory, grounded theory approach both to the collection and analysis of data.¹⁷ Rather than testing preconceived or fixed hypotheses, structured and open-ended research questions guided the data collection relevant to the project research questions, with the literature review developing alongside the data collection and analysis, and aiding the identification and investigation of emerging issues in the research process (Glaser & Strauss, 1967; Charmaz, 2000). In relation to the data analysis, a process of initial open-coding was undertaken to identify the key themes and patterns in the data, which supported the development of the findings grounded in the data. This was followed by further theoretical and selective coding, to examine the variances between the emerging themes and patterns, and led to the development of the core themes—those with the highest frequency and most relevance to the emerging theory (Charmaz, 2000; Dey, 1999; Janesick, 2000; Kelle, Prein, & Bird, 1998; Punch, 1998; Ryan & Bernard, 2000). The core themes identified in this process are developed in Chapter 6 of this report.

Recruitment measures

Families were recruited using multiple strategies, such as through family law services, online communication and the dissemination of recruitment material. The recruitment strategy focused on engaging with parents and young people (10–17 years) indirectly, through promotional materials, at the time services and courts were being used to resolve parenting arrangements. This recruitment strategy primarily targeted families who had commenced but not completed their engagement with services or courts, although a number of services were also able to make contact with families following the recent finalisation of their matters. While young people and their parents ultimately self-selected to participate in the research, the researchers collaborated closely with key stakeholders to engage in sensitive and targeted recruitment methods to engage with families who had used their services. To recruit this purposive sample, the research team liaised with over 500 legal and non-legal organisations, and more closely with over 70 of these organisations to circulate recruitment materials on an ongoing basis, including:

- the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia
- Family Relationship Centres (including FDR services providing child-inclusive FDR) including via Relationships Australia, UnitingCare, EACH (Social and Community Health), Catholic Care and Anglicare
- National Legal Aid and state and territory legal aid commissions
- national and state and territory children's commissioners
- law societies, bar associations and the Family Law Section of the Law Council of Australia
- the National Association of Community Legal Centres together with individual community legal centres
- Women's Legal Services Australia and state and territory women's legal services and domestic and family violence (DFV) services
- Family Law Pathways Networks
- youth services
- community health services
- school networks.

The research proposal and funding for this project was based on the recruitment of participants in Melbourne, Sydney and Brisbane and in regional and rural areas that were accessible within the cost parameters of the fieldwork component, although recruitment was extended to all states and territories during the course of the project.

¹⁷ While the initial formulation of grounded theory by Barney Glaser and Anselm Strauss centred on the positivist notion of discovery, the more recent constructivist approach to grounded theory has shifted the focus towards the active generation of theory by the researcher and research subject: Charmaz, 2000; Glaser, 1994; Lincoln & Guba, 2000.

Family law, community and youth services shared promotional materials about the study via their websites, social media accounts, e-newsletters and other online networks. In addition to engaging with families through face-to-face services, the research team also utilised a wide variety of online recruitment strategies, enabling us to connect with families that were no longer accessing face-to-face family law services. Finally, targeted advertising through Facebook was also used by the research team as an additional method of connecting with potentially in-scope families.

Promotional recruitment materials (hardcopy and electronic) were developed specifically to engage young people and their parents and to invite them to participate in the study. A poster and postcard were developed to be displayed in waiting areas of family law system services. The eye-catching design featured an image of a dog holding a can on a string with the statement 'Be heard!' above the key study information and contact details for parents and young people to register their interest in participating. These materials were designed to stand out among the other pamphlets and visual materials in the waiting areas of family law services (that typically used fairly generic imagery, such as stock photos of children and families).

The recruitment measures implemented for this study were designed to maximise the reach of the promotional activities and to connect with the broadest possible sample of potential participants, with regard to geographic location, parent and child gender, background, service use and range of experiences. However, the realities of using an 'opt-in' approach are such that the final distribution of the sample was difficult to control.

Screening and sampling procedures

Implementing this 'opt-in' process involved the parent or young person making initial contact with the AIFS research team, via one of several methods (including email, a 1800 number, SMS and a webform). A team member responded to all registrations of interest by either sending an email with some initial screener questions and/or having a brief telephone conversation with the parent to establish whether they were 'in-scope' to participate in the study, as well as to ensure that the research did not impose a burden on participants or cause any harm or unintended consequences.

Detailed protocols were developed to guide the researchers in determining whether a family was 'in-scope', which covered issues related to the timing and details of finalisation of legal and/or settlement processes, any anticipated future proceedings and issues of safety/risk. The screening process was adapted to the circumstances of the family and their contact with family law system services.

Sampling frame

As noted above, children and young people aged between 10 and 17 years could either register their interest in participating themselves¹⁸ or were recruited via their parent(s), and their participation was dependent on obtaining both their consent and the consent of one of their parents, as outlined below.

The sample frame for the Children and Young People in Separated Families study consisted of the following key components:

- The child/young person was aged 10–17 years during fieldwork period.
- Parents had finalised (or re-negotiated) their matters and had engaged with Australian family law system services no earlier than 2013.¹⁹
- For children aged 12 years and over, a minimum of three months had elapsed since all family law related matters were finalised, and for 10–11 year olds, a minimum of 12 months had elapsed.
- There was no anticipated issue of safety or risk of conflict arising as a result of the child/young person's participation in the study.
- Either the participating parent had sole/shared parental responsibility or the parent/guardian with the requisite parental responsibility had provided consent for the young person to participate.

The above screening components were developed to ensure the data reflected the current family law system services as well as possible, while mitigating the risk that engagement with the research would somehow impact on the families' engagement with services and courts (e.g. interview material being subpoenaed). These sampling restrictions were in place as part of the study's Human Research Ethics Committee (HREC) clearances and are discussed in further detail in the ethical considerations section below.

¹⁸ If a child/young person registered their interest in participating directly, a member of the research team would ask the young person for the contact details of a parent/guardian in order to obtain parental consent and confirm eligibility related to family law matters before proceeding further with the young person.

¹⁹ Families were initially eligible to be interviewed where their family law matters had been finalised during the period from 1 January 2015 to 31 December 2017. The eligibility period was subsequently extended to the period between 1 January 2013 and 31 December 2017, in response to recruitment requirements.

The AIFS researchers established and maintained regular contact with families from the date of initial registration of interest through to the period following the completion of the parent interview and then through to the time of the interview with the child/young person. The length of time between family registration and the child/young person's interview varied due to each families' experiences and was dependent on factors such as the minimum waiting time from finalisation, children/young people needing to wait until after their tenth birthday, and the parent and child or young person's availability to participate in the interviews. On average, it took 189 days (approximately six months) from when families first registered their interest in participating to the completion of the child/young person's interview, ranging from 24 days to 395 days.

Summary of study registrations

Table 1.1 provides a summary of all the registrations of interest to participate received from families during the fieldwork period. Of all family registrations ($n = 422$), 11% resulted in participation, with 15% of registrations with mothers registered as the parent resulting in a participating family, and 7% of father-registered families resulting in a participating family.

Overall, 29% of registrations were deemed out of scope, with matters not finalised being the most common reason (15% of all registrations), the child being either too young (or in a small number of cases, too old) to participate (4% of all registrations), the registering parent not having parental responsibility and/or consent from the other parent (4% of total registrations—eight fathers and eight mothers) and other reasons including no recent service use, and only the parent wishing to participate in the study.

Five per cent of registrations throughout fieldwork ultimately opted out of the study, on average about three months from the date of registration and generally after at least one follow-up attempt after sending through the initial welcome SMS/email.

Among all registrations of interest, 54% were ultimately categorised as 'no contact'—that is, after receiving an initial registration of interest, despite several contact attempts, the research team received either no response at all or too little to establish whether the family were potentially 'in-scope'. This was slightly higher among registering fathers than mothers (60% of fathers, cf. 48% of mothers).

Table 1.1: Summary of study registration sample

Registration outcome	All registrations % ($n = 422$)	Mothers % ($n = 275$)	Fathers % ($n = 106$)	Not specified % ($n = 41$)
Complete	11.4	14.9	6.6	0.0
Opted out	5.2	4.7	3.8	12.2
No contact	54.0	48.0	60.4	78.0
Out of scope	29.4	32.4	29.2	9.8
<i>Child age</i>	4.3	4.7	3.8	2.4
<i>Matters not finalised</i>	14.9	17.8	11.3	4.9
<i>Parental responsibility</i>	3.8	2.9	7.5	0.0
<i>Other reason</i>	6.4	6.9	6.6	2.4

Notes: There were 41 registrations of interest completed by a child/young person where the parent gender was never established. Percentages may not total exactly 100% due to rounding.

The recruitment methods employed as described in this chapter were comprehensive in targeting both metropolitan and regional/rural areas and a broad range of services and access points for families. The achieved sample reflects this maximum variety sampling approach.

1.3 Ethical issues

Given the complicated nature of the research, particularly involving children and young people with complex family dynamics, the research team was cognisant of the care and sensitivity required in approaching every aspect of this study. A key consideration underpinning the methodology of this study was to value and empower young people to have a voice about their experiences of the Australian family law system services and to provide a platform for their suggestions of how to best support young people experiencing parental separation. However, it was imperative that this be done in a sensitive and careful manner so that participation did not cause undue distress or burden on participants.

Ethics approach

The research team developed comprehensive protocols that covered all aspects of engagement with families, but particularly with children and young people, including: recruitment; screening of families; obtaining informed consent (from both the parent and the child/young person); interview procedures; protecting and maintaining participant confidentiality, privacy and safety; responding to distress; reporting obligations; and offering referrals to support services. These protocols equipped the research team with the appropriate strategies applicable to the recruitment and interview process and enabled researchers to respond appropriately where support and referrals were directed. Debriefing of staff took place after interviews with both parents and children and young people (with the AIFS Executive where directed) and there were no circumstances assessed by the research team and AIFS Executive as triggering a notification to be made to a prescribed child welfare authority.

All researchers involved in interviewing parents and children and young people had extensive research experience working with families, children and populations with complex and diverse backgrounds. Further, all researchers who undertook the interviews with children and young people had completed additional training in interviewing children and young people with an experienced psychologist. The research was also guided by reference to relevant research literature regarding research with children and young people (including Greene & Hogan, 2005; Taylor, Gollop, & Smith, 2000; Turoy-Smith & Powell, 2017; Wilson & Powell, 2001).

Two researchers were present at each interview with each child/young person, with one researcher experienced in interviewing children and young people conducting the interview and a second researcher present as an observer and note taker. The second researcher also supported the development of rapport in the interview process, enabled non-verbal expressions and cues to be recorded that would otherwise not be captured by digital audio recordings and ensured any signs of distress were not overlooked during the interview process. This dual-researcher approach is consistent with previous AIFS research with children and young people (e.g. Kaspiw et al., 2014). In these past experiences, the researchers had explained to the child or young person that the second person was there to help take notes so that the main interviewer can focus on engaging directly with the child or young person.

Informed consent

All parents and children and young people who were eligible to take part in the study were provided with an information sheet about the study. Separate participant information sheets were developed for the two participant categories, with the information sheet for children and young people using age-appropriate language.

As with most research involving young people, in order for young people to participate, the research team required both parental consent and the child or young person's consent before commencing the child or young person's engagement with the research. However, given the population of families engaged, and being cognisant of the complexities of parental responsibility, we required that the consent for the child or young person's participation be provided by a parent with requisite parental responsibility (either shared or sole).²⁰

Once parental consent was obtained to speak with the child/young person, the researchers confirmed with the child or young person that they would like to participate. Prior to the interview, a researcher would contact the child or young person by telephone to confirm the interview date and time and answer any queries the child or young person might have for the research team. Before commencing the interview, the researcher would read through an oral consent script and obtain formal informed consent from the child or young person. The voluntary nature of participation and the privacy of participants was reiterated throughout the interview.

At the conclusion of the interviews with children and young people, the researchers provided each participant with details of appropriate support services (Kids Helpline and like services) irrespective of whether they presented as distressed. There were no participants who were assessed as requiring one of the AIFS on-call psychologists to make follow-up contact.

Ethics review process

The AIFS HREC provided the primary ethical review for this study. The research team applied for ethics clearance in July 2016 and in doing so provided the AIFS HREC with project methodology, recruitment materials (including invitations to participate, plain language information sheets, consent scripts and social media material), interview schedules and recruitment and ethical protocols. Ethical clearance was received from the AIFS HREC in September 2016.

²⁰ It is important to note that we did not require the participating parent to have parental responsibility, only that informed consent for the young person to participate be provided by a parent/guardian with parental responsibility. Among all registrations, 16 families (8 mothers and 8 fathers) did not participate because the parent who registered their interest did not have parental responsibility and the other parent did not consent to the child/young person's participation.

Subsequently, the research team engaged with other family law system services for assistance with recruitment activities in support of the study. Although the National Health and Medical Research Council's *National Statement on Ethical Conduct in Human Research* (2007), seeks to avoid duplication of ethical review when involving multiple institutions (see Ch. 5.3), the research team were required to submit five further applications for ethical review by other HRECs, to enable these organisations to be involved in recruitment activities in support of the study. Applications were made to the ethics committees/research advisory groups of the Family Court of Australia, Federal Circuit Court of Australia, Relationships Australia (New South Wales and Queensland Research Advisory Group) and UnitingCare (Queensland). All five external committees granted clearance for the study during the period of September–December 2016. During the course of the research study, regular updates were provided to the AIFS HREC as well as separately to the five additional HRECs, to keep the committees informed and to seek clearance for any substantive changes to project methodology and/or materials, recruitment activities, protocols or staffing, as well as to advise of any complaints received in relation to the study from participants or members of the public.

Impact of ethical clearance processes

The protracted and complex processes involved in obtaining ethics clearances from six committees reflect the cautious approach to the conduct of research involving children and young people in the family law context. A number of additional measures and safeguards were included in the screening protocols (and were a condition of ethical clearance) to address the potential for harm or distress to participants. This led to a number of challenges for recruitment.

These measures and associated challenges included:

- The requirement for all matters relating to the separation to be 'fully resolved' with no foreseeable potential proceedings to be initiated by either parent. This requirement led to situations where potential participants were not able to proceed as they were unable to confirm with certainty whether any negotiations or further proceedings were foreseeable.
- The 12-month waiting period from the date of finalisation of all matters for 10- and 11-year-old participants was an additional requirement arising from the ethical clearance process as a way to mitigate the risk of harm to the younger children. This made recruitment of 'in-scope' families more complicated and protracted, and maintaining families' interest in and commitment to the study over this period proved particularly challenging. In these circumstances, the research team was ultimately only able to recruit and complete 10 interviews with children under 12 years of age.
- The age range of potential participants presented a challenge in the conduct of this research. Of the 18 registrations that were screened out due to age, six were only just out of scope (8–11 years old), while age information was not entered on the others. In addition, families where at least one child participated also included 23 children who were just out of scope (7–9 years old and 18–20 years old). This would indicate that up to 41 additional interviewees may have been eligible to participate if the age range had been expanded.

Recruitment was primarily achieved through family law services, targeting parents currently accessing services to finalise their separation. This meant having to wait, firstly, for their matters to be finalised, and then for the 3–12 month waiting period to expire before they could participate. Due to this requirement, many of the families that registered their interest did not qualify to participate before the fieldwork was concluded, were no longer interested in participating by the time they did qualify or the research team was unable to contact them at the expiration of the waiting period.

The distress to potential participants arising from the screen outs due to age and stage of proceedings was also notable. While many of those potential participants screened out did not reply to our correspondence, several parents and young people who did so expressed frustration at being screened out due to age or the stage of their proceedings. For participants screened out due to age, the comments of these potential participants indicated their disappointment and their ongoing concern at being 'silenced' due to their age and perceived immaturity. Those who were deemed too old expressed confusion as they felt their stories were 'still relevant and enlightening' for this research. Further, participants screened out due to the stage of their proceedings suggested that their participation in the study would have no impact on their negotiations or that despite their ongoing contact with family law system services, their circumstances were such that there was virtually no chance of changes in parenting arrangements from their perspective.

The protracted ethical clearance process also had implications on the timing of recruitment with a delay in the anticipated timing for the commencement of recruitment activities. The project team could not commence recruitment until late in 2016, in the lead up to the summer holiday period, which is a particularly challenging

time to secure assistance with recruitment measures and interest from potential participants. To accommodate the stringent recruitment measures and the delay in the commencement of recruitment activities in earnest, the fieldwork period was required to be extended on two occasions in order to achieve the required sample of participants.

As detailed above, rigorous recruitment and ethical protocols were required and, in particular, strict screening protocols were established in order to obtain ethical clearance to proceed with this research. These additional measures, while aimed at further protecting children and young people from risk and harm, in some instances gave rise to distress among young people and their parents, as they were deemed unable to participate in the study when they otherwise would have qualified. Despite these challenges, the research team were able to achieve 61 interviews with children and young people in 47 families, enabling a robust and rigorous exploration of the research questions. The richness of the insights and experiences of these children and young people, their maturity and resilience, and the appreciation they expressed at having been heard will hopefully support the clearance of further research involving children and young people in the future:

I've gotten a lot out but I haven't gotten a lot, you know, like straight up, today I've gotten so much out that I've just wanted to get out for so long ... it's one thing to tell people bits and pieces but to just whoosh it out, you know, and just like to really just like burn it off, just, it helps. (Zoe, F, 12-14 years)

I'm glad that I had this opportunity to ... help out with future, like, law things. (Scarlett, F, 15+ years)

1.4 Structure of this report

In this chapter, the research aims and research design employed for the Children and Young People in Separated Families project have been summarised, together with an outline of relevant literature, provisions of the FLA and case law, providing context to the analyses that will be covered in the substantive chapters of the report.

Chapter 2 first provides an overview of the demographic profile of the participating families and their characteristics (including the nature of the familial relationships and the existence of safety concerns). The analysis in this chapter considers families' engagement with legal and non-legal services in the family law system (both by parents and children and young people) and the post-separation parenting and financial arrangements made by these families. Chapter 3 explores the perspectives and experiences of children and young people of their parents' separation, with a particular focus on the parenting arrangements made over time. Chapter 4 examines the children and young people's experiences of the family law system services (both legal and non-legal services) and Chapter 5 explores the supports that the participating children and young people indicated would assist them in dealing with their parents' separation. A summary of the key findings and a discussion of the conclusions arising from this research are provided in Chapter 6. The authors note that, in this report, more extensive use is made of direct quotes in order to provide a direct voice for participating children and young people and to ensure that, as far as possible, their perspectives were made available in their own words, thereby enabling a deeper understanding of how children and young people articulate their views and experiences in this context.

2 Sample and demographic profile

This chapter is aimed at providing some contextual background information on the participating children and young people, including demographic information, information about wellbeing of the 61 participating children and young people, details of the separation and their current living arrangements. Of note, there were 14 families where two children and young people participated. The data presented in this chapter are most commonly reported at the child and young person level but some of the key parent demographics are also presented at 'family level' so as not to double count parent information.

2.1 Demographic profile of families

As outlined in the previous chapter, the study achieved interviews with 61 children from 47 families. While our recruitment methods were targeted across all states and territories, the participating families in the final sample resided across four states: Victoria (36%), New South Wales (34%), Queensland (19%), and South Australia (11%) (see Table 2.1).

Participating children and young people most commonly came from families with two children (51%), with a further 34% of participating families having either one (17%) or three (17%) children, and 15% having four or five.

Table 2.1: Sample demographics

Demographic information	Family-level % (<i>n</i> = 47)
State	
Victoria	36.2
New South Wales	34.0
Queensland	19.2
South Australia	10.6
Number of children in family	
One	17.0
Two	51.1
Three	17.0
Four or more	14.9
<i>Average number of children (min.: 1; max.: 5)</i>	2

Notes: Percentages may not total exactly 100% due to rounding.

Table 2.2 shows some of the key demographic characteristics of participating parents (at family level, rather than child level). The majority of participating parents were female (85%), though as the methodology section highlighted, we did receive a large number of father registrations but struggled to obtain further details from many of them. Participating parents were aged between 34 and 53 years with the average age being 44 years. While the majority of parents identified as non-Indigenous Australian born (83%), 9% identified as Aboriginal and/or Torres Strait Islander and another 9% were born overseas.

The vast majority of parents held a post-secondary qualification (68% tertiary-level and 23% trade or other qualification) and more than two-thirds of participating parents were employed (72%). Forty per cent identified as a full-time carer.

When asked about their current relationship status, 13% identified as being married or in a de facto relationship, and a further 23% were in relationships (but not living together), while 34% identified as being separated/divorced and 30% identified as being single.

Table 2.2: Parent demographics

Parent demographics	Family-level % (n = 47)
Parent gender	
Female	85.1
Male	14.9
Parent age	
30–39 years	21.3
40–49 years	63.8
50+ years	14.9
<i>Average age years (min.: 34; max.: 53)</i>	<i>44</i>
Parent cultural heritage	
Aboriginal and/or Torres Strait Islander	8.5
Australian born (not Aboriginal or Torres Strait Islander)	83.0
Born overseas	8.5
Parent education	
Year 11 or below	8.5
Year 12	0.0
Post-school qualification	23.4
Bachelor degree or above	68.1
Parent employment	
Employed full-time	36.2
Employed part-time	29.8
Full-time parent/Carer	40.4
Casual employment	6.4
Disability/Carer pension	6.4
Studying full-time	0.0
Studying part-time	14.9
Looking for work	10.6
Parent relationship status	
Married/De facto	12.8
In a relationship	23.4
Separated/divorced	34.0
Single	29.8

Notes: Percentages may not total exactly 100.0% due to rounding. For parent employment, parents could select more than one option.

Of the 61 children and young people interviewed, 56% were male and 44% were female (Table 2.3). Participants were aged between 10 and 17 years²¹ during the fieldwork period, with the average age at the time of interview being 13 years. Ninety-two per cent of the children and young people were from a non-Indigenous, Australian background, with a further 7% being of Aboriginal and/or Torres Strait Islander heritage and one participant born overseas. Around half of the young participants in the study were in Years 7–9 at secondary school (53%) with 27% in Years 4–6 at primary school and 20% in senior secondary school. The vast majority of the young participants in the study had at least one sibling (92%), with two being the average number of siblings per participant.

Table 2.3: Child/Young person demographics

Demographics of children and young people	% (n = 61)
Child gender	
Female	44.3
Male	55.7
Child age	
10–11 years	16.4
12–14 years	52.5
15+ years	31.2
<i>Average age</i>	<i>13 years</i>
Child cultural heritage	
Aboriginal and/or Torres Strait Islander	6.6
Australian born (not Aboriginal or Torres Strait Islander)	91.8
Born overseas	1.6
Child education	
Primary school	24.6
Secondary school	73.8
Paid work	1.6
Child year level at school	
Years 4–6	27.1
Years 7–9	52.5
Years 10–12	20.3
Number of siblings	
None	8.2
One	42.6
Two	16.4
Three	21.3
Four or more	11.5
<i>Average number of siblings (min.: 1; max.: 5)</i>	<i>2</i>
Do they have a pet	
Yes	70.6
No	29.4

Notes: Percentages may not total exactly 100.0% due to rounding.

Among the participating families, almost two-thirds of parents had shared parental responsibility for their children (63%) (Table 2.4). Around one-third (32%) of families had their separation finalised in 2017, another 30% had their separation finalised in 2016 and 38% of families had finalised matters prior to 2016. On average, parents had been separated for seven years at the time of their interview (ranging from less than one year to 16 years).

²¹ One participant turned 18 years between the time of their registration to participate and the time of their interview.

Table 2.4: Separation details

Separation details	Family-level % (n = 47)	Child-level % (n = 61)
Length of separation (years)		
Average number of years (min.: <1; max.: 16)	7	
Year of finalisation (as per orders)		
Prior to 2016	38.3	36.1
2016	29.8	32.8
2017	31.9	31.2
Parental responsibility (as per orders)		
Shared	63.0	65.0
Sole responsibility	37.0	35.0

Notes: Percentages may not total exactly 100.0% due to rounding.

2.2 Characteristics of children and young people and their families

Participants were asked a series of questions about their lives, their families and their current wellbeing. The results of the analysis are presented here.

Child wellbeing

When asked about their overall health, the majority of children and young people reported that their health was excellent (27%) or very good (28%), with a further 32% reporting 'good' health (Table 2.5).

Some young people felt compelled to provide additional information behind lower overall health ratings:

Good ... it could be very good but I don't exercise at all. (Lily, F, 12-14 years)

Physically I think it's fair but mentally, my mental health is really bad at the moment. It's always really been bad and there's not really much I can do to help fix it really. But physical health, I really don't do much exercise and I probably don't drink as much water as I should. But I eat a pretty healthy diet. (Claire, F, 12-14 years)

Probably more fair, because I do have a lot of trouble sleeping, like ... almost every night. (Hayden, M, 15+ years)

Mental health ... lately it's been pretty poor. Physical health, it's always very good ... Yeah, probably I'd say good, weighing in the mental health factor from recently. (Nicholas, M, 15+ years)

Table 2.5: Child wellbeing: Overall health

Overall health	% (n = 60)
Excellent	26.7
Very good	28.3
Good	31.7
Fair	10.0
Poor	3.3

Notes: Responses of 'Don't know' were excluded from analysis (parents: n = 2; children: n = 1).

Children and young people were also asked to rate four other aspects of their wellbeing over the preceding six months:

- getting along with people the same age
- feeling confident
- losing their temper
- happiness with life in general.

The majority of children and young people rated their social wellbeing quite highly, with 60% reporting that in the previous six months, they had gotten along with their peers 'most of the time' and a further 27% reporting they had gotten along with others 'all of the time' (Table 2.6).

Table 2.6: Child wellbeing: Get along with people same age

Get along with people same age	% (n = 60)
All of the time	26.7
Most of the time	60.0
Sometimes	10.0
Rarely	3.3
Never	0.0

Notes: Responses of 'Don't know' were excluded from analysis (children: n = 1).

When asked to rate their feelings of confidence over the previous six months, one in five children and young people responded that they felt confident 'all of the time', while a further 53% responded with 'most of the time' and 26% with 'sometimes' (Table 2.7).

Table 2.7: Child wellbeing: Felt confident

Felt confident	% (n = 60)
All of the time	19.7
Most of the time	52.5
Sometimes	26.2
Rarely	1.6
Never	0.0

Notes: Responses of 'Don't know' were excluded from analysis (children: n = 1).

Regarding their temper over the previous six months, the vast majority of children and young people felt they only lost their temper 'sometimes' or less often, though a small number (5%) reported that they lost their temper 'most of the time' (Table 2.8).

Table 2.8: Child wellbeing: Lose temper

Lose temper	% (n = 61)
All of the time	0.0
Most of the time	4.9
Sometimes	39.3
Rarely	49.2
Never	6.6

The majority of children and young people reported that they felt happy with their life in general most or all of the time (67% and 16%, respectively) while a further 15% reported they were 'sometimes' happy with their life (Table 2.9). One child reported he was 'rarely' happy with life in general but added:

The reason I said in-between is because I'm happy with how many friends I have, 'cause that's great, and how many supporting friends at that. But, um, of course, since there's so much going on in my personal life, I find it hard to think about other things on top of those things. (Paul, M, 10-11 years)

Table 2.9: Child wellbeing: Happy with life

Happy with life	% (n = 61)
All of the time	16.4
Most of the time	67.2
Sometimes	14.8
Rarely	1.6
Never	0.0

Parent-child relationship dynamics

Children and young people were also asked to consider their relationships with each parent, with regard to how close they feel to each parent and how easy they feel it is to see each parent. The vast majority of participating children and young people felt very or quite close to their mother (80% and 15%, respectively), while two young participants reported that they were 'not very close' and one participant was 'not close at all' (Table 2.10). Participating children and young people's reports on their closeness to their fathers were somewhat more varied than their reports on their mothers. While the majority of children and young people reported feeling very or quite close to their fathers (22% and 35%, respectively), 19% reported they were 'not very close' and 24% reported they were 'not close at all' to their father. Very few young participants offered additional commentary after giving their answer but some provided further insight:

I'd say we're somewhere between very close and quite close, anything - he's kind of both parents for me, so, and he's quite relaxed in his, like, demeanour and stuff, so, I can find it comfortable to talk to him about things that are general - like, all of my other friends say that they don't really feel, like, comfortable talking about that with their dads, but I find it quite comfortable. (Caitlin, F, 15+ years)

My dad and I, we clash sometimes because we're both very argumentative people. So often we get into arguments and/or he does things to really upset me and I come to my mum's house because I can't deal with it with my - because I have an anxiety disorder. So dealing with that sort of thing is really stressful. So, with my dad I'm a lot less close, I feel like I can't tell him things because he's extremely judgemental of the things that I do tell him. (Claire, F, 12-14 years)

Table 2.10: Child closeness to parents

Closeness to parent	%
Mother	(n = 59)
Very close	79.7
Quite close	15.3
Not very close	3.4
Not close at all	1.7
Father	(n = 58)
Very close	22.4
Quite close	34.5
Not very close	19.0
Not close at all	24.1

Notes: Responses of 'Don't know' were excluded from analysis (mother: $n = 2$; father: $n = 3$).

Finally, children and young people were asked about how easy it was for them to see each of their parents in-between other commitments such as school, sport and social activities. For this question, participants were asked to provide some further detail about why it was 'easy' or 'hard', and these qualitative responses have been coded into the broad themes that emerged.

Almost all children and young people reported it was easy or very easy to see their mother in-between other commitments (93%), while around 44% reported it was easy or very easy to see their father (Table 2.11). Just less than one in three children and young people felt it was hard or very hard to see their father (31%) (and one participant felt it was hard to see their mother). Around 1 in 5 (19%) chose not to answer about their father because they never had contact with him (and two further young participants chose not to answer about their mother because they never saw her).

Table 2.11: Ease of seeing parents

Rating	Father % (n = 59)	Mother % (n = 61)
Very easy	27.1	54.1
Easy	16.9	39.3
Neither	6.8	1.6
Hard	15.3	1.6
Very hard	15.3	0.0
Refused (never see)	18.6	3.3

Notes: Responses of 'Don't know' were excluded from analysis (fathers: $n = 2$; mothers: $n = 0$). Percentages may not total exactly 100.0% due to rounding.

When asked why they felt it was easy to see their parents, the majority (mothers: 58%; fathers: 46%) spoke about convenience, either living with or very close by, and generally doing things together (Table 2.12):

Well, she's always out and about, like, around the house I just choose ... like, we're always home together ... And so, yeah, I see her as much as I want to. (Scarlett, F, 15+ years)

Just the fact that, you know, he gives me a lift here and there and I live with him so I spend time at night with him and do dinner and all that kind of stuff, so. (Hamish, M, 15+ years)

She works from home so, like, whenever I pop in I'll say hey mum and then we'll have a cup of tea or something like that. (Connor, M, 15+ years)

It's probably - it's probably easy still but it's - again it's not - like it's easy to see him but seeing him is different to doing meaningful things with him. (Nicholas, M, 15+ years)

Many children and young people mentioned that their parent either specifically made time for them and/or took them to their extracurricular activities, and that the travel time enabled them to catch up (mothers: 25%; fathers: 31%):

It's, like, because I can easily meet up because I just - when I want to see her I can call her usually, like, when she's at work I can still see her. She might come, come out for a bit but, like, yeah, it's generally pretty easy, yeah, to see her all the time. (Dominic, M, 12-14 years)

She's flexible with some of the days. So say if I have work or something like that comes up, we can like juggle things around about so that's good, it's good that we can like kind of work between the school and everything. (Oscar, M, 15+ years)

Um, cause she's usually there when I'm doing activities, sports and stuff, cause she's watching me do the activities. (Mason, M, 10-11 years)

Um, I'd say it's easy, like, he's generally, like, he works full-time at the moment and um, sometimes he has work meetings or work get-togethers and stuff like that, but ... when he does have those, it's really easy to get a hold of him on the phone and all that kind of stuff ... it's pretty easy for me to just, like, come back here and I know that he's probably gonna be here over the weekends, or whenever he doesn't have work, he's most likely gonna be at home, so. (Caitlin, F, 15+ years)

Other young people felt that the quality of their relationship with their parent was what made it 'easy' to spend time with them (mothers: 9%; fathers: 4%):

I spend like so much time with my mum ... I know I can always go to her. Like, with anything that's worrying me at all. I know I can just talk to her, like, 'Mum, I need to sit down and talk.' ... She gives me options and tells me what would be best to do for, like, my sake and also for other people's sake. Like, she's amazing like that. She's the best. (Zoe, F, 12-14 years)

It's just sort of comfortable. You never feel sort of awkward or something. It's just she seems like the right person to talk to about it all. (Interviewer: So it's pretty easy to balance doing sports, doing other stuff with seeing your mum?) Yeah. (William, M, 12-14 years)

Some young people commented on their own schedule and efforts to factor in time for spending with their parents (mothers: 9%; fathers: 19%):

Because I have, like, a very good time schedule, for - because when I get home from school, if I have homework to do, I'll do that, then I'll talk to my mum, then I'll talk to my friends. (Levi, M, 12-14 years)

For the children and young people who felt it was hard or very hard to see their mother or father, the reasons ranged from proximity issues to relationships and scheduling issues. For 33% of young participants who found it hard to see their father, and the one participant who found it hard to see their mother, living too far away or it being inconvenient to travel there (e.g. on a school night) were the main factors:

I only see him on the weekends because he doesn't live that far away anymore but it's hard to go there, 'cause then it's too hard to go, like, after school, and then, like, come home on the same, like, day. (Andrew, M, 12-14 years)

For just over a quarter (28%) of the young participants who found it hard to see their father, the child or young person's schedule was a barrier, where they struggled to make time around their extracurricular activities:

Because he's not here as often, and I usually have to change up my schedule ... to talk to him. (Levi, M, 12-14 years)

It's hard but I try to kind of make it, like, even just a little bit of time. If I'm, say, going to my friend's house, I'll be like, 'Can you give me a lift there?' so that I can spend that, like, 20 minutes with him. (Phoebe, F, 15+ years)

Others noted that the reason it was difficult to see their father was that he was too busy or not willing to be flexible with time (17%):

Very hard because he makes it difficult. Like - you'll start to make plans with him and then he'll be, then he'll be like, 'Oh okay.' And then when it comes to it, he'll be like, 'Oh, I can't make it,' or he'll be like, 'Oh, it'll have to be another time.' [Or he] makes like an inconvenient time. (Alana, F, 12-14 years)

Finally, 22% of children and young people said that relationship issues were behind the difficulties they felt in seeing their father.

Table 2.12: Ease of seeing parents

Ease of seeing parent	Father %	Mother %
Reason it is easy	(n = 26)	(n = 57)
Convenience/proximity (live there, see each other often)	46.2	57.9
Parent makes time for child	30.8	24.6
Quality of relationship	3.9	8.8
Child makes time for parent	19.2	8.8
Reason it is hard	(n = 18)	(n = 1)
Convenience/proximity (too far)	33.3	100.0
Parent's schedule (not willing/able to make time)	16.7	0.0
Quality of relationship	22.2	0.0
Child's schedule (struggles to juggle making time with extracurricular activities)	27.8	0.0

Notes: Responses of 'Don't know' were excluded from analysis (fathers: $n = 2$; mothers: $n = 0$).

Children and young people were asked whether the time that they spent with each parent was adequate. Three-quarters (75%) of participating children and young people felt that the time they spent with their mother was 'about right', with 46% feeling this was the case with their father (Table 2.13). Just over one in three children and young people responded that the amount of time they spent with their father was 'not quite enough' or 'nowhere near enough' (21% and 13%, respectively). Around 15% of young participants felt that they had too much time with their mother and around 8% felt this way about their father.

Table 2.13: Time with each parent

Time with each parent	% (n = 61)
Mother	
Nowhere near enough	0.0
Not quite enough	8.2
About right	75.4
A little too much	13.1
Way too much	1.6
Don't know	1.6
Father	
Nowhere near enough	13.1
Not quite enough	21.3
About right	45.9
A little too much	3.3
Way too much	4.9
Don't know	11.5

Notes: Percentages may not total exactly 100.0% due to rounding.

Children and young people were asked about how decisions were made in their family about things that affected them. The majority of children and young people reported that their parent/s discussed matters with them and included them in the decision-making process (Table 2.14). Sixteen per cent reported that their parents made the decisions together. Around one-fifth reported that one of their parents tended to make most decisions (18% reported their mother and 3% reported their father) and a further 8% of young participants reported making most decisions for themselves.

Table 2.14: Decision making in the family

Who usually decides on child-related matters	% (n = 61)
Mother decides	18.0
Father decides	3.3
Parents decide together	16.4
Parents discuss with child	55.7
Child decides	8.2
Something else	16.4

Notes: Percentages may exceed 100% as respondents could select more than one option.

Participating parents were asked whether they had concerns for themselves or their children as a result of ongoing contact with the other parent, and while 39% had no concerns, 26% responded that they were concerned for their children only and a further 20% responded that they were concerned for both themselves and their children (Table 2.15). When asked what these concerns related to, emotional abuse/anger issues were the most common response (64%), followed by mental health issues of the other parent (61%), violent/dangerous behaviour (32%), something else (29%) and alcohol/substance abuse issues (21%).

Table 2.15: Parents report of current safety concerns

Safety concerns	% (n = 46)
Concerns for self	4.3
Concerns for child/ren	26.1
Concerns for both	19.6
No concerns	39.1
N/A (no contact)	6.5
Don't know	4.3
Issues that concerns relate to	% (n = 28)
Alcohol/substance use	21.4
Mental health issues	60.7
Violent/dangerous behaviour	32.1
Emotional abuse/anger issues	64.3
Gambling	0.0
Something else	28.6

Notes: Percentages may not total exactly 100.0% due to rounding. Respondents could select more than one option when selecting the reason for their concerns. One parent did not answer.

2.3 Parenting and financial arrangements

This section examines the current parenting arrangements for each participating child and young person. The data presented here have been calculated based on the participating children and young people's reports of their current parenting arrangements and frequency of contact with each parent. Table 2.16 shows that of the children and young people participating in this study, 75% reported living mainly with their mother, 12% reported living mainly with their father, and a further 13% spent about the same amount of time with each parent. Children

and young people were then asked how many nights they spend with each parent each fortnight.²² Where children and young people had no overnight stays with one parent, daytime-only contact has been noted. The table shows that while only 13% of children and young people reported living about the same amount with both parents, the proportion living in 'shared-care' arrangements (35–65% of nights with each parent) was 26%. Just less than two-thirds of participating children and young people were living in 'majority mother' care arrangements (64%) and 10% were living in 'majority father' care arrangements.

Table 2.16: Children and young people's reported parenting arrangements

Parenting arrangements	% (n = 61)
Who live	
Mostly with mother	75.4
Mostly with father	11.5
About the same with both	13.1
Parenting time	
Mother 100%, never sees father	18.0
Mother 100%, sees father daytime only	24.6
Mother 66–99% of nights	21.3
Mother 53–65% of nights	14.8
Equal time (48–52% of nights with both)	9.8
Father 53–65% of nights	1.6
Father 66–99% of nights	4.9
Father 100%, sees mother daytime only	1.6
Father 100%, never sees mother	3.3

Notes: Percentages may not total exactly 100.0% due to rounding. The data presented here is based on two separate questions and are not meant to be directly comparable. Participating children and young people were asked firstly, who they lived with most of the time, with the options consisting of 'Mostly mum, mostly dad, about the same with both or someone else?'. They were then asked how many nights on average they spent with each parent and how often they saw their parents during the day time only - these responses were used to calculate 'parenting time'.

As noted above, children and young people were asked whether the amount of time that they spent with each parent was 'nowhere near enough', 'not quite enough', 'about right', 'a little bit too much', or 'way too much'. When examining the responses by care-time arrangements, 85% of children and young people living most or all nights with their mother felt this was 'about right', with a further 13% reporting it was too much and one participant reporting it was not enough (Table 2.17). Of the 16 children and young people in 'shared-care' arrangements, just over half ($n = 9$) felt this amount of time with their mother was 'about right', and four of the five children and young people living most or all of the time with their father felt the amount of time with their mother was 'about right'. One participant chose not to answer because they had no contact with their mother.

Table 2.17: Parenting arrangements by child's feeling of time with mother

	Majority mother (66–100%) (n = 39)	Shared time (48–65% with both) (n = 16)	Majority father (66–100%) (n = 5)
Parenting time			
Not enough	2.6	18.8	20.0
About right	84.6	56.3	80.0
Too much	12.8	25.0	0.0

Notes: Sample size: $n = 60$. Responses of 'Don't know' were excluded from the analysis ($n = 1$). Percentages may not total exactly 100.0% due to rounding.

²² Where participants stayed less often than once per fortnight with a parent, and where arrangements differed in school holidays, this was recorded accordingly and a total number of nights per year was calculated during analysis.

When considering the amount of time they spent with their fathers, just less than half of the children and young people living in a majority mother care-time arrangement felt this was 'about right' (46% or $n = 15$), with a further 46% reporting this was not enough time with their father and 9% ($n = 3$) reporting this was too much time (Table 2.18). For the children and young people living in shared-care arrangements, 47% ($n = 7$) felt the time they spent with their father was 'about right', 40% ($n = 6$) felt it was not enough, and 13% ($n = 2$) felt it was too much. All six of the children and young people living in a majority father care-time arrangement felt this was 'about right'. Seven children declined to answer because they had no contact with their father.

Table 2.18: Parenting arrangements by child's feeling of time with father

	Majority mother (66-100%)	Shared time (48-65% with both)	Majority father (66-100%)
Parenting time	($n = 33$)	($n = 15$)	($n = 6$)
Not enough	45.5	40.0	0.0
About right	45.5	46.7	100.0
Too much	9.1	13.3	0.0

Notes: Sample size: $n = 54$. Responses of 'Don't know' were excluded from the analysis ($n = 7$). Percentages may not total exactly 100.0% due to rounding.

As well as the number of nights they spent with each parent, participating children and young people were asked about other types of contact they had with their parents. Table 2.19 shows the frequency of daytime-only contact (spending time during the day but not staying overnight) that children and young people had with the parent whom they spend less nights with (or in the case of equal care-time, the parent that was not participating in the study). For the purposes of brevity in this section, we will refer to this parent as the 'non-resident' parent.

Thirty per cent of participants responded that they only had overnight stays with their non-resident parent and didn't spend any time with their parent during the daytime only. The next most common arrangement was to see their non-resident parent at least once per week during the day (21%), with a further 21% never seeing their non-resident parent during the day or overnight.

Table 2.19: Frequency of daytime visits with non-resident parent

Daytime visits frequency	% ($n = 61$)
Every day	0.0
Several times a week	1.6
At least once a week	21.3
At least once per month	9.8
At least once every 3 months	11.5
At least once every 6 months	0.0
At least once per year	0.0
Less often	4.9
Sees parent for overnights only	29.5
Never sees parent	21.3

Notes: Percentages may not total exactly 100.0% due to rounding.

Children and young people were then asked how often they had contact with their non-resident parent by phone, SMS, email and other forms of non-face-to-face contact. The majority of participating children and young people (63%) reported having contact with their non-resident parent at least weekly, with one-third in contact several times per week (34%) (Table 2.20). While 9% ($n = 5$) had contact at least once per month, the remaining 9% of participants reported having contact with their non-resident parent less than once every six months. One-fifth of participating children and young people had no contact with their non-resident parent.

Table 2.20: Frequency of non-face-to-face contact with non-resident parent

Non-face-to-face contact frequency	% (n = 59)
Every day	6.8
Several times a week	33.9
At least once a week	22.0
At least once per month	8.5
At least once every 3 months	0.0
At least once every 6 months	0.0
At least once per year	5.1
Less often	3.4
No contact with parent	20.3

Notes: Responses of 'Don't know' were excluded from the analysis (n = 2). Percentages may not total exactly 100.0% due to rounding.

The two most common methods of non-face-to-face contact were phone calls and sending messages via SMS or messaging applications. Among participants that specified phone contact, Table 2.21 shows that the vast majority reported phone contact at least weekly (81%), with over half contacting their non-resident parent at least several times per week and a further 28% contacting their non-resident parent at least once per week.

Table 2.21: Frequency of phone contact with non-resident parent

Phone contact frequency	% (n = 36)
Every day	2.8
Several times a week	50.0
At least once a week	27.8
At least once per month	13.9
At least once every 3 months	0.0
At least once every 6 months	0.0
At least once per year	5.6

Notes: Percentages may not total exactly 100.0% due to rounding.

Sixteen of the participants specified contacting their non-resident parent via SMS or a messaging application on their mobile, and all but one of these children/young people were in contact at least weekly (Table 2.22).

Table 2.22: Frequency of SMS contact with non-resident parent

SMS contact frequency	% (n = 16)
Every day	12.5
Several times a week	50.0
At least once a week	31.3
At least once per month	6.3

Notes: Percentages may not total exactly 100.0% due to rounding.

The children and young people who had contact with both parents were asked where (or how) their changeover between parents usually happened. Most commonly, children and young people were driven by a parent or other relative between the two homes (38%), or changeover would occur at school (21%) or another location midway between the houses (15%) (Table 2.23). A further 17% of participants would find their own way between their homes, either by public transport or, in a very small number of cases, drive themselves. For 10% of participants, changeover would occur in a public place, such as restaurant or park, for another 6%, it would happen at a children's contact service and, for two participants, there was no specific changeover arrangement in place.

Table 2.23: Changeover arrangements

Changeover arrangement	% (<i>n</i> = 48)
Home	37.5
School	20.8
Mid-point	14.6
Children's Contact Service	6.3
Public place	10.4
Child finds own way	16.7
Changes all the time	4.2

Notes: Percentages may not total exactly 100.0% due to rounding. Respondents could select more than one option when selecting the method of changeover. Participants who never saw one parent were excluded from this analysis (*n* = 13).

2.4 Engagement with family law system services

This final section examines participating families' engagement with family law system services during and after separation. Children and young people were asked whether their parents accessed any services to help them during and after the separation. While some examples were given as to what sort of services their parents might have accessed, the aim of the question was to gauge young people's unprompted recollection of service use as much as possible. The examples provided to children and young people included: lawyers who give advice or assist with mediation; family relationship services that do counselling and mediation; a family report writer; and a hearing at a family court.

Table 2.24 presents the proportions of the full sample of children and young people who recalled their parents accessing particular services. Not surprisingly, the more commonly mentioned services were those included in the examples, with 61% of participating children and young people recalling their parents had contact with a lawyer, and 48% recalling involvement of the courts. A further 34% of children and young people mentioned that a family consultant or report writer was involved and 23% mentioned an ICL. As will be discussed in Chapter 4, children and young people sometimes felt confused about whether the court-related specialist they recalled was a report writer or an ICL but as far as possible, (with careful probing and occasional cross-checking against the parent's interview) we have coded them appropriately.

Table 2.24: Child reports of family law services accessed by parents

Services	% (<i>n</i> = 61)	Whether met the professional %
Lawyers/legal service	60.7	13.5
Courts	47.5	10.3
Family consultant/Report writer	34.4	95.2
Counsellors	27.9	64.7
Mediation/FDR	19.7	25.0
Independent children's lawyer (ICL)	23.0	78.6
Child psychologist	18.0	90.9
Children's Contact Service	3.3	100.0
Police	1.6	100.0
Domestic violence service	0.0	n/a
No services	6.6	n/a

Just over one in four participating children and young people recalled their parents accessed counselling (28%) and one in five recalled they attended mediation (20%) (Table 2.24). Children and young people also reported that their parent/s organised counselling for them or other family members (as opposed to relationship counselling) (18%). A small number of participants mentioned a Children's Contact Service or police were involved.

For each service recalled, participating children and young people were asked whether they were able to meet them. Apart from child psychologists/counsellors, the most common professionals that children and young people had direct contact with were family report writers (95% of those who recalled, or 20 participants) ICLs (79% of those who recalled, or 11 participants) and counsellors (65% of those who recalled, or 11 participants). Only 10% of participants ($n = 3$) who recalled their parents using the courts said that they met with court personnel. Similarly, only 14% of children and young people who mentioned their parents had contacted a lawyer, reported that they had met the lawyer ($n = 5$).

Parents were also asked which family law services they accessed during and after the separation, in order to obtain a more accurate picture of family law service use during and after separation. Table 2.25 shows that all but one parent had accessed at least one service to finalise their parenting arrangements, with the average number of services mentioned being eight. Almost all participating parents had accessed a lawyer or legal service (96%) or relationship counselling, mediation or family dispute resolution (FDR) (94%). Of the participating parents, 83% had contact with the courts, with 60% also having contact with a family consultant or family report writer and 36% having an ICL appointed. The majority of parents also mentioned contacting a private counsellor or psychologist to support their children through the separation (72%). Almost half of the participating parent sample had contacted a domestic violence service during or after their separation (47%) and a further 13% contacted police.

The data from children and young people presented in Table 2.25 show the proportion of children who recalled their parents accessing the service for each service their parents accessed. The sample for the 'child recall' data is based on the number of parents who accessed each service (not the full sample of children and young people). In cases where the parent didn't report having contacted a service, but the child did, this has not been included. For example, of the 96% of parents who contacted a lawyer, 63% of their children recalled them doing so. Of the 94% of parents who accessed counselling, FDR or mediation, 44% of their children recalled this having happened.

Where the parents had reported engaging with the courts (83%) just over half of their children recalled this happening (57%) and just over half of the children and young people whose parents accessed a family consultant or report writer recalled this occurring (57%). Of the 36% of parents ($n = 17$) who reported that an ICL was appointed to their case, less than half of their children recalled this occurring (46%).

Among the 47% of parents who contacted a domestic violence service post-separation, and the 13% ($n = 6$) who contacted police during their separation, none of their children were aware of this occurring.

Table 2.25: Family law services accessed by parents and their children's recall of each

Services	Parent report % ($n = 47$)	Child recall %
Average number of services accessed (min.: 0; max.: 8)	8	n/a
Counselling/FDR/Mediation	93.6	43.9
Lawyer/Legal service	95.7	62.7
Courts	83.0	57.1
Family consultant/Report writer	59.6	56.8
Independent children's lawyer (ICL)	36.2	45.8
Domestic violence service	46.8	0.0
Police	12.8	0.0
Child psychologist/counsellor	72.3	62.2
Children's Contact Service	19.2	20.0

Parents were also asked about their main pathway to finalising their post-separation parenting arrangements. The majority of participating parents reported that their arrangements were mainly reached through the courts (62%), with a further 21% naming counselling, FDR or mediation as their main pathway and 11% having used a lawyer (Table 2.26). A small number of parents said that while they might have had contact with some services, their main pathway to finalising parenting arrangements was discussions with the other parent (6%).

Table 2.26: Main pathway for sorting out parenting arrangements

Main pathway	Parent report % (n = 47)
Counselling/FDR/Mediation	21.3
Lawyer	10.6
Courts	61.7
Discussion	6.4

Notes: Parent report data presented at child-level.

Parents were asked whether they felt their main pathway 'worked for the children' and whether they felt their children's needs were adequately considered. Just over half the participating parents disagreed that the pathway 'worked for their children' (51%), with 44% agreeing that it did (Table 2.27). Similarly, 58% of parents disagreed that their main pathway adequately considered their children's needs (cf. 38% who agreed).

Table 2.27: Participating parents' perceptions on main pathway

Agreement with statement	It worked for the child/ren (n = 45)	Child/ren's needs were adequately considered (n = 45)
Strongly agree	24.4	17.8
Agree	20.0	20.0
Neither	4.4	4.4
Disagree	11.1	15.6
Strongly disagree	40.0	42.2

Notes: Responses of 'Don't know' were excluded from analysis (n = 2). Percentages may not total exactly 100.0% due to rounding.

Table 2.28 shows the distribution of care-time arrangements by the main pathways parents reported having used to finalise parenting arrangements. While we feel this analysis is important in providing some context to the experiences of children and young people in the sample, we caution against any detailed interpretation of these data due to the very small sample sizes. Among the children whose parents used court proceedings to finalise their arrangements, just over half (51%) reportedly spent 100% of nights with their mother. Of the 13 parents who mainly used non-legal professionals to finalise their parenting arrangements, seven of the children had shared care-time arrangements.

Table 2.28: Parenting arrangements

	Counselling/ FDR/mediation %	Lawyers %	Court %	Discussions %
Parenting time	(n = 13)	(n = 6)	(n = 37)	(n = 5)
Mother 100%	7.7	50.0	51.4	60.0
Mother 66-99%	23.1	0.0	24.3	20.0
Shared time (48-65% with both)	53.9	33.3	16.2	20.0
Father 66-99%	15.4	16.7	0.0	0.0
Father 100%	0.0	0.0	8.1	0.0

Notes: Percentages may not total exactly 100.0% due to rounding.

Parents who had contact with the courts to finalise their matters were asked at what stage their case was finalised. For 36% of parents, their case was resolved by consent prior to a final hearing (Table 2.29). A further 33% of cases were resolved by judicial determination, and for 18% of cases, applications for orders were made and the other parent did not contest the orders sought. A small number of parents were not able to clearly determine how the case was finalised (often because there had been multiple orders).

Table 2.29: Used the courts: Court outcome

Outcome of court proceedings	% (n = 39)
Pure consent	35.9
Consent during proceedings	18.0
Judicial determination	33.3
Other outcome	12.8

Notes: Percentages may not total exactly 100.0% due to rounding.

2.5 Summary

This chapter provides contextual information about the participating children and young people's backgrounds, their current wellbeing and family dynamics such as parent-child relationships and care-time arrangements. The quantitative data presented were drawn from the semi-structured 'survey-style' component of the parents' and children and young people's interviews. The parents of the children and young people had been separated for an average of seven years and the majority of matters were finalised in 2016 or 2017. The average age of the participants was 13 years and there was a relatively even distribution of males and females (56% cf. 44%, respectively). The vast majority rated their overall health very positively, though a small number noted their mental health as an issue. Other aspects of their wellbeing were generally reported as being fairly positive, including social life, confidence, temper and life in general.

Among the participating sample, the vast majority of children and young people were in either 'shared-care' parenting arrangements (26%) or spent most or all nights with their mother (64%). The majority of children and young people in the study felt the time that they spent with each of their parents was 'about right' and that they felt close to their parents, though closeness was notably higher regarding mothers than fathers (95% cf. 57%, respectively). With regard to how easy it was for children and young people to see each parent, beyond the obvious proximity and convenience, parents' effort to spend meaningful time with their children and make themselves available to them were the most common reasons for higher ratings of ease. Conversely, reasons for lower ratings of ease regarding seeing a parent included proximity, the parent not being able or willing to make enough time for the child, relationship strains and children and young people's own busy schedules. The majority of children and young people also reported that their parent/s consulted them about decisions that directly affected them.

Of particular note, 50% of participating parents reported that they had safety concerns for themselves and/or their children in relation to ongoing contact with the other parent, with emotional abuse, anger and mental health issues being the most common reasons cited behind the concerns.

Parents reported having contact with an average of eight services during the time they were finalising parenting arrangements. The vast majority of parents in the study had contact with a lawyer (96%), counselling, FDR or mediation services (94%) and/or the court system (83%). Participating children and young people were also asked about their parents' contact with services and the most commonly mentioned services were lawyers (61%) and the courts (48%). Examination of the alignment between parents' and their children's reports of service access showed that the highest recall of services among children and young people occurred when parents had accessed legal professionals during negotiations. That is, a higher proportion of children and young people whose parents accessed lawyers, courts, family consultants/report writers and ICLs recalled this occurring, compared with their recall of parents' contact with non-legal professionals.

The majority of parents whose children participated in the study, reported that their main pathway for finalising parenting arrangements was the courts (62%), followed by counselling/FDR/mediation (21%) and lawyers (11%). Among parents who used the courts, 36% of cases were resolved by pure consent, with a further one in three cases finalised by judicial determination following a hearing (33%) and 18% by consent during proceedings. Parents were asked whether they felt their main pathway 'worked for the children' and whether their 'children's needs were adequately considered' during this process. Participating parents were fairly divided in their agreement with these statements, with 44% agreeing that the process worked for their children and 38% agreeing that their children's needs were adequately considered. Agreement with these two statements among parents in this sample was notably lower compared with previous research among parents (see Kaspiew, Carson, Dunstan, De Maio et al., 2015). However, with the recruitment approach being vastly different and the sample consisting of a higher number of parents using legal pathways to resolve matters, this is not designed to be directly comparable. Further, with the focus of this study being children and young people's own reported experiences, we have a unique opportunity to examine their first-hand perspectives on what works and does not work for children and young people when considering their needs after their parents separate. The forthcoming chapters will address this specifically.

3 Issues important to children and young people in making post-separation parenting arrangements

Children and young people who participated in this study expressed their need for supportive and understanding parental relationships and multiple social and emotional supports (e.g. friends, family, mental health services), as well as an ongoing voice in the development and adjustment of parenting arrangements in the post-separation context. Other key issues identified by children and young people included respectful communication between parents, a safe and secure environment and, in the longer term, a need for flexibility and openness to change.

The discussion in this chapter focuses on exploring what children and young people identified as the most important issues when post-separation parenting arrangements were being made. These issues, including being listened to and supported to participate in the decision-making process, were identified as key to making decisions that accommodated their needs and best interests. Some insight is also provided in this chapter into what characterises the lived experience of children and young people growing up in separated families. To the extent that it is possible via cross-sectional data, the discussion also considers their experiences of different kinds of parenting arrangements, relationships with fathers, mothers, siblings and step-families and the dynamics underlying changes in parenting arrangements, and whether these parenting arrangements were child- or adult-focused.

3.1 Listening to and supporting children and young people throughout the process of separation

When given an opportunity, children and young people in this study expressed a strong desire for their parents and other adults to listen to their point of view throughout the process of separation and beyond. The data suggest that listening meant taking the time to hear and understand their point of view, informing them about what was going on in the separation process, and allowing them time and space to contribute to the decision-making process and to process their experiences and emotions.

More than three-quarters of participating children and young people expressed a desire for their parents to listen to their perspectives and to communicate regarding the separation and in the process of making parenting arrangements. The importance of listening was evident in the extended responses provided by participating children and young people:

Listen, listen to what your child has to say ... Be respectful, try and understand why they're making this decision ... And just be supportive. (Lucy, F, 12-14 years)

So like maybe, yeah, just take more account into what the kids want 'cause what you (the parents) want isn't always the best, um, for the whole situation. (Oscar, M, 15+ years)

Yeah, look I'd say it's just important to listen and just understand what the kid's saying pretty well. (Michael, M, 15+ years)

Mmm, talk to them about it and don't like, and then like, when you finally get to hear what they actually think, like, don't get mad at them for it or go and sulk about it. (Hayley, F, 12-14 years)

This finding is consistent with a substantial body of family law research both in the Australian²³ and international²⁴ context, which establishes the importance for children and young people having an opportunity for their views to be heard and considered in decision-making affecting them. In particular, research has highlighted the importance of facilitating these opportunities to be heard, both in relation to matters relevant to deciding the post-separation care and regarding the more general effects of their parents' separation (e.g. Birnbaum & Saini, 2013, 2015; Fehlberg et al., 2018; Fernando & Ross, 2018; Fortin, Hunt & Scanlan, 2012; MacKay, 2013; Marschall, 2017; Qu & Weston, 2015; Quigley & Cyr, 2017; Sadowski & McIntosh, 2016). For example, consistent with the observations of children and young people in this study, Birnbaum and Saini's (2015) analysis of the post-separation experience of 35 young people identified, as a common theme, that young people sought involvement in the making of post-separation parenting plans.

When children and young people participating in this study were asked how much say they had about the time they spent with each parent, most indicated that their view had no impact at all ($n = 17$) or that they had limited say in the decision-making process ($n = 17$). Of note, nine participants reported that they had a substantial say and a further 13 participants indicated that they had some say in the parenting arrangements made.²⁵ Of the 21% ($n = 13$) who reported that both parents listened to their views during the separation process, all except one felt either quite close or very close with both parents. These children expressed strong levels of confidence in being able to communicate with their parents:

(Interviewer: And so you – how much do you feel your mum and dad listened to you then?) Quite a lot. If I say something they won't ignore me. They'll talk about it. (Sebastian, M, 10–11 years)

Mmm, very well. (Interviewer: Yeah. And what indicated to you that they were listening to you?) They did stuff I asked and they were very open to comment. (Jeremy, M, 12–14 years).

Yep. Like, if I said something it would get through. Um, like, of course sometimes it wouldn't work out. Of course, sometimes it'd have to be tweaked. But that's – I still count that as having my say. (Paul, M, 10–11 years)

(Interviewer: Okay, and what kind of indicates to you, maybe back then, that they were listening to you and taking on board your opinion?) They sat down with me at the table and asked what – well, it was at our old house – they sat down with me and asked if I wanted to stay here or go to CITY 2 with my dad. (Sure. Okay. And so you – did you feel in that situation that you felt comfortable saying one way or the other, like you could just say whatever you wanted, or?) They said they wouldn't mind what I chose. (Okay. And so you felt pretty comfortable either way, saying) Yes. (Levi, M, 12–14 years).

Making parenting arrangements that accommodate the perspectives and experiences of children and young people's views have not only been associated with close parent-child relationships but have also been associated with better decision making (e.g. Kaspiew et al, 2014; Parkinson & Cashmore, 2008).

However, as noted above, more than half of our young participants reported that one or both of their parents had not listened to them throughout the separation process. For example:

Uh, my – my mum a lot. My dad very little ... Like it – it kind of went in one ear and out the other like when he processed it, it probably just turned into something like, say I say, 'I don't want to come to you guys' – to – like 'I want to come to you a lot' ... That's the way it went into his brain, was like the opposite of what I was saying. (Harry, M, 12–14 years)

Mum, all ears, Dad, selective hearing. (Nicholas, M, 15+ years)

Um my mum listened pretty well. Um I felt like my dad sort of twisted my words. (Interviewer: Right. So like are you able to expand upon that a little bit?) Um yeah. Well, I don't know. Whenever I – whenever I told him something it seemed like he always took it out of context and sort of said the opposite. (Ryder, M, 12–14 years)

Also consistent with previous research, the data from children and young people suggested that listening not only meant hearing, understanding and respecting their point of view, informing them about what was going

²³ For example, Bagshaw et al., 2010; Bell, 2017; Campo et al., 2012; Cashmore, 2011; Fitzgerald & Graham, 2011; Graham & Fitzgerald, 2006; Graham & Fitzgerald, 2010; Kaspiew et al., 2014; Lodge & Alexander, 2010; McIntosh, 2009; McIntosh, Wells, Smyth & Long, 2008; Parkinson & Cashmore, 2008; Parkinson, Cashmore & Single, 2005; Qu & Weston, 2015; Sheehan & Carson, 2006; Sheehan et al., 2005.

²⁴ For example, Birnbaum, 2017; Birnbaum & Bala, 2009; Birnbaum & Bala, 2017; Birnbaum, Bala, & Cyr, 2011; Neale, 2002; O'Quigley, 2000; Quigley & Cyr, 2017; Smart et al., 2001; Smith, Taylor, & Tapp, 2003; Taylor, 2006; Taylor et al., 2000.

²⁵ Note that this no coded response was obtained from five participants in relation to this question.

on in the separation process, and ensuring that open communication was ongoing throughout the process; it also involved allowing children and young people the time to process their experiences and emotions during this participation:

Okay, well to the parents, they should let the child have some time to allow what's happened for them to understand and realise what this is going to mean before they jump to any decisions of what is going to happen. (Lily, F, 12-14 years)

Yeah. Include them. Like, don't bother trying to cover it up and to sugar-coat it and soften it because kids are gonna figure it out anyway. They're not stupid, they know what's going on and if you try and hide it from them then it just worsens your relationship with them. (Phoebe, F, 15+ years)

Listen to them and like don't be dismissive of what they're saying to you, you know and try to connect with them. (Phoebe, F, 15+ years)

These important tenets were echoed throughout the study as young people expressed a feeling of being 'kept in the dark' (Oscar, M, 15+ years) in discussions about post-separation parenting arrangements, and about the separation process more generally. Most young participants suggested that they desired a greater level of communication with their parents and others involved in the separation process. More than half of participating children and young people (55%) reported that one or both of their parents did not listen to them (with a third of participants indicating that they could not say or that they preferred not to answer). For those that expressed that one or both parents did not listen to their perspective, this was coupled with feelings of confusion, anxiety and isolation:

Um, just really like talk to the kids a lot about it. Um yeah, don't sort of leave anything undecided. Like sort of confirm everything with them 'cause if you leave things undecided the kids'll sort of think of the worst possibility. (William, M, 12-14 years)

Like, they (the parents) know what's going on and they're confused, how would the kids feel? Like, being thrown around and not knowing anything at all. That's even more confusing than actually even knowing something. (Scarlett, F, 15+ years)

The majority of young people indicated that they did not necessarily want to 'know everything that was going on' (Scarlett, F, 15+ years; Rose, F, 15+ years), particularly regarding their parents potentially strong feelings of hatred, anger or frustration at the other parent. Interviewee Scarlett (F, 15+ years) expanded on this sentiment, but stated that in not knowing anything, children and young people were left to fill in the gaps and developed resentment at their lack of involvement or knowledge of the process:

He was just telling me like, 'Oh, you're too young to be involved in this stuff. You're only 16, 17', like, 'You're too young.' Right, okay.) And, 'Don't worry about it until you're older' ... So, yeah, that was a part of the only information I had. (Interviewer: Yeah. And how did you feel about having that level of involvement?) I didn't like it 'cause I was very like, gaining independence at that point ... and, like, I already had my own way of viewing things so I much prefer if I'd had more input. (Scarlett, F, 15+ years)

The age at which children and young people reported being able to contribute their views regarding parenting arrangements and to speak openly with their parents varied. Among those who felt that they did not have a say, some expressed a view that they had been perceived as being too young to give their opinion:

Um, the courts basically saying that to my parents about me. Um, just saying he's too young to have an opinion yet. (Noah, M, 15+ years)

Um, because I was like - I was like 10 and 11. (Interviewer: So you feel you were) I feel like it was just because I was little. (Okay.) Because like you don't really - not that I was little but like, you don't really know what you're on about. That's what it kind of felt like. (Harry, M, 12-14 years).

However, when children and young people were asked when they felt ready to express their views, there was a discrepancy between these reflections and when they felt that they had been listened to when their own post-separation parenting arrangements were being made. For example:

(Interviewer: What age ... did they start like listening to what you had to say about it all.) Maybe when I was 14. Yeah, about 14 I'd say. (Do you feel like you knew what you wanted before that age?) Yeah, like from the beginning I just wanted it to be equal, so just Mum half the time and Dad half the time. (Oscar, M, 15+ years)

Like, I don't think it's right but I think it was when I was about 14 (when Mum and Dad started listening). I think that kids younger than that should be able to be heard and listened to. (Stephanie, F; 15+ years)

In fact, a number of young participants held quite clear ideas about when they felt ready to express themselves about the parenting arrangements:

Like, or like, once you reach about eight or nine that's when you start to understand everything more clearly. (Alana, F, 12-14 years)

(Interviewer: What age?) Oh, 10 below. Yeah, I guess. (Noah, M, 15+ years)

(Interviewer: What age do you think that you felt like you really knew what you wanted when it came to wanting to spend more time with one parent or the other?) I would say I was around like 11. (Max, M, 12-14 years).

For others the process of developing their views on parenting arrangements came with time and support, rather than at a specific age:

(Interviewer: So what age then did you feel like you had that kind of educated, 'I know this now, I don't want this anymore?') It was kind of like every now and then when I would have that feeling that, you know, I have an educated view now, and then a while later I'll be like, I have an even more educated view now. (Hamish, M, 15+ years)

Indeed, for many children and young people there was an expressed need for support in developing their views and the confidence needed to express them with their parents. Nearly two-thirds of participating children and young people (62%) reported accessing mental health services (most often private counselling or a psychologist), with many developing coping skills for dealing with the separation in this process. For example:

And she gave me a way, like, to focus on this, don't do this, don't ... Yeah, strategies, yeah, so, to help me deal with it. (Daniel, M, 12-14 years)

Other interviewees identified counsellors and psychologists as vital in helping them express themselves more freely towards their parents and others:

Well, I once - Mum once sent me to this, like, this really nice lady to speak to and she like helped me get my opinion out, which was good. (Emma, F, 12-14 years)

Yeah, I feel like it was - it was really helpful. Because even if we hadn't quite worked through all of the issues, we at least had them out there ... so everyone knew what everyone was feeling, which we hadn't done properly. We had now, like, a proper conversation about emotions with my dad. (Phoebe, F, 15+ years)

They [counsellors] help me to communicate with Mum and Dad if there's something that I'm embarrassed to communicate about or something like that. Ah, they help me, like, if something new happened, I can talk to them and they can give me a fresh idea on that, ah, problem. And talking about divorce. (Paul, M, 10-11 years)

Once they were able to express themselves and identified their views as being heard and respected by their parents, some children and young people described a greater sense of wellbeing and contentment in their living situation. The key role counsellors and psychologists played in supporting children and young people will be discussed later in Chapters 4 and 5.

3.2 Experiences before, during and post-separation and their impact on parenting arrangements

Participating children and young people identified the reasons for their parents' separation, how they found out about it and how their parents communicated with them around this time as important factors influencing their response to the decision-making process and their views of these parenting arrangements.

For some children and young people in the study, their parents' separation had been somewhat expected:

Oh, so basically we all knew it was, um, going to come because they kept on arguing - splitting up - like, really bad arguments and then me and BROTHER knew it was going to come. (Ryan, M, 12-14 years)

They'd been arguing, like, more often ... basically, like, they kept on fighting and then Dad goes out and Mum pretty much kicks him out because they're just going crazy. (Claire, F, 12-14 years)

It happened, like, 'cause Mum and Dad used to always argue. (Charlie, M, 12-14 years)

However, for others who were less aware of relationship issues between their parents, the experience was one of great confusion and sadness:

So how did I find out? Um, at - like at first when I realised that they were kind of separating, it was quite unexpected so I was like you know really upset about that. And 'cause I was kind of not young but, yes, like nine, so I was still trying to figure things out. (Oscar, M, 15+ years)

I think it just happened all in one day ... We just started packing boxes. (Angela, F, 10-11 years)

I don't remember exactly how that one happened but it was just a very - it was very upsetting. (Harry, M, 12-14 years)

While these experiences varied greatly, they appeared to influence the separation process and, in turn, the post-separation experiences of children and young people, as well as where and with whom they wanted to live. For those children and young people who reported a relatively amicable separation (e.g., where parents had 'fallen out of love'), a need for time to process the situation and their feelings about their parents' separation was recommended:

Because I hadn't experienced anything. Like some children, they know exactly what they want right away but because it immediately happened straight after they - my dad left, I didn't have time to process what was happening and distinguish what I wanted and really think about it. And so I was just put in the situation and then I was like oh I don't like this ... I just think that there should be, I don't know, a break before there's any decisions between the parents or anything ... And the child just gets to process what's happening before they either think about it or if they still don't know, then there is something come up with that they try before, you know, before like any big decisions or demands are made. (Lily, F, 12-14 years)

Participants expressed the need to be able to talk to someone other than their parents to 'vent', to process their emotional state, to develop coping strategies, as well as to distract their thoughts from the issues at hand. These supports were commonly identified as being available in the form of school teachers, friends, extended family and, in particular, mental health professionals such as counsellors and psychologists. This will be discussed in depth in Chapters 4 and 5.

For those whose parents had separated in acrimonious circumstances or where the separation was characterised by family violence (i.e. significant levels of physical, emotional, verbal or other abuse), children and young people often relied heavily on one parent for their physical, emotional and other needs. Our data suggest that in circumstances characterised by reported emotional, verbal, physical or sexual abuse, the children and young people interviewed were unlikely to have reflected a positive view of the other parent (i.e. the parent that they were not living with). Of the young participants who indicated that they did not have (or had very limited) time with one parent ($n = 25$), just over half ($n = 13$) reported experiences of abuse or feeling significantly unsafe in the presence of the other parent. Some described how the circumstances informed the parenting arrangements involving limited time with one of their parents. For example:

Um, there was an incident where he got like a bit aggressive with like everyone and he came over here, um, and yeah that's pretty much just why we stopped seeing him. (Eliza, F, 15+ years)

Because of what he did to me back in [location]. He abused me ... like with punches ... And he abused me in sexually way ... And I don't want anything to do with him. (Tahlia, F, 12-14 years)

Because we're um, scared of, kind of, starting up something that we'd been trying to get away from for a while. And it's just - that's the main reason why. And, also, the last time - we haven't really heard anything from her since the last time, when she told me and my brother, kind of, to our faces, that she was, like, didn't want anything to do with us. (Caitlin, F, 15+ years)

However, these experiences were not always barriers to the child or young person being placed in the care of the other parent (either sole or shared) for a period of time (as Case study 1 illustrates).

Case study 1: Daniel

Listening to children and young people in the context of family violence

Daniel (M, 12–14 years) described physical and verbal abuse perpetrated against him by his father, which had been occurring since early in his childhood. He indicated that as a result of this he had continuing high levels of anxiety, fatigue and had been diagnosed with post-traumatic stress disorder. While his parents had separated in early childhood with shared-care arrangements, multiple proceedings had been issued in relation to Daniel's parenting arrangements, with the most recent proceedings issued by his mother seeking no parenting time between Daniel and his father. Daniel described this process:

Um, I don't think I got a choice [as to living arrangements] ... I didn't really get a say, I liked it at my mum's but I didn't like it at the other parent's house. (Interviewer: Right, and why do you think you didn't have much say in that?) Um, I honestly don't know, I think - I know it sounds weird but I think the family court's corrupt. (Right?) To be fair with you, I don't - 'cause we went to court and the judge said I had to go back with Dad that night.

Daniel then detailed an event that occurred soon after these orders were made:

Um, he - I, I went to after-school camp in Year 6. And I told my mum 'cause I forgot that he was going to pick me up there. And I said to my mum that he didn't pick me up. And my dad got really angry, he, um, and because of that he - that night he choked me for a solid minute, and I couldn't deal with it any more so I didn't go back.

After this period Daniel and his mother went to the police, whom he said listened to his claims and told him that he 'didn't need to go anymore'. Reflecting on his court experience Daniel mentioned that he felt he was clear in his ability to have a say in relation to his parenting arrangements despite being of a young age.

Daniel suggested that his mother's lawyer did 'all that she could' but was unable to argue for the courts to cease contact with the father. Daniel suggested that the lawyer:

Should've pleaded and begged the judge to stop - to stop domestic violence for me and, yeah, and give the other parent justice for what he's done.

Young people, like Daniel, who had experienced violence and abuse emphasised the validity and severity of their experiences and were adamant about the importance of listening to young people's views and experiences when decisions are made about post-separation parenting arrangements in these circumstances (e.g. Tahlia, F, 12–14 years). Consistent with previous Australian (e.g. Bell, 2016, 2017; Henry & Hamilton, 2012; Kaspiew et al., 2014; Kaspiew et al., 2017; Parkinson & Cashmore, 2008) and international research (e.g. MacDonald, 2017; Neale, 2002; Tisdall, 2016), children and young people participating in this study reported their distress when their experiences of violence and abuse had not adequately informed the post-separation parenting arrangements:

Ah, yeah, there was like a lot of evidence on like FATHER where ... we should have like straight out like never had to go there again but like we did, we had to keep going there and stuff. (Eliza, F, 12–14 years)

Parents and judicial, legal and non-legal service providers are faced with the challenges of protecting and supporting the agency and participatory rights of children and young people without exposing them to harm that may arise from participation in circumstances characterised by family violence and/or abuse. Key among these concerns is ensuring that children and young people are not re-traumatised by their participation, as a result, for example, of continuing exposure to parental conflict (e.g. Smart et al., 2001), from the multiple interviews effect,²⁶ or by enabling parents to involve their children in the misuse of legal processes (Bell, 2016a; Henry & Hamilton, 2012; Kaspiew et al., 2017; McDonald, 2017; Royal Commission into Family Violence, 2016; Tisdall, 2016).

While acknowledging concerns regarding the involvement of children in their parents' conflict, these concerns must be considered in light of circumstances where these children are, or have already been, exposed to their parents' conflict or violent and abusive behaviour. As such, affording them the opportunity to participate in the decision-making process relating to their future parenting arrangements emerges as crucial. Hearing the voices of children and young people has been identified as particularly critical in these circumstances, not only because

²⁶ The multiple interviews effect may arise where children are questioned multiple times or have had contact with multiple services: Kaspiew et al., 2014.

this participation is central to meeting obligations pursuant to the UNCRC but also because it is important from an evidentiary perspective and is consistent with the expressed views of the relevant children and young people in cases characterised by family violence or conflict (see e.g. Bell, 2015; 2016a, 2016b; Parkinson & Cashmore, 2008; Fernando, 2013a, 2013b, 2014a, 2014b; Fernando & Ross, 2018; Kaspiew et al., 2013, 2014; Qu & Weston, 2015; Sheehan & Carson, 2006).

Relevant insights from an international perspective include MacDonald's (2017) recent analysis of Cafcss²⁷ reports prepared for UK Family Court on matters that were characterised by family violence. This research described the marginalisation of children's voiced experiences of family violence as a result of 'adult gatekeeping' and presumptions in favour of facilitating parenting time. This, in turn, was identified as impacting on the report recommendations for parenting arrangements (MacDonald, 2017. See more generally Saini, Birnbaum, Bala, & McLarty, 2016). As a means of addressing concerns of this nature, Tisdall (2016) has called for the broader adoption of the child-inclusive approach to combat the undermining of children's views by concerns about child manipulation or distress. In doing so, Tisdall draws on a distinction between 'thick' and 'thin' agency as a means of identifying that the 'thin' agency experienced by children in circumstances characterised by family violence, could be 'thickened with support for their views to be developed, heard and understood' (p. 374).

Identifying appropriate means by which children and young people can safely and effectively participate has also been identified in the context of children with disabilities or with diverse cultural backgrounds or linguistic capacities, with a view to ensuring that the voices of these children and young people are not marginalised (see e.g. Dobinson & Gray, 2017; Family Law Council, 2012; Harris, 2012; Kaspiew et al., 2013; Taylor et al., 2015).

As the discussion in Chapter 4 focuses on children and young people's experiences with family law system services, the mechanisms for engaging children and young people in decision making via service pathways such as the courts and FDR will be more specifically considered in that chapter.

3.3 Communication during separation

As has been noted, young participants generally expressed a strong desire for greater communication with their parents. Communication was important in learning to accept their new living circumstances, to build new relationships with their parents (see section 3.4 below) and to better understand what the separation process and the making of parenting arrangements involved. However, several children and young people participating in this study described experiencing aspects of their parents' communication that distressed them. One interviewee described how he and his siblings were caught in the middle of their parents' conflict, and were 'becoming tools to use against each other' (Hamish, M, 15+ years), while others reported feeling pressured to 'take a side' (see also Parkinson & Cashmore, 2008):

Sometimes, like, your parents feel like your siding on one side ... It's just a bit awkward. (Emma, F, 12-14 years)

It's frustrating - because both of my parents get angry at me because one of them will be talking to the other about how, for instance, my dad will get angry at my mum and send her lots of messages saying, 'Oh, it's not fair, I don't spend enough time with CHILD' but then he doesn't actually talk to me about it and make the time to see me. So then I get all that off my mum and my dad. All of their kind of pent-up rage instead of them just talking to me about it ... and letting me be like, 'Okay, I will see you here, here and here.' So it's very frustrating to have that coming from both sides when they could just kind of say, 'Hey, are you free next week?' (Phoebe, F, 15+ years)

I don't know, and especially like 'cause in the beginning 'cause my mum obviously like hated my dad and I don't blame her for that 'cause she was so like, oh your dad's done this, your dad's done that. And then my dad was also like, oh your mum this and your mum that. If they had just had someone to tell them that that's wrong and they need to act like adults at home until they figure out whatever they need to. (Rose, F, 15+ years)

For children and young people in this predicament there was a great level of distress and confusion, as many grappled with the remarks made by each parent in relation to the other. Indeed, a number of young people stressed this experience made them feel as though *they* were the problem and, in giving advice to other children, participants cautioned against others feeling this way as a result of their parents' behaviour:

Because it's not their fault. Even if the parents, at one point, blame it on them but - it doesn't - it's not their fault because that's not how relationships end. (Claire, F, 12-14 years)

²⁷ Cafcss refers to the Children and Family Court Advisory and Support Services.

If you ever feel like that it's your fault that your parents separated, it's not. It's really not your fault. (Zoe, F, 12-14 years)

It's not their fault. Um, I think that seems to be the main problem. (Amelia, F, 15+ years)

With support, a number of children and young people noted that they were able to accept their parents' issues with each other, and that their parents' separation was outside of their control. Interviewee Savannah (F, 15+ years) elaborated on her experience in coming to this realisation:

And now, because I'm constantly, I was constantly so worried about what my parents would think. I wanted to please them and ... she [a psychologist] was able to help me kind of come up with a mind of my own. And, you know, not to worry about issues that don't concern me. They're with my parents, and my parents need to deal with that. I'm not the adult, I'm the child, and I was able to kind of get the better perspective, and I was able to be more confident with having a voice. (Savannah, F, 15+ years)

In several instances children and young people were well aware of the stress that separation had caused their parents:

Just 'cause you know he's got a lot of problems and stress - or yeah, again, he's like I - that was only reading his report which he left on the table from a psychologist's and they also said that he has PTSD from everything. (Hamish, M, 15+ years)

Well, um, Mum had to go there a lot. And we had to go to someone else's house. Which was annoying. And she seemed really stressed out when she had to go to court. (Liam, M, 12-14 years)

Some children and young people were also aware of the impact that this stress had on the way their parents behaved in their presence:

Yeah. So parents aren't always bad people ... it was very tough because he was trying to do the best for us and he stopped alcohol, he stopped smoking to look after us, yeah ... Yeah, because my mum's not bad either, she is pretty good, my dad's good ... Yeah. I think she just cracked over the pressure and I think my dad did the same thing. (Beau, M, 12-14 years)

Um, like as I mentioned before, uh, neither of my parents really liked going [to court]. So they were kind of bitter after the fact. Uh, my mum for like another two days afterwards was just not all that friendly, I guess. Not specifically towards me, just like, towards anyone, really. Just kind of yeah, like you've just found that someone's spit in your sandwich or something, type of thing. Just like something miniscule that sets off the biggest reaction ... Kind of like, I had to be careful what I was going to say. (Noah, M, 15+ years)

Two young people suggested that it would have been helpful if their parents had made use of mental health services through the separation:

And also, um, also for the parents to talk to someone, I think as well. So that they're dealing with their stress as well. (Lucy, F, 12-14 years)

Whether they're from whatever side you're on, so it would be in this case FATHER, like listening and actually talking could have saved a lot of time, things like that would have been time saving. So, it's just I would say the most important thing would be listen and try and understand and also use things like counsellors and things like parents' helplines that I think my mum was using as well. (Michael, M, 15+ years)

Positive reflections on family communication emphasised instances of parents behaving amicably, not denigrating each other and of parents building open and supportive relationships with their children:

Don't talk down about one parent. Like, if you - you're one parent, don't - like say that you're the mum, don't be like, 'Oh the dad's just like' and just keep on talking down about it and like, that's, that's, because that only damages the kid ... like the emotional turmoil that can put them through isn't worth it in the end. (Alana, F, 12-14 years)

She's my parent before my friend but she's also my friend and that's a good thing in my opinion. (Claire, F, 12-14 years)

And he's quite relaxed in his, like, demeanour and stuff, so, I can find it comfortable to talk to him about things that are general - like, all of my other friends say that they don't really feel, like, comfortable talking about that with their dads, but I find it quite comfortable. (Caitlin, F, 15+ years)

3.4 Relationship development post-separation

Previous Australian and international research relating to children and young people's experiences of post-separation parenting arrangements has identified the importance of facilitating quality parenting time in this post-separation context rather than focusing on quantity or 'clock-time' (see further Fehlberg et al., 2018; Butler, Scanlan, Robinson, Douglas, & Murch, 2003; Smyth, 2005; Trinder, 2009). Spending quality time with their parents emerged as vital for many of the participating children and young people when reflecting on the closeness of their relationships with parents:

'Cause yeah I just enjoy seeing him and chatting with him, that's what I feel comfortable with, so. (Oscar, M, 15+ years)

Well, I just feel really comfortable with her ... And we've just got a really good relationship but, yeah. (Lucy, F, 12-14 years)

Um, because she like talks to me if I have anything to tell. She asks about school and like she knows what's going on. (Evie, F, 12-14 years)

Like, she spends like a lot of time with me. I mean, like, in a good way. (Hayden, M, 15+ years)

The data presented in Table 2.10 (see also text accompanying Table 2.10) indicates that the vast majority of children and young people in our study felt very or quite close to their mother (80% and 15%, respectively). While reports on closeness to fathers were somewhat more varied than their reports relating to mothers, the majority of children and young people reported feeling very or quite close to their fathers (22% and 35%, respectively). The text accompanying Table 2.11 and Table 2.12 indicates that the barriers and enablers to spending time together included issues associated with the quality of the parent-child relationship, the schedule and commitments of the relevant children and young people, and also the willingness on the part of parents to be flexible in order to facilitate time together. Feelings of frustration and disappointment were evident in interviews where children and young people reported that they did not feel that they had enough quality time with their parents:

Nowhere near [enough time]. (Interviewer: All right and can you tell us why you feel it's nowhere near enough?) It's in the scheme of things between a - my mum's relationship and my dad's relationship, Mum's more like a father to me. Like Mum does all like that fatherly figure stuff and like puberty all that stuff. Dad does sweet FA. (Okay but so in regards to the time that your dad spends with you.) No. Just because like it's not quality time. Whenever we're spending, it's always on his terms and it's like doing things that are not necessarily my favourite thing. (Nicholas, M, 15+ years)

Well, one on one with Dad is probably not enough, personally, because I feel like he's so distracted with everything else that he just doesn't spend enough, like I'm always around with him, but like a one on one [time] isn't probably enough. (Savannah, M, 15+ years)

(Interviewer: Oh, okay, so regarding - just with that question, do you think the amount of time your dad spends with you, do you feel it's not quite enough or?) Um, not quite enough. (Right, okay. And why do you feel that way?) Well, one, he's got work a lot so ... He's got to, one, look after his, his fiancé too, and walk the dog and do the usual fathering stuff. So, that doesn't really leave that much time [with me]. (How do you feel about that?) Um, not the best, I wish that I could have more time with him. (Alice, F, 10-11 years)

A number of children and young people noted that their time with their parent was diluted by step-family members (see further below), while other participants described how shorter amounts of time together could be beneficial in some circumstances:

With my dad spending like the whole day with him and because we have to do something all day, it's not the best. It'd be better if it was like broken up into smaller segments but probably about right ... I guess. (Robbie, M, 15+ years)

I think just about right because I think sometimes after a while it gets, I get emotionally tired of being with him. (Amelia, F, 15+ years)

Others expressed resentment at feeling like their parent was forcing a relationship on them or that their parent's behaviour towards parenting time sent them mixed messages about relationship expectations:

Don't know. The keep pressuring, that probably indicated it. (Interviewer: So what was he pressuring you, if you don't mind my asking?) Just to talk, talk about having more time and making sure that we thought

about it, pretty much just wanting us to think about it and make sure that we got to have that extra night. (Nicholas, M, 15+ years)

But the thing is, he was meant to show up for, like, a bunch of – I don't know how long, supervised contact, but he didn't show up for them, so, he didn't complete that first part so – but when the supervised contact was over he thought, 'Hey, give me my daughter, I want unsupervised contact now' ... It's very confusing. (Isabelle, F, 12-14 years)

Indeed, for a number of young participants, the relationship was something that took time to rebuild or renew after separation. In the above cases, the behaviour of these parents was identified as developing distance and resentment when they did not take time to listen to their children and let their relationship develop over time. At an elementary level, just taking an interest in their children's lives was identified as crucial for children and young people in what they sought and needed in their relationships with their parents:

Because like, she doesn't just, when I'm like saying stuff. She doesn't just keep on doing her stuff, and she's like, 'Yeah, that's nice sweetie.' Like she'll full on sit down and she'll be like, 'Okay, talk.' And like later on she'll remember stuff about it. (Interviewer: Okay. Yeah, right, that's really nice. And how about – how about your dad, how do you feel – how much do you feel he listens to you?) I feel like he doesn't really listen to me, because I can tell him stuff a thousand times and he won't even know. Like, it took, when I did Taekwondo it took three years for him to remember that I even did it. Like every Thursday when he'd call me, I'd be like, 'Oh, I'm just out to Taekwondo' and he's like, 'What, you do Taekwondo?' Yeah, it's like he doesn't remember anything unless it's useful for him. (Alana, F, 12-14 years)

In this case, the young person appeared to develop feelings of distance towards the other parent based on their perceived lack of interest or care and attention. Importantly, this factor emerged as key in the decisions made regarding future parenting arrangements, leading to this interviewee spending less time with their father. Some children and young people were clear in their expression of the need for parents to commit to, or continue with, their role as a caregiver even while the separation process was ongoing.

As foreshadowed above, a complicating issue noted by several participating children and young people in relation to their endeavours to form positive and meaningful post-separation relationships with their parents was the presence of a new partner. For some children and young people, their parent's re-partnering was a positive experience:

I feel like the only beneficial thing that came out of me having to spend time at Mum's was the fact that I met STEP-FATHER and I want to spend time with him, and I still have that relationship with him. (Hamish, M, 15+ years)

My relationship with my step-mum used to be a bit iffy but it's gotten a lot better now. (Claire, F, 12-14 years)

However, for other participants the re-partnering of a parent contributed to difficulties associated with parenting arrangements:

Well, I remember before my dad married my step-mum ... before then I could just choose whenever I wanted to see Dad ... Like, I could just go, and then when my step-mum came in, things started to get specific, yep ... Yeah, it was really flexible ... And now, before, it was like really hard, now it's not flexible, even though he's saying, oh, it's really flexible. (Lucy, F, 12-14 years)

Um it's okay during the week, it's the right amount. But on the weekends I don't see her because her new boyfriend comes round and every single weekend and they usually go out or I just don't get to really talk to her that much on the weekends. So that's not enough on the weekends. (Lily, F, 12-14 years)

My dad I've had less ... contact with over time. Um, ever since he had his uh, he had a, his, uh, wife and his two kids. (Harry, M, 12-14 years)

In the case of Lucy (F, 14 years), a particularly divisive relationship with her step-parent had developed, and she felt her father had not supported her through this:

I was being blamed for the whole court order and stuff, and I got blamed a lot [by] Step-mum ... He just sits there and listens ... but he never really stood up for me. (Lucy, F, 14 years)

Lucy (F, 12-14 years) suggested that there was a need to minimise involvement of her parent's new partner in the process of making parenting arrangements:

Um, yeah, um, if they've got a step-parent who is really nosy, tell them to butt out ... Seriously, cause um, many times [Step-mum] turned up, like, because now and then she would turn up when I'm having meetings with my psychologist ... Um, when Dad - we're having counselling, she would always turn up and always like, kind of take control. (Interviewer: So actually come in the session?) Yeah. Um, just also, um, let the parents talk about it, don't let the step-mother or step-father get involved.

For children and young people in this study, it was vital that their parents retained their role of being *their parent* in the context of their commitment to a new relationship. To this end, quality time was important for children and young people in reinforcing their parents' relationship with them and easing them through the separation process. Importantly, where such issues were present, working through these issues emerged as vital if a relationship was to continue:

Okay, yeah. Basically, what I just said about kind of putting things more firmly in place and not giving any of us an option as to whether we kind of talk about it or not. Because we knew that we needed to but when you give someone the option to run away from it, they're going to. And it was really important that we continued to do it because, especially for my dad, we really needed him to understand where we were coming from. But he's the kind of person that, if he finds something difficult he just ignores it and doesn't go back to it ever again. (Phoebe, F, 15+ years)

3.5 Flexible parenting arrangements and the ability to change

In addition to participation in decision making with respect to the initial parenting arrangements, previous Australian and international research has also associated children and young people's satisfaction with the flexibility of these arrangements with their ability to have some say in changing these arrangements over time (e.g. Cashmore, Parkinson, & Weston, 2010; Campo et al., 2012; Fortin et al, 2012; Lodge & Alexander, 2010; Sheehan et al., 2005; Trinder, 2009). Many of the children and young people interviewed for this study had experienced some change in their parenting arrangements over time, and specifically in relation to the amount of time spent with each parent. Nearly two-thirds of participants (59%) reported that they were satisfied with the time that they spent in the home of each parent at the time of the interview, while nearly one-third (30%) expressed a desire for change in this regard. A number of reasons were identified as giving rise to the need for change including: a poor relationship with the relevant parent (or a stronger relationship with the other parent), a lack of quality parenting time, additional duties at the other parent's household, unsuitable living conditions or frustration with parenting styles:

You know, he (father) sort of has different opinions on parenting and stuff like that. He's sort of more like the parent should be the parent and never like, like you shouldn't be considering your parent like a close friend. They should be your parent. Whereas my mum and I, yeah, she's my parent before my friend but she's also my friend and that's a good thing in my opinion but my dad sees it differently. He thinks that if you're seeing a parent as a friend it can sort of get rid of authority and stuff like that. (Claire, F, 12-14 years)

Um, it's not quite enough time with him but he likes - he wants to do more time but then sometimes he, he like struggles to like find the time. (Evie, F, 12-14 years)

Yeah. And even then, like, it wasn't much, like, bonding time because, like, he used to live with his friend ... we didn't spend any time with him anyway. We just spend that time, like, with other people. (Scarlett, F, 15+ years)

In other cases, the children and young people reported that they were simply frustrated at the difficulties associated with maintaining their social and other commitments while moving between two houses:

Because like, if - if here they [friends] have like a birthday party you want to go to and it's on your father's weekend you can't really say ... Okay, can I not go to your house ... And then it's hard to like organise another time ... Because you're always busy. (Ellie, F, 10-11 years)

Yeah. Well, as I said earlier, it's really hard like maintaining all those commitments and stuff if I'm at my dad's since it's so far away. (Emma, F, 12-14 years)

Interviewees Zoe (F, 12-14 years) and Isaac (M, 12-14 years) (among others) expressed their appreciation for flexibility in time at each household and in the ability for parents to adjust and to make changes where they were needed. Whether it was the ability to see more of one parent, or to change plans for their weekend together, children and young people expressed an ongoing need to be listened to by their parents when it came to spending time together:

Like, you know, it would be awesome if I could just say, 'Right, okay, I'm only coming this weekend.' Or to be able to say, 'Right, me and my girlfriends. We're going out to the movies. Um, we're having a, um, we're going back to so and so's place for a sleepover' ... Like, I want to be able to say that. I want it to be flexible and to say, 'Okay, I'm going to do this with my friends. I'm going to do that with my friends.' (Zoe, F, 12-14 years)

Yeah, my mum said, 'If you want to change anything we can ... oh if like you don't feel, if you want to go like see your dad like even if it's on my weekend, I will let you,' and stuff ... like if I wanted to like go for one weekend I would say, 'Oh yeah, Mum can I just go talk to my - like go over to my dad's house for the day?' And she'd probably be like, oh yeah, okay. (Isaac, M, 12-14 years)

After expressing a desire to change the arrangements, one interviewee indicated that:

We were just, 'What could we do?' and we go, 'What about two, two, five, five?' [regarding a potential care-time arrangement]. And we just tried and then it was all good and we're like, we kept on going with it and now it's our usual thing. And then my mum told my dad. And he's like, 'That's completely fine with me.' (Riley, M, 12-14 years)

However, in many cases where the participating children and young people reported feeling that their opinion was not taken on board, there was a level of frustration evident:

Like, I guess if you were to meet my dad, you'd understand. He's very like, how do I say? If he doesn't - it's either his way or no way. (Harry, M, 12-14 years)

Significantly, participating children and young people reported developing alternative ways of making themselves heard by their parents and other adults. Some children used letters as a means of communication:

I was discussing it with him a lot saying that I didn't want to live with him. I wrote him a few letters while I was living with him that I didn't want to live there, and then he just gave in I guess. (Stephanie, F, 15+ years)

Yeah, so I wrote a handwritten letter to her and mailed it in the post, which I have photos of and that. It was just pretty much expressing all my feelings about her and what she's doing and all that kind of stuff and you know if she doesn't change the person that she's been, and the way she behaves, then she's going to be missing out on a lot. (Hamish, M, 15+ years)

In other cases, children and young people's frustration at unsafe parenting arrangements and at not being heard resulted in them running away from home (Lily, F, 12-14 years) or destroying parents' property:

And so he picked us up and then after that we went and broke his house and his TV, you know ... Because we, if he didn't want to listen to us he'd have to listen to us a different way. (Tahlia, F, 12-14 years)

As has been noted, nearly two-thirds (62%) of participating children and young people reported using a mental health service in relation to their parents' separation, with some participants suggesting that their communication with parents and parenting arrangements were catalysts for this engagement. Eight children in shared-care arrangements reported feeling anxious when going to one parent's household at the time of interview and had worked with mental health professionals to manage both their symptoms and the way they engaged with the relevant parent. As the discussion below and in later chapters in this report indicate, the level of trauma and distress reported as being experienced by children and young people in our sample suggests that greater attention needs to be placed on listening to the views, experiences and needs of children and young people, and acknowledging and according due weight to these when making parenting arrangements.

While emotional support and being listened to by their parents was, for many children and young people, key to developing a positive relationship post-separation, others discussed the desire to simply feel secure and protected in their living environment. The ability to seek change in these circumstances emerges as crucial for children and young people in this predicament. This issue of safety was raised by participants on 53 separate occasions across the interview data with children and young people, with nearly one-third ($n = 18$) suggesting that at different times they had not 'felt safe' at one of their parent's households, giving rise to substantial anxiety on the part of affected participants:

I still - I think because of like how my childhood was I'm still like, what's the phrase, there's a phrase that I was about to use. Um. What's it called - I'm like still just walking on eggshells around him. (Alana, F, 12-14 years)

It's a bit weird. Like, I just didn't feel safe there. (Interviewer: Yeah, why do you say that?) I get this bad vibe, vibe off him. Like he's just a very - he's very abusive. I just like, not, not towards me. He never abuses me, thank god. But he was just very - he seemed like that person that if you tick off he'll just lose it. Yeah. (So you didn't feel safe?) No. (Harry, M, 12-14 years)

Moving homes after separation brought some participants a greater sense of security. For example:

Like in this house I feel safe ... Yeah. But like going out sometimes I - I am cautious. Going out like, every night, also, I'd always lock the doors, the gate. (Hayden, M, 15+ years)

No, so baseline, like, for the entire time period [after separation] I always wanted to spend more time at Dad's because the household was always more peaceful, ah, I felt a lot safer there in general. (Hamish, M, 15+ years)

Feeling 'safe' for participating children and young people was described as involving a home environment free from physical, verbal, emotional and other abuse, and/or free from fear of physical, verbal, emotional and other abuse. For some participants the circumstances present when parenting arrangements had initially been made meant they did not feel safe. Interviewee Hayden (M, 15+ years) reflected on an experience soon after being placed in shared care with his father:

He was drunk and he came to pick us up. (Mmm.) Because - Mum usually drives us. It used to be like every - no, every - every week - whenever really but it - minimum every fortnight. (Mmm.) Like, sometimes we'd see him maybe every weekend and stuff. (Yeah.) Just like normal. (Yeah.) And then um, yeah, that night, like it was getting a bit late and Mum was doing stuff. I'm pretty sure like work stuff, so we were fine with that but he was crackin' - like cracking it. (Mmm.) So anyways, he came down and then he was just being very, like abusive. He actually grabbed my mum. (Yeah.) And then I had to actually hit him to get off my mum. (Right.) And it escalated pretty quick. (Right, I'm really sorry to hear that CHILD, and to the best of your knowledge that was reported to police or the other authorities?) Yeah, straight away. (Yeah.) My little brother actually called the police. (Right.) While it was happening and (Okay.) they came pretty quick.

Hayden (M, 15+ years) said that he no longer had contact with this father, and 'felt safe' in his current house with his mother and other family. However, he also noted that:

But like going out sometimes I - I am cautious. (Yeah.) Going out like, every night, also, I'd always lock the doors, the gate. (Yeah.) Just make sure we're secure.

Some interviewees noted positive experiences of support services that helped them to feel safer with their parenting arrangements, including those provided by Children's Contact Services:

I felt more safe ... when I did have supervised contacts. (Isabelle, F, 12-14 years)

However, others had more ambivalent recollections about whether the response of police or the relevant child protection authority made them feel safe (e.g. Beau, M, 12-14 years) or whether they addressed their reports of violence, abuse or other safety concerns:

I felt like he [police officer] believed me [regarding violence claims] but I don't think he - yeah, like, yeah, I don't know, he get - he told me to come back in and they did a recording and they got a police doctor to say questions about what he did. And I answered them and - but just, nothing ever happened. (Daniel, M, 12-14 years)

Other participants described their distress or disappointment at not being believed in relation to their complaints of violence or abuse, with these responses informing their parenting arrangements. This participant is responding to a question on what they wanted from services:

When I talked to the police, for them to listen ... Instead of just going, oh, he's your father and, you know, your blood and ... 'Cause they just kept saying, oh, there was - there's - 'cause from what I remember they said that there's, like, no physical reports he, that there was any abuse, so we can't believe you. (Ashley, F, 12-14 years)

Mmm, they [police] didn't protect SISTER. They thought it was okay to leave her in his custody when they knew that stuff was happening in his house, alone ... Mum, like, reported everything, but all of them got turned down. (Interviewer: And this was to police or child protection?) Everything. (Isabelle, F, 12-14 years)

3.6 Ongoing communication and a meaningful say in parenting arrangements

In the context of an open-ended interview question, a substantial proportion of participating children and young people (38%) described how they wanted ongoing communication in order to understand more about what was going on in the post-separation context. As will be explored in Chapter 4, nearly two-thirds of participating children and young people indicated that family law system professionals needed to improve their communication in the context of decision making associated with parenting arrangements. Additionally, young participants sought to maximise opportunities for quality time and support and cautioned against parents providing commentary on the other parent's perceived motivations. Children and young people indicated that the matters they sought more information on included:

- When and how they would have an opportunity to have their say?
- How much would their say impact proceedings?
- Would there be a professional representing them?
- What potential assistance measures were there in communicating their preferred living arrangements to their parent?
- What was the timeline and nature of legal proceedings, the decision maker in these circumstances or the steps associated with negotiating parenting arrangements?
- What are the available support services (e.g. mental health professionals, support groups, helplines, legal advice)?
- What are the potential outcomes and options for their living arrangements?

Staying informed provided children and young people with a degree of comfort and assurance about the path ahead in the context of the uncertainty and upheaval associated with the separation. Several children and young people noted that they did not want to have to 'fill in the gaps' regarding what was going on in their parents' separation and the process of finalising arrangements:

Something that helped me out through it was my dad kept me informed with things that would've been affecting me and BROTHER or would've been things that he'd think that we would like to know. And things like that, even though they're small, they're very helpful for – so, you know what's happening and you get to – like, you can feel, you know what to feel about it and you feel prepared in case. (Caitlin, F, 15+ years)

Building on discussion in the previous section, having a meaningful say emerged as of pivotal importance to those children and young people whose family circumstances were characterised by violence, abuse or other child safety concerns. The ability to have a meaningful say in the making of the parenting arrangements affecting them emerged as important to most children and young people, with some calling for their views to be treated as an integral and respected part of the decision-making process:

Just kind of treat them as you would any other adult, because when a kid goes through a divorce a lot of the time the adults become very immature so the children grow up a lot quicker ... I preferred to be spoken to, like, as an equal rather than someone speaking to me as if I were, you know, just someone who didn't have any idea what was going on and didn't have any idea of the situation. (Phoebe, F, 15+ years)

While participation may be identified as more challenging in this context (e.g. Parkinson, Cashmore & Single, 2010; Parkinson & Cashmore, 2008; Neale, Flowerdew, & Smart, 2003), nearly half (46%) of participating children and young people called for family law system service professionals to be more mindful of their views and experiences in relation to these high-risk circumstances, with greater participation supporting this goal. As noted above, rather than being separated from the legal and non-legal decision-making processes, children and young people, even (and indeed particularly) in these high-risk circumstances, sought to be heard and taken seriously. The experiences of participating children and young people where their families accessed family law system services are the focus of the following substantive chapters.

3.7 Summary

This chapter has focused on the important issues associated with the making of post-separation parenting arrangements from the perspective of children and young people. Most children and young people described how the separation of their parents had a profound impact on their own lives, and that they required support and guidance in how to adjust and cope in the context of this change. While there was a wide variety of circumstances associated with parental separation in our sample, a clear majority of participating children and young people expressed the need for their parents (76%) to listen to their views more often and with greater attention.

The comments of participating children and young people reflected their need for parents to fulfil their role as carer and guardian as best they could despite the trauma or upheaval of the separation, as well as in the context of new partners. As expressed at the outset of this chapter, where children and young people reported that they felt listened to by their parents both during the separation process and afterwards, they were more likely to report feeling close to that parent. Conversely, acrimonious separations and not listening to children and young people's views and experiences were more likely to be associated with either no contact or limited contact with that parent, or a desire for such parenting arrangements.

Other factors emerging as important to children and young people included the development or renewal of an emotionally supportive relationship with their parents, and parents facilitating flexibility in parenting arrangements and an openness to changes in future. Feeling safe and secure in their living environment, as well as ongoing avenues for communication and an opportunity to have a meaningful say in decision making were factors also identified as important by participating children and young people. While not exhaustive, these nominated factors were key in the reports of young participants' views and experiences of their parenting arrangements.

4 Children and young people's experiences of family law system services

Children and young people participating in this study were asked about their experiences of any legal or non-legal family law system services that their families engaged with when separating. The services explored in these interviews included services associated with family law proceedings (including courts, legal services (including ICLs) and family reports/assessments), as well as non-legal services such as FDR (child-inclusive, child-focused or other FDR), Children's Contact Services and counselling services. This chapter will first explore children and young people's reports of how their views and experiences were acknowledged by professionals in these family law system services, and the extent to which the children and young people were themselves the direct beneficiaries of these services. The discussion will then consider whether the families' engagement with these system pathways supported the participation of the children and young people in the making of decisions about parenting arrangements.

This will be followed by detailed consideration of children and young people's experiences of participation or non-participation in this context, and of the differences and similarities in the experiences of children and young people using these different pathways. To the extent that is possible in the context of a cross-sectional study, the discussion will also provide some insight into how the participating children and young people experienced changes in their parenting arrangements over time, and the extent to which the use and reuse of services was positive, negative or mixed from their perspectives. Differences and similarities in the circumstances of, and outcomes for, children and young people using the different pathways over the longer term will also be considered where the data permit.

4.1 Acknowledgement of the views and experiences of children and young people by services

Data from the interviews with children and young people provide insight into the extent to which they perceived that their views and experiences were acknowledged by family law system services. In identifying whether children and young people perceived their views and experiences to be acknowledged, the research team considered whether children identified that they had been listened to, whether their views were passed on to the decision maker, whether their views were taken seriously or whether they identified as having an impact on the decision-making process. As the discussion in this chapter will illustrate, consistent with the analysis in section 3.1, a key theme emerging from the interviews in relation to this issue of acknowledgement was that participating children and young people commonly described the significance of having 'someone' to listen to their views and then communicate those views so that they could inform the decision making in their case.

Counsellors were nominated by participating children and young people as a key means by which their views and experiences were acknowledged, with a number of participants describing their interactions with counsellors subsequent to their parents' separation. For example:

It was my counsellor who was, yeah, she was good but she didn't really have much say with the court because she was just a(n) outside counsellor ... she, she was the one who first said CHILD can't do this, she can't stay overnight, yeah. (Lily, F, 12-14 years).

Some participating children and young people described this service provision as occurring in parallel with, rather than directly informing, the decision-making process about parenting arrangements. These experiences will be considered in more detail in sections 4.2 and 4.4 below, and in Chapter 5 in the context of an analysis of the supports that the participating children and young people indicated would assist them in dealing with their parents' separation.

Some children and young people described their direct engagement with service providers, including family consultants/family report writers and ICLs, and their acknowledgement of their views and experiences as facilitating their input into the decision-making process.

As outlined in Chapter 2 (see Table 2.24–2.26 and accompanying text), 61% of participating children and young people recalled that their parents had contact with a lawyer, and 48% recalled involvement of the courts. A further 34% of children and young people indicated that a family consultant or report writer was involved in their matter, and 23% noted the appointment of an ICL. Children and young people also reported that their parent/s organised counselling for them or other family members (as opposed to relationship counselling) (18%). Two participants mentioned using a Children's Contact Service and one participant mentioned that police were involved in their matter.

The data presented in Table 2.24 outlines the extent to which children and young people reported meeting the nominated service providers. These data show that apart from child psychologists/counsellors, the most common professionals that children and young people had direct contact with were family report writers (95% of those who recalled, or 20 participants), ICLs (79% of those who recalled, or 11 participants) and counsellors (65% of those who recalled, or 11 participants). One-quarter of the participants who recalled their parents accessing FDR/mediation reported meeting the FDR professional. Only 10% of participants ($n = 3$) who recalled their parents using the courts, said that they met with court personnel. Similarly, only 14% of children and young people who mentioned that their parents contacted a lawyer, reported that they met the lawyer ($n = 5$).

These reports and the qualitative descriptions of service experience from participants suggest that there were mixed experiences in relation to the extent to which children and young people identified these service providers as acknowledging their views and experiences. Of those children and young people who could recall engaging with family consultants/family report writers, half indicated that their views were not acknowledged ($n = 10$), although the responses of a small number of participants reflected that their views were acknowledged or somewhat acknowledged ($n = 9$).²⁸ For example:

I think if me and SISTER didn't want to do – like it had have been something like 50/50 again that's what the judge decided, me and SISTER still would've been, we just would've said, 'We don't want to go'. So I think we've had quite a bit of say because we told the people that were interviewing us for court that's what we wanted. And I think they knew that, you know, it [the parenting arrangement] was what was going to work best. Because Dad wanted to see us as well. (Robbie, Male, 15+ years)

Although 12 participating children and young people recalled their parents accessing FDR/mediation, only three reported that they had met the FDR practitioner or mediator but each of these participants indicated that their views had been acknowledged by these professionals.

In the context of an arrangement akin to child-inclusive FDR, two participating young people described how the counsellor with whom their family spoke provided them with the space and opportunity to communicate their views and then, in turn, communicated these views to the parents on the young person's behalf:

Um, she [counsellor] asked if I was comfortable talking to Mum and Dad and she then, she sat down with them ... she asked if I wanted to be there ... I said no ... It's probably a bit more awkward if I was there. (Caitlin, F, 15+ years)

She kind of converted what – my speech into action. (Jeremy, M, 12–14 years)

A developing body of research exists in relation to outcomes arising from child-inclusive FDR. Research by McIntosh, Long and Wells (2009) has shown that when compared to 'child-focused' interventions, the statistically significant outcomes for child-inclusive families in the four years after mediation included:

less legal action over care and living arrangements, lower rates of return to mediation ... greater stability of care and contact arrangements, higher satisfaction with living arrangements (fathers and children), greater reduction in parent acrimony ... children feeling less caught in the middle between their parents and children feeling less distressed about their parents' conflict. (pp. 9–10).

Overall, McIntosh and colleagues found that a majority of parents who engaged in the child-inclusive practice in their sample went on from mediation to build more stable patterns of care. These tended to gradually but steadily increase fathers' parenting time, albeit with less shared care (noting shared care was in their sample associated with higher conflict) (see also e.g. Bell et al., 2013; Ballard et al., 2013; Inder, 2014; Kapsiew et al., 2013; McIntosh, 2007; Moloney & McIntosh, 2004; Rice, 2017; Webb & Moloney, 2003; Yassenik & Graham, 2016).

This research supports the application of child-inclusive FDR to facilitate acknowledgement of children and young people's views and experiences, where this is accompanied by rigorous approaches to screening to ensure

²⁸ The response of one young participant interacting with their family consultant/family report writer did not provide sufficient information in this regard.

the safety of children and young people and their families prior to commencement. Although limited insight into children and young people's experiences of FDR was available from the participants in this current study, recent action research conducted by UnitingCare Queensland (Williams, 2016), as well as earlier research, may guide further consideration of this option for participation (see Brown & Campbell, 2013; Ewing et al., 2015; Graham et al., 2015; Kelly, 2014; Taylor & Gollop, 2015; Walker, 2013; and Harris, 2012 regarding the KidsTalk program implemented by Victoria Legal Aid).

Most participating children and young people who could recall accessing an ICL ($n = 14$), reported meeting their ICL ($n = 11$), with almost half ($n = 5$) of these participants reflecting that their ICL acknowledged their views. A small number of participants also reflected on the role played by their parents' lawyers in acknowledging their views. Although more than half of the participating children and young people could recall that their parent had accessed legal services ($n = 37$), five participants recalled meeting their parent's lawyer, with one identifying the lawyer as acknowledging and articulating her views:

Um, kind of just to know like that someone is fighting for me to come home, you know? Someone like actually wants like me to come home so that I've got someone like – just like putting forward everything. (Eliza, F, 12-14 years)

Although for some children and young people (e.g. Jeremy, M, 12-14 years; Robbie, M, 15+ years) the acknowledgement of views and experiences was described as taking place prior to, or in parallel with, the settlement or determination of the parenting arrangements; for others, as noted above, the acknowledgement of their views took place subsequent to the making of these arrangements. Nevertheless, the positive impact of parents and professionals acknowledging the views and experiences of children and young people was evident in the reflections of some participants, even when that engagement took place after the post-separation parenting arrangements had been made. For example, one participant described receiving support from a counsellor attending at her home subsequent to an arrangement for her to spend time with her father each alternate weekend. Another participant described checking in with his psychologist at the commencement of the new school term to address any issues arising after each school holiday contact period.

As noted in section 3.1, what emerged from the interview data, however, was a lack of specific awareness of the extent to which their views had been acknowledged in the decision-making process or in the course of their family's engagement with family law system services. More specifically, some participating children and young people reported that their views regarding parenting arrangements were not sufficiently acknowledged or valued on the basis of their age:

Um, I don't know. I think – everyone seemed to think I was pretty young. My opinion didn't really matter or something. (Ryder, M, 12-14 years)

Even where direct engagement was facilitated, some participants found the nature of the professional enquiry and interaction for the purposes of family law matters to insufficiently acknowledge their experiences and needs in the context of their parents' separation. For example:

It was a counsellor who was trying to ask the same questions of both of us – It was, they were trying to get an opinion on both sides so it was all questions ... about FATHER and things like that. It wasn't kind of questions about, like, other things, you know, general wellbeing and things like that. Like, that's why I did the school counsellor and Kids Helpline and things like that 'cause they were broad. Whereas that one was just based on the one thing that we'd just spoken about in court, just that one thing. (Michael, M, 15+ years)

Following on from the discussion in Chapter 3, interviewees Emma, (F, 12-14 years) and Alana (F, 12-14 years) reflected (in the context of a discussion about their engagement with service providers) on the age at which they felt that the individuals in their lives began acknowledging and engaging with their views:

Well, I'd like to maybe comment that I think it – it was much easier to get my thoughts across like when I was older 'cause I think I got more of a say when I was older, like, since I'm 12 now ... I think I – Dad has especially as coming – considers my thoughts a bit more ... So, I guess it would be even harder for like those younger ones 'cause I know it was hard for me when I was like little ... I was a bit confused about what was happening. (Emma, F, 12-14 years)

I think when we get to about eight, you really start to understand what exactly you want. Because like, when you're younger you're still getting used to everything. Like, or, like, once you reach about eight or nine that's when you start to understand everything more clearly. (Alana, F, 12-14 years)

4.2 Children and young people as direct beneficiaries of service provision

The project data provided particular insight into the extent to which children and young people were themselves direct beneficiaries of the family law system services provided in the context of their parents' separation. The discussion in this section explores the extent of children and young people's awareness of the family law system services that their family accessed post separation and their understanding of the purpose of these services.

A small number of children and young people participating in this study demonstrated an awareness of the role of the court in determining their parenting arrangements and reflected on this process as being ultimately beneficial to them. For instance, when asked whether the professionals associated with the court process (e.g. as ICLs or family consultants/family report writers and judicial officers) were helpful to him, one young person observed that:

Yeah, it was because if it wasn't for them, then I don't think I would've been able to spend more time with my dad, so. (Max, M, 12-14 years)

While these experiences will be discussed in greater detail in section 4.3, what emerged from these data was that even where the recommendations of the ICL or family consultant/family report writer differed in some respects from their expressed views, some children and young people were able to ascribe benefit to services received from professionals who were perceived to be genuinely intending to make arrangements that were in the best interests of the relevant children and young people. For example, one participant described his interaction with the family consultants and the ICL as beneficial and as they were 'genuinely want(ing) what was best for us' (e.g. Robbie, M, 15+ years), even in circumstances where the recommendations varied in part from their expressed views.

In relation to the family consultants, this young person reflected:

They [family consultants] both seemed like they wanted what was best for everybody and they were nice to talk to. I think it was like four, six months difference. I think they'd listened to what we'd had to say but then they did what they thought was best from what we had to say. I don't know. I think it was because like when they were making the decision it was just my mum's word against my dad's and they were saying different things. And that gave, you know, the judge to see like genuinely what me and my sister wanted. (Robbie, M, 15+ years)

In relation to his experience with the ICL, this participant observed similarly that:

She was nice. She just seemed like she genuinely wanted what was best for us. I think she just got - like got the wrong impression from us or something ... It was like 10-20 minutes [with each sibling separately]. I think she's asked us to tell her about ourselves and so she could get an idea of what kind of, you know, people we were and our interests and what, like, we thought of the whole court process and stuff like that, I don't know. I think she did listen to us quite well. (Interviewer: And what gave you that impression?) I don't know but like I said, she just seemed like she genuinely wanted what was best for us. I guess it was just so that me and SISTER could have a say and it would be directly from us and she would be able to say what she thought was best for, like, for us. Just, you know, directly from us ... It would have been probably better if they, like, if well, 10-20 minutes wasn't that much time and somehow if there had have been like - don't know. If they had have known like what was best for us better, if that makes sense but I don't know. (Robbie, M, 15+ years)

However, most children and young people who reported engaging with these family law system professionals reported feeling negatively towards the court process ($n = 11$), the family consultant/family report writer ($n = 11$) and the ICL ($n = 7$) and dissatisfied with either their level of input or awareness of the decision-making process or the final parenting arrangements. Some perceived that there were negative and/or harmful effects of the court process for themselves and their family. These data will be explored in section 4.4.

Participating children and young people were more likely to report being direct beneficiaries of post-separation counselling, and more commonly reflected positively on the support that they received from counsellors and the benefit from having 'another voice' (Amelia, F, 15+ years). For example:

Mum once sent me to this, like, this really nice lady to speak to and she, like, helped me get my opinion out, which was good ... Which was good ... Yeah. That was helpful but I don't think I was allowed to - I don't know. I don't think my dad wanted me to see her anymore ... I'm not exactly sure but, like, I didn't see her anymore and I would have liked to. (Emma, F, 12-14 years)

Yes, I talked to one for four months, from about April last year to August, September. Because I was in a really hard time with juggling my parents. And in both ears, and I couldn't take it anymore. So, she was so helpful ... You know, that still doesn't get me far with my dad, but ... it's being kind of more sure now of what I'm - what I'm saying and - the, what involves me. And so, it was very helpful. (Savannah, F, 15+ years)

The ability to direct the nature of the topics for discussion during their engagement with service providers emerged as important to a number of participating children and young people as a means of benefiting from service engagement. As noted above, some children and young people focused on the support that they received from counselling as a means by which they could 'be heard' and to 'vent' (Nicholas, M, 15+ years) (see also the discussion in Chapter 3), even in circumstances where they acknowledged that this did not impact on the post-separation outcome. The support received from an independent person who was prepared to acknowledge and listen to what this young person had to say played an important role in their adjustment post separation:

At one stage I did go to I think it was a counsellor ... so that helped a bit like being able to talk about it and kind of be heard even though it didn't really have any effect on the outcome, it kind of just helped to kind of talk these things through with just, like, an independent counsellor. (Oscar, M, 15+ years)

My dad and my step-mum thought it would benefit me, and then my mum thought, you know, this would be a good opportunity for you. And so it was kind of a both parent support, and then both parents would talk to the psychologist once every 10 weeks, because it was kind of a 10-week session. So, yeah, they were both very supportive of it and, you know, would do whatever they could to be able to alter, you know, if they could, how they were acting or what they were doing and I think it strengthened my relationship with my mum and I think give my - give my dad and my step-mum a bit more reassurance of that I knew what I was talking about and that I'm not being persuaded by, or - because their favourite words, words are, is manipulation. You know, one parent thinks the other parent is manipulating me. And, like, they wouldn't think I had a mind of my own, like, you know, it's like oh, your other parent is manipulating you to make this decision and I'm like no, like this is what I want, and it was frustrating, so ... [the counsellor] was able to give them more reassurance that I knew what I was doing. (Savannah, F, 15+ years)

More specifically, some young participants reflected on their more extended engagement with counsellors and described the varied approaches taken by these practitioners to provide them with therapeutic support. The following participant described the activities that they undertook with their counsellor, preferring a less direct approach that provided the space for discussion to emerge in the context of creative activities, which could together serve a clear purpose in addressing the young person's concerns:

The first counsellor that I had - remember, she was like the school one, we always did these little crafty thingies and she'd talk to me, I was with her for a couple of years and she was really nice. And yeah, she helped me a lot. And there's these other ones, which I didn't really like too much, 'cause they were full-on about, 'How do you feel about this? Do you wanna um, let's talk about your feelings.' There was this little box we made once and we decorated it, and I think it was something like - like a worry box or whatever and you write down your worries and you put in it, and just, like, little thingies, like creating a board game and all that, just fun stuff. (Isabelle, F, 12-14 years)

Another young participant described the features of her support service that made her feel comfortable when engaging with her counsellor. Having toys that enabled play during counselling sessions not only were a point of interest for this young person but also provided a means to soften or divert attention from any discomfort arising from the content of the discussions:

It's fun because like there's - while you're talking you can play because there's like a few things in the room and you don't have to be looking at them while talking 'cause it's just like awkward sometimes. Yeah, and sometimes you can have the company of your mum, you decide if you can have the company of your parent or not. And yeah. (Angela, F, 10-11 years)

In their description of their engagement with support services, the comments of some participants highlighted the time and effort necessarily invested by both parties in the process to make the most of therapeutic support during their parents' separation. For example, one participant described his interaction with the psychologist as a friendship, and detailed the nature of the investment that was required by both parties for the outcomes to be beneficial from the young person's perspective, in supporting and comforting them through the family's transition:

Well, she was just - it was basically a friendship. Like, she was just brand new and we, like, you know when you first meet someone ... You can't straight away go and open doors. And just, 'This', you have to

build up and I'm like, 'I don't know', 'cause I know some of them are helpful and teach ... I felt comfortable enough (to talk to her) ... She helped me and my mum calm down even more. Um, she helped me and my mum and my brother sort, like, I don't know - about much about what she did with my mum. But, like, she helped me and my brother just get, like, more over it and more absorbed into, 'Now, you've got two families, you can't go back.' Like, sometimes, I still just wish I could have Mum and Dad there. But I can't, I can't change it back ... And comforting, yeah. (Riley, M, 12-14 years)

These data also illustrate how the needs of children and young people may change over time, with some participants reflecting on the support received from practitioners on an ongoing basis (Max, M, 12-14 years). For example, one young person reflected on the positive support provided by the family consultant who in circumstances where the child was engaging in physical violence and alcohol consumption at school provided ongoing therapeutic support subsequent to conducting the family report. This young person described the family consultant as 'always someone great to talk to - I did tell her everything and she gave me tools to deal with things that were going on'. Prior to his engagement with this professional, the young person described dealing 'with it a lot by myself ... the emotional part of it ... when I was getting sick of ... living with Dad and stuff'. (Connor, M, 15+ years)

Another young participant described their ongoing engagement with their counsellor in a positive light, noting the benefit of being able to engage with them on an as-needs basis, with specific support provided in the post-separation context:

That was good, it helped 'cause like they give you tips on how to like go through things, like say something's happened and they'll tell you like how to deal with it and what to do if you've had a fight with something, and yeah. It's just tips and what to do and getting used to it. (Angela, F, 10-11 years)

Another described the benefits arising for them from engaging in post-settlement family counselling together with all members of their family. The experience of receiving therapeutic support as a family unit was received positively, with the young person reflecting on its role in helping their family move beyond the separation towards repairing and strengthening their familial relationships (see also e.g. Interviewee Claire, F, 12-14 years, discussed at 5.1 below):

We went to family mediation for family therapy ... for two sessions and it was very kind of intense and tough because we have so many, like, unexplained thoughts and unexpressed thoughts, but then my dad just kind of decided he didn't want to do it anymore because we were arguing all the time but I don't think he understood that's because we were getting somewhere. But, yeah, that definitely helped. The family therapy. Especially 'cause it was free. (Interviewer: And who did you do the family therapy with? Was it everybody or ...) So we did one session with my brothers and my mum and then we realised we probably didn't need any more because we were fine, and we did two sessions with my brothers and my dad. And my dad wanted to do sessions with just me but I wanted my brothers there to kind of protect me, so then we couldn't really figure out how to approach it ... Just to kind of support me by sitting there. Like, I'm the kind of person that even if I'm doing, like, homework that I'm stressed about, I just like someone to sit there and just say, 'Yeah, you're doing great, keep going'. (Phoebe, F, 15+ years)

More specifically, this young person explained that this service provided them and the family with the opportunity to better understand each other's perspectives and experiences and, in turn, facilitated their ongoing relationships:

I feel like it - it definitely exposed a lot of things that we wouldn't have talked about otherwise. And I think that it strengthened my relationship with my brothers and probably with our mum as well because we appreciated that there was so much drama going on with her. But I think it helped us to understand my dad's perspective more, which we hadn't before 'cause we didn't speak about it. (Phoebe, F, 15+ years)

Some participating children and young people recalled accessing post-separation support programs that enabled them to connect and communicate with peers experiencing parental separation. They reflected somewhat positively on this experience although concluding that it 'didn't really help a whole lot':

I did this uh, Banana Splits thing when I was little. Oh, it was just uh, me and a lot of uh, other uh, kids whose parents had divorced. Like a lot of their uh - and just kind of went, met new - met each other, played games, did lots of activities, things like that. Just kind of got us, I guess the whole moral behind it was just to see like, you're not the only one going through this. Um, see the main problem with that for me, was that my parents have been divorced for so much longer than the majority of everyone else. (Noah, M, 15+ years)

Benefits associated with having contact facilitated by a Children's Contact Service for changeover were also outlined by a small number of participants, including by two participating young people in their mid-teens. Despite their reports that the service seemed geared towards younger children, these young people described their relief at changeover progressing without conflict and facilitated by staff whom they knew would support them (Amelia, F, 15+ years; Robbie, M, 15+ years). The reassurance that 'nothing bad was going to happen' at changeover was highlighted by the male sibling, who observed that he did not think they would be seeing their dad if they were not able to use the contact service for changeovers.

Of note, children and young people participating in this research also identified benefits that they associated with their receipt of direct support from services from outside of the family law system when adjusting to their parents' separation. Numerous participants described receiving support from school counsellors ($n = 13$) and from general counsellors or psychologists ($n = 38$) with a small number describing their referral via their general practitioners. More specifically, some children described the benefit that they received from brief and general therapeutic support (rather than support focused on parental separation) as a means of moving forward in the post-separation context (e.g. Isaac, M, 12-14 years; Caitlin, F, 15+ years). These services will be considered in section 5.1.

4.3 Engagement with service providers and experiences of participation in decision making

The discussion so far in this chapter has provided insight into the extent to which the views and experiences of participating children and young people were acknowledged by family law system services and the extent to which the children and young people were themselves direct beneficiaries of family law system services. In this section, the interview data will be considered with a view to examining, in more specific detail, the nature of children and young people's experiences of participating in the decision-making process, with particular consideration of the extent to which engagement with services supported effective participation. The discussion will reflect in particular on children and young people's reported experiences of participation via the varying service pathways. This will be followed by an analysis of experiences of non-participation.

Experiences interacting with service professionals

Participants' responses suggested that children and young people had mixed views and experiences of their interactions with family law system professionals and regarding the extent to which these interactions facilitated participation in the decision-making process. The analysis of these data will reflect on both Australian and international research regarding the interaction of professionals with children and young people in the family law context and provides important insight into the expectations and experiences of children and young people when engaging with family law system services (see e.g. Birnbaum & Bala, 2009; Birnbaum, Bala, & Cyr, 2011; Birnbaum, 2017; Birnbaum & Saini, 2013; Douglas, Murch, Miles, & Scanlan, 2006; MacKay, 2013; O'Quigley, 2000; Smart, Neale, & Wade, 2001; Taylor et al., 2000; Tisdall, Bray, Marshall & Cleland, 2004; Tisdall & Morrison, 2012). This Australian and international research is consistent in identifying the importance of: (1) providing children and young people with the opportunity to be heard in the decision-making process; and (2) having the professionals that interact with them invest the time in getting to know them, to listen to their views and experiences, to keep them informed of the progress of their family's matter and to advocate for them in the decision-making process. The data analysis suggests that the goals of protection and participation can be met with the application of trauma-informed, child-inclusive approaches to participation in the family law context.

In this current study, where the young participants could recall their families accessing family law system services ($n = 52$), six reported having had a substantial say and nine reported having some say in their parenting arrangements (with most of the participants providing these response options having met with a family law system service professional ($n = 5$ and $n = 7$ respectively)). Nevertheless, most young participants (64%) indicated that family law system service professionals should listen more to their views and experiences and respect their preferences on arrangements. More than one-third (38%) also indicated that they wanted more information on the separation process (e.g. who is representing them, when and how they will be permitted to have a say in the parenting arrangements and what options are to be discussed), and just under one-third (30%) of young participants specified the need for professionals to stay 'objective' or 'neutral' in discussions on arrangements.

While some positive experiences of participation were described, as the discussion below illustrates, the responses of a substantial proportion of children and young people with experiences of the family law system suggest that the approaches adopted by the service professionals with whom they interacted operated in a

way that limited their practical impact or effectively marginalised the child or young person's involvement in decision-making about parenting arrangements.

The court process and ICLs

When reflecting on their families' engagement with the legal system, the comments of children and young people suggested that they experienced some level of indifference on the part of courts and legal services. Some participants recounted their experiences of the legal process as more focused on what their parents wanted:

They didn't really – the lawyers didn't really communicate or get our perspectives on it so they didn't really help us, mainly just our parents and what they wanted ... And I guess that's what the kind of report writer did was just to try and get our perspective on it ... But I think yeah it was to make – it was mainly focusing on what our parents wanted, not really what we wanted. (Oscar, M, 15+ years)

I don't know. I felt like they [lawyers] were focusing more on my parents' opinion on things. (Ryder, M, 12-14 years)

One participant cautioned against the use of the court process in resolving parenting arrangements by contrasting the court approach, used with his half-sister, with the resolution of his parenting arrangements outside of the court process (to which he attributed arrangements that enabled him to safely maintain a relationship with both parents):

You need to let children speak up. And be in the, with, have a bit more of a random conversation, rather than planned. Because in my sister's – my sister's case, she was doing a talk with a counsellor, but her dad was there and he's pretty scary. He, um, when my mum were together, he was hitting her. And so my sister's scared of her, him. And at the time, she thought that if she had said that she doesn't want to stay there, he could have hurt her. But, so it's better if it, when she was there, if someone came over randomly and just talked to SISTER. When she hadn't been prepared ... they (father and his family) were also bribing SISTER a bit. They were saying, 'If you come live with us, we'll give you a dog and a big house and a big room,' and all sorts ... And it wasn't fair, because SISTER was young. It's been two or three years and she didn't understand. And now it's crazy because SISTER wants to come home now and she doesn't want to go there and she's not getting another chance ... I don't think my sister's safe at all ... Because I think he's crazy and I don't know what he's capable of, because he's said some really bad things to my mum ... And he has physically assaulted her and I don't think it's safe for my sister to be around him. (Andrew, M, 12-14 years)

As noted in Chapter 1, while ICLs are appointed in certain cases²⁹ to represent the best interests of the child, one function of their role is to facilitate the communication of the young person's views to the court. Where an ICL had been appointed, young participants were asked about their experiences with their ICLs, albeit that it was observed that there was often confusion as to whether the professional that the participant had met or had spoken with was an ICL and, if so, what their role was in their case:

Um, I'm pretty sure we had a lawyer ... From the – I don't really remember like – I only remember talking to her once and she only really told us ... um, like that, like, the decisions been made but there was another lady who's like, who told us. But, um, she didn't really help us whatsoever. She was our lawyer but she didn't – we never talked to her ... Um, she was just kind of like, oh okay. She didn't really do anything. She, I don't think she really took our, like, thoughts into account. (Ellie, F, 10-11 years)

Um, the person on the phone? I'm pretty sure that they were supposed to be like representing me in some sort of way. Um, but yeah that's kind of like all I knew 'cause, um, yeah. (Eliza, F, 12-14 years)

The discussion in Chapter 1 also illustrated that ICLs are not obliged to act on the child's instructions or to make recommendations based on the child's views; however, the data from the interviews with young participants suggest that ICLs did not always effectively communicate this important feature of their appointment to the relevant child or young person. Some participants expressed strong dissatisfaction with their level of input in decision-making via the ICL, commenting that:

²⁹ The court may use its discretion to appoint an ICL in matters where this is warranted (s 68L *Family Law Act 1975* (Cth)) (FLA), being guided by the non-exhaustive criteria in *Re K* (1994) 17 Fam LR 537. These criteria include matters where there are allegations of sexual, physical or psychological abuse, allegations of antisocial conduct by one or both parents of a kind that seriously impinges on the child's welfare (e.g. family violence), or where there is a relocation proposal that would restrict or, in practice, exclude the other parent from having contact with the child.

I just think that the ICL lawyers should actually represent the children's views, like apparently, she was like, 'Yeah I put some stuff ... in my report about you.' But Mum heard the report or read the report or something and there was hardly anything about what I wanted. Except just saying, 'Oh CHILD wants this but you know, I'd recommend this.' (Lily, F, 12-14 years)

However, having the ICL 'actually' listening to children and young people and communicating those views in the decision-making process and taking those views 'more serious[ly]' was also a perspective emerging in the data (Ashley, F, 12-14 years).

More specifically, one young person described their interaction with their ICL as marginalising, with the ICL speaking with the young person and their mother but not 'actually talk(ing) to me'. Upon reflection, this young person stated that she ought to have spoken up and that perhaps in doing so there may have been a different outcome in her case:

I met with the solicitor but no, like, right before court. I think I went to his office. And like I remember sitting down with him and I said to him, 'What do you do?', and my mum was finding it hard to explain to me as well. Like I was there. I was a kid and it's like how do I explain this to a child and so he goes - and I forgot what he said. He like laughed and he said, oh, I do this, this and this. I'm like, okay and I think he said something like, so I help you and like stuff like that. And then after he just said that like pretty much like afterwards he didn't help like at all. He didn't help. He just sat down with me and just told me what he did and talked mainly with Mum and he said he wanted me there too. But he just talked with Mum. He didn't actually talk to me ... He seemed friendly and then when he didn't help out in court and stuff I was like huh, huh, huh, you know, that was like whole part of the, you know, like not being about to trust them because that's what they do. You know and that's like now my expectations. (Zoe, F, 12-14 years)

Another participating young person described the ICL in her case as just 'doing his job' rather than operating on the basis of a desire to help, with a lack of engagement on his part with what she was saying:

Um, like he wasn't listening, like, at all. Um, but yeah, like - what I mean by like just doing his job is like, you know, I felt like he wasn't listening, he was just like waiting for like the phone call to end, you know, and just like, you know, kind of just waiting for the day to go by, like, he wasn't actually genuine. (Eliza, F, 12-14 years)

Similarly, interviewee Hamish (M, 15+ years) commented on how he felt that the ICL came across as professional but detached, which had affected how well he was able to communicate with this professional:

Um, I suppose it - they seemed kind of detached from the situation but in their line of work they also can't, they can't, like, get involved with it personally and, like, actually let it become something to them. Um, but it really kind of made it difficult to want to talk to him about all the questions he was asking me when he seemed really detached ... it wasn't that I had any difficulty sharing anything with him, um, it's just the fact that what I was sharing with him I feel like it - you know, it made no difference to him and his preference of what happened, he was just writing notes that he would then share later on. Um, which in some cases I'm sure is good and some cases I'm sure is bad. (Hamish, M, 15+ years)

One interviewee (Lily, F, 12-14 years) described her experiences with the ICL and the sense of 'betrayal' when the ICL made a recommendation contrary to her views regarding the parenting arrangements:

The ICL, oh she did listen and said that she agreed with me in the first appointment and was very nice and did listen to my opinions. But then in the second appointment kind of thing, she was still nice but she was like oh no, I came up with my own solution kind of thing. She was like, 'You know I still said what you wanted me to say' but she didn't support it, so it didn't - in the second one it was like maybe she wasn't such a good, you know, supporter ... Yeah, I was confused and I also felt kind of betrayed because she said she'd support me and then she didn't and I was very upset because, yeah, she just went and said that I should stay overnight. She was also the one who told me what the outcome was and then I felt really upset, yeah. (Lily, F, 12-14 years)

The experiences of participation outlined by children and young people above broadly reflects the observations of children and young people in earlier research relating to the role and efficacy of ICLs. Research undertaken by AIFS (Kaspiew et al., 2014) found that ICL practices involving limited or no contact between the ICL and the child or young person resulted in disappointment and unmet expectations (See also Parkinson & Cashmore, 2008; Taylor, Gollop, & Smith, 2000). Consistent with earlier research by Parkinson & Cashmore, 2008, the AIFS ICL study (Kaspiew et al., 2014) also identified a lack of clarity in relation to the role of the ICL both from the perspective of parents and children and young people and particularly regarding the approach and activities undertaken by the

ICL in their cases. Most children and young people (and their parents) participating in the AIFS ICL study expressed disappointment at not being heard in the decision-making process and at the perceived inaction on the part of the ICL in their cases, particularly in the face of evidence of risk to their best interests.

Mixed experiences were also reported by children and young people in Birnbaum and Bala's (2009, 2017; Birnbaum et al., 2011) research relating to children's experiences of the Canadian Office of the Children's Lawyer (OCL) (see also Birnbaum & Saini, 2013). While most of the 11 young people participating in the 2009 study expressed some satisfaction with the OCL, concerns were expressed by some about the legal representation that they received, including that they were confused about the role of their lawyer, that they had limited time with the lawyer, that they did not feel heard, or that their lawyer was unresponsive. Consistent with the AIFS ICL study and this current research, these participants also sought more information about the process and outcomes in their matters. Birnbaum and Bala (2009) concluded that what young people sought from their lawyer was for them 'to listen, provide information and, most significantly, to put forward their views in court' (p. 60). Birnbaum and colleagues (2011) larger study involving 32 children and young people also emphasised the importance of professionals listening to children and providing the 'choice, opportunity and availability' to participate in the decision-making process (p. 414).

More positive reports of experiences emerged in the recent NSW survey of young people's experiences of ICL practice (Anderson, Graham, Cashmore, Bell, Beckhouse, & Alex, 2016). In that study, respondents ($n = 55$) completed a survey regarding their experience of ICL practice following their meeting with the ICL appointed to them in their family law matter. Most respondents completed their survey after their initial meeting with their ICL or at their meeting following the interim hearing in their matter. In this NSW study, most respondents reported that they generally felt listened to and heard, with a minority of respondents indicating that they did not trust their ICL or that they wanted more frequent contact with their ICL. Nevertheless, respondents did indicate that their ICL experience could be improved 'by having fun activities, having clear explanations, and by being listened to' (p. 22). Some positive experiences of communicating with child guardians were also reflected by participants in earlier UK research (Douglas et al., 2006; Tisdall et al., 2004, which contrasted with O'Quigley's (2000) earlier meta-analysis of research regarding young people's interactions with professionals).

Counsellors, family consultants/family report writers

In the current study, the experience of being marginalised by lawyers also emerged in a small number of children and young people's reflections on their experiences with counsellors (e.g. Alana, F, 12-14 years). For example, one young person reflected on his disappointing engagement with a counsellor as devaluing his potential contribution to the decision-making process:

She [private counsellor] um - she basically told me in - in her own different way, um, that I'm young and I don't know what I'm on about ... Like, of, when I want to go. She's like, 'Because you're a kid you've just got to cop what you cop.' She didn't say it like that but that's what ... I forget the way she says it but that's what I remember - And then, since then, it was like, I never went again ... Because I was just like, 'Whoa'. (Harry, M, 12-14 years)

When describing their engagement with family consultants involved in the preparation of family reports, participants' recollections varied in relation to the content of these sessions, although those describing their interactions tended to describe the report writers as asking broad-based questions that related primarily to the nature of their relationships with their parents (e.g. Eliza, F, 12-14 years; Connor, M, 15+ years; Phoebe, F, 15+ years):

I think they just asked like does Dad ever raise his voice or does Mum ever raise her voice or and how does this make you feel. Yeah, do you and your sibling, do you and your sister get on well? Do you, yeah, ever feel uncomfortable at any person's house or anything like that? ... So, and asked kind of what we'd like as well, yeah, those sorts of questions. (Oscar, M, 15+ years)

It was sort of simple questions like, you know, 'How old are you?' Blah, blah, blah, 'How do you feel about your dad? How do you feel about your mum? Do you like the situation you're in now with the time? What do you want to do?' It was like very just basic questions ... I don't remember exactly but yeah. (Harry, M, 12-14 years)

While some participants were comfortable with the interview process, one participant described the difficulties that he experienced answering the broadly phrased questions (Beau, M, 12-14 years).

The children and young people who reported accessing family consultants also reported varying levels of satisfaction with the consultants conducting their family reports in relation to whether they perceived this

engagement to be helpful in facilitating their active contribution to the decision-making process. The data suggest that a common factor in these responses was the disappointment experienced by children and young people when they identified a failure on the part of these professionals to genuinely listen to and value their views and experiences:

I mean, it was helpful that they were making a report for, um, the courts to see and all that kind of stuff, and I think what, like, she – I think what was wrote down was pretty accurate for how me and my brother felt with – at the time ... the only thing is I just felt like there should've been a little bit more weight placed on what we'd said in the report than I think there was. (Phoebe, F, 15+ years)

She didn't listen to anything I said and interrupted everything that I had to say ... And was trying to force me to go with FATHER. (Tahlia, F, 12-14 years)

Not – not good 'cause, I don't know, she just didn't listen. So, I was like what's the point of telling her if she's not going to listen. She spoke like down to me, like 'cause I was a child my views didn't matter. And she had this tone in her voice like she didn't believe anything that I was saying ... Yeah, no, she didn't ask many questions. She kind of said her opinions and yeah, she just yeah, she didn't listen very well at all. Yeah, she – like I said she didn't even write anything down that I said, she didn't listen to what I had to say. She'd already basically picked who she thought was right. And what would happen – what should happen ... I don't know, she just spoke in this really horrible way to me and just – she also didn't listen to my mum but that was 'cause my mum was supporting what I wanted ... she didn't ask many questions, just, 'What would you like?' and then, 'Why don't you spend time with your dad?' and like not in a way like why don't you but you should, kind of. And then yeah stuff like that. It's more statements about, like, you should. (Lily, F, 12-14 years).

Ah, not very much at all. She didn't listen to me, like, really, at all. Um, I guess there wasn't much for her to listen to her but, like, she didn't respect my wishes. (Zoe, F, 12-14 years)

Consistent with the observation made above in relation to lawyers, the data suggest that for some of these participants, they experienced participation in a way that saw their views being diminished or marginalised via their engagement with family consultants. For example, one participant reported feeling as though his views were not being taken seriously enough by the family consultant:

Well they listened but at the same time it was like it kind of felt like I was being not so much pressured or attacked but you know it was as I was saying things they were like, 'Do you really think that, like is that what you fully believe?' Like that I was kind of sitting there like saying they were like, 'Why do you not want to see your father?' and I was saying that and they were like, 'Is that a real reason though?' So, I was kind – that was interesting. (Michael, M, 15+ years)

When asked to reflect further on that experience, this young person indicated that the order in which the family members' interviews took place with the family consultant may have had an impact on the weight accorded to his views:

I think I was last up though so by then they kind of had two sides of the story. I don't know, yeah, so being last up – I don't know whether I was last up but it kind of felt like that's what it was. Maybe it was just after FATHER so they kind of had just heard one side of the opinion and then when I came in to express mine, it was kind of like they'd just heard another opinion so were kind of like voicing that opinion in a little bit ... It kind of felt like I spoke after FATHER. I think I did speak last because everyone came in after I was in there. I stayed in the room and then everyone else came in so I think I was last ... [I] kind of felt like the person had already heard two sides of the argument, it was like well I can see that this side is the better side, when I was in there voicing my opinion it was kind of like there was a nine or 10 year old saying something against what the person already had their opinion on based on two sides of the story they've heard. So it was a bit more difficult to get my opinion across. (Michael, M, 15+ years)

While some participants were disappointed with their experience and could not identify, when asked, any helpful aspects of their engagement with these professionals (e.g. Interviewees Oscar, M, 15+ years; Hayley, F, 12-14 years; Hamish, M, 15+ years), others were more circumspect in their responses. They appeared to be either unsure of the effect of their engagement with these professionals or unsurprised by the perceived limited effect of any engagement:

It was probably like good to kind of get those things off my chest but I don't really feel as if I was heard as much in those kind of, like, with her, so ... So I think we had like a mediator who we – I think we maybe

saw her, was it like maybe twice or three times throughout the process ... So that was, I don't know, I didn't really feel like what I was saying was being heard 'cause it was the same, it kind of kept on happening, yeah ... I was kind of like, it was uncomfortable going there, I guess maybe at first it didn't seem like it was doing much but it might have had an influence later on ... But, yeah, just at first it kind of didn't seem like I was being heard as such. (Oscar, M, 15+ years)

(Interviewer: You had an opportunity to say what you wanted, to that professional, did you feel that made any difference?) No. (Did it - how did it make you feel having that opportunity?) ... Well, I felt fine having a voice but not a big impact really. (Lucy, F, 12-14 years)

Um, I wouldn't have a clue. Um, obviously always good to have someone to have a bit of a chinwag to but, um, other than that I wouldn't know ... It's not, like, I feel as though it's not necessarily their fault that they were unhelpful. (Connor, M, 15+ years)

I guess it wasn't, sort of, unhelpful, it just didn't do anything. Um, like, I guess, it didn't really do anything but, like, it didn't make anything worse, you know? Like, it didn't make anything worse but it didn't do anything, like, you know? I don't see how it did anything? (Zoe, F, 12-14 years)

Some children and young people identified that participating in the process (rather than the behaviour of the professional) was the challenging aspect of their service experience. For example, one participant described the family consultant as a nice person and 'not hard to talk to' but described the process as 'nerve-wracking' and the questions that the family consultant asked were very difficult and they did not wish to answer them (Patrick, M, 10-11 years). This participant explained that the process felt 'a lot nicer' during the co-joint sessions (with each parent present), albeit it was acknowledged that answering questions while their parents were present was challenging at times.

One young person also expressed concerns about the settings in which consultations and observations for family reports were conducted and about the unnatural nature of interactions in that context. These factors were identified as shaping the nature of any participation:

And then he [family consultant] - he put me in this glass room ... And through this - the glass that you can - you can't see them, they can see you. It was like, they actually have one of those in one of the, in SUBURB. It was the worst thing. Like, they - they full locked me in the room. And then they, they didn't talk to me, I don't think. They just, they like sent in my mum or my dad ... And they wanted to see how I would react with them. And connect with them. And I'm like, it doesn't make sense because I know you're there. Like, it's kind of freaky trying to talk to someone when you know like, yeah, behind that glass ... this guy's just staring at you ... The room. Probably not - the room's not his idea but just ... yeah, I hated it. It was, I felt like I was a - what was that thing I said to my mum? I felt like I was in a cage or something. Like, it felt weird. Just knowing that I was like locked - not, I wasn't - I was actually locked in that room. And then this guy just staring at you is really weird ... it's the whole, you know, fake thing, it just put me off. (Harry, M, 12-14 years)

The artificiality and discomfort associated with the conduct of discussions and observations for the purposes of interviews also emerged as a key issue for this participant:

And he was writing down notes and then they were full recording me and stuff and it was - yeah, and then my dad came in and that's what annoyed me. He acted like we were best friends ... It felt weird, like I've never seen that type of like, my dad. And then my mum was acting normal ... Because that's, that, that was the main idea, just to act like, you know, normal and then they, they won. Then they didn't win but like, I didn't get what I wanted because it looked like I lied. Because I said I don't - I don't have a good connection with my dad and then he came in like, 'CHILD'. And then it kind of looked like I was lying ... Yeah, it was very fake. (Harry, M, 12-14 years)

The duration of the consultations for family reports was also a factor identified by the following participants as causing distress and confusion:

Well, it would've been as simple as, 'Okay, I think I'm gonna stop now, all right?' 'Cause my dad, obviously, didn't know how long my mum's one went for. He probably didn't have a clue, for all he knows they could - for all he knew they could've um, talked to me in-between, like, for all, he know, he knows. And, um, they could've just taken me out, that's - they could've just done it, what they said they were gonna do. They should - they could've just gone through with it and they didn't and that's what was most upsetting about that. (Zoe, F, 12-14 years)

They probably could have gotten the, like, child psychologist to talk to us more. And like, yeah, talked, yeah talked to us a lot more because like ... Even though I don't really remember it, I think we weren't really in there for that long. Like, even like, another day have us go back and talk to her again. Because like sometimes, like when you're really tired you get confused about stuff so you might say one thing and then another time you might say another thing. Because like, it's clearer, so like have us see her on like different days instead of just one time, set in stone, bam. Like, when you have one conversation with someone you don't really get an idea of who they are and, like, how it's affected them. Where, like, when you have a lot of conversations with someone you get a broader idea of how it's changed them (Alana, F, 12-14 years)

I think it would be better if we had, like, a few separate meetings just to sort of get to know what was actually happening but we didn't really - it wasn't really, like - so if I said something in that conversation and I don't know if I could change my mind after that because we didn't really have any - we didn't really talk to him again. (Dominic, M, 12-14 years)

Some children and young people described a level of confusion associated with the family report process and regarding their engagement with the family consultant. This, in turn, influenced the manner in which they participated in their sessions with the family consultant:

They were just kind of like, 'Oh, do you feel? What do you want ...? Like, what do you want?' and then I was just like, you could like - as I was younger, I didn't really understand what they meant but they didn't really explain properly ... So, I, as I said, I didn't really, like, I, they - I was so afraid that like ... if I told them something really personal and like something - something that could like, could hurt another parent's feelings ... I felt that they'll tell them that and ... I really feel as if I'd, I wasn't comfortable talking to them ... I might've been maybe eight [years of age] ... as I said, [family consultant], he didn't care whatsoever, he was kind of just like - he wasn't, he wasn't a good, he wasn't a good man. (Ellie, F, 10-11 years)

Limited Australian research is available in relation to the practices of family consultants/family report writers and in relation to the conduct and quality of family reports/single expert reports in particular. Some insight is available from O'Neill and colleagues (2018) who examined views of the quality of these reports from the perspectives of 65 family law system service professionals in New South Wales. The participants included family lawyers, ICLs, judicial officers and psychologists. While the overall quality of the reports was rated positively, the reports were identified as falling short of some professional's expectations. Of note, the reports received higher ratings from psychologists as compared to legal professionals, with recommendations that inclusions be made to improve the utility of the reports in family law matters, as well as for improvements in relation to training.

Also, of note, Banham and colleagues (2017) analysis of child-inclusive conferences in the Western Australian jurisdiction via interviews with 10 family consultants identified challenges experienced by family consultants in determining if and when the conferences would be conducted. The criteria used by family consultants and the challenges faced in this context were identified as considerations informing potential regulation aimed at ensuring the optimal use of these conferences in family law matters in the future. This relative dearth of research on the practices of family consultants and family report writers and of the nature and quality of family reports does, however, highlight the need for further research in this area specific to the Australian context.

Prior international research also provides some insight into experiences of engaging with social science professionals in the legal process. Birnbaum's (2017) recent study of children's experiences of the child report process in the Canadian context analysed data from 24 children aged 6-17 years. The study identified that although children were clear on the need to provide their views and their preferences regarding their post-separation parenting arrangements, consistent with concerns raised by participants in this current research, some participants raised concerns about the accuracy of reports about their views, and about the need to protect their confidentiality in the process. Birnbaum emphasises that child reports are but one mechanism to facilitate participation and should not replace legal representation or child-inclusive approaches to decision making, such as child-inclusive FDR.³⁰

UK research including Tisdall, Bray, Marshall, & Cleland (2004), MacKay (2013) and Douglas and colleagues (2006) also provide insight into children's experiences of the Children and Family Court Advisory Service (England) and the operation of the Scottish provisions for children and young people to communicate their views on parenting arrangements. For example, the court file component of MacKay's (2013) research into the extent to which children and young people were heard in parenting disputes before two urban Sherriff Courts in

³⁰ See also Birnbaum & Bala, 2017 and Saini et al., 2016 who, reporting on a survey of 118 family law professionals and 1,000 court files, observed that children and young people's views were sought in a limited number of cases via child reports or other means.

Scotland identified that their views were reported in less than half (42%) of cases. Less than one-quarter (17%) were provided with an F9 form inviting them to provide their views directly to the court. It is notable, however, that child reports in this jurisdiction were usually undertaken by lawyers rather than social science professionals.

Engaging with family law system professionals can be stressful

The uncertainty about the nature of their engagement in the family law process compounded the stress and distress that some children and young people experienced when interacting with family law professionals more generally, with this stress and distress palpable at the time that these interactions were recounted during the project interviews. The comments extracted below suggest that these children and young people did not regard the professionals with whom they engaged as having insight into their experiences and uncertainties in these circumstances:

I think the whole – the whole kind of situation was a bit stressful for me ... So kind of bringing that up maybe brought back like memories and just like, yeah, just the whole kind of uncomfortable like kind of feelings that were associated with the situation. I didn't really like being away from either person so having to discuss [with the lawyer] who I'd prefer to stay with is a bit hard. (Oscar, M, 15+ years)

Um, she wasn't like you guys where [you] said, like, if you want to stop at any time, like, if you – if you don't want to do this you don't have to. She still made me go in there but she said if it gets too much to put my hand up. (Zoe, F, 12-14 years)

Well, I didn't think we had much say because like, when we were talking to [family consultant] um ... he was basically like the guy that we talked to ... um, he'd write down notes [crying] ... It's just he wasn't a nice man and ... yeah. He just, he didn't do it, he didn't say like, I wish, um at the time and he just ... he didn't really – he kind of just said it straightforward ... And at the time I didn't know and ... he just ... So he was just – he would, he, like, he just wasn't a nice man ... at the time, I was really young and I didn't really understand ... And he kind of just threw it at me ... And um, I was a bit scared of like – because I didn't want to say anything ... I didn't want to hurt my parents feelings ... And I didn't really – it didn't really – I wasn't really listened to – I needed to learn – it was kind of just like, well this is just the children, they don't really have a say in – we understood that it was ... no one really listened to you, you're 12 years old ... But we just didn't get it because SIBLING hasn't got a good relationship with Dad and they just wouldn't – they wouldn't just ... And they just, and I was just, I didn't want to say anything that would – that would hurt another, another person there ... Because, as a person, I love to keep everyone else that I love ... I love, I love everyone to be happy ... And I just – it's, it's, it's hard when you just – you don't want to say anything that will hurt anyone – anyone's other feelings ... And then you, and then you, if you don't say then they won't get – it won't get through to them. (Ellie, F, 10-11 years)

The painfully recalled experience extracted above provides insight not only into the skill required of professionals in ensuring that children and young people feel safe as well as heard during the family report process – and that their views are an important consideration in the process – but also the trauma that may be experienced by some children and young people in having to express a view that may be regarded as partisan or as favouring one parent over another. At a more elementary level, the stress associated with engaging with professionals for the purpose of the preparation of the family report was described by one participant as not giving rise to a positive experience, with the young person stating that the 'stressful kind of situation' gave him a headache (Oscar, M, 15+ years).

Another young participant, recounted her upsetting interactions with a family consultant during parenting proceedings. She described how she had confided in the consultant about her father's physical and psychological abuse towards her, only for the father to be brought in for a co-joint session:

My dad was trying to battle for custody of us and we saw a child psychologist who I – I remember – it was like one of the worst things I think a psychologist could ever do. So we were talking to her and my dad was like in a different room, and she was like, 'So, tell me about it ...' So I basically explained everything, like how like I witnessed him chase Mum through our house with a knife. How he used to pick me up by arm and throw me in my room. How he used to lock BROTHER's room and stuff. And basically, overall, how abusive he was and then she's like, 'Oh, okay,' and she's like, 'So, if I got him in here do you think we could talk about it?' And like, I'm – I'm one of those people who doesn't know when to say no. So, like, I didn't really want to. I'm like, 'Ah.' And she's like, 'Okay, we'll get him in here.' I didn't exactly say no. Like, but I didn't really say yes either. And she's just like, 'Okay, we'll bring him in here.' And she's like, 'Okay, CHILD told me, and then says everything I said. And looks at me and is like, 'CHILD is that true?' And I'm like, 'Uh,' like I'm freaking out because I'm only like six or seven or something. Like, understandably, and then she's like, 'Oh,

okay, so do you promise never to hurt the kids again if they go back up?' And my dad's like, 'Yeah.' And he – and she turns to me and she's like, 'CHILD do you feel safe with that answer?' (Alana, F, 12–14 years)

The interviewee further explained how vulnerable she felt in these circumstances and described how she was afraid to say 'no' in response to the report writer's question:

And I'm like, 'Yeah.' Because I didn't know what else to say ... And like, it was so confronting because I didn't believe him but I felt like I had to do it for my personal safety just in case we were sent back up. (Alana, F, 12–14 years)

Distress was also experienced by children and young people in circumstances where the challenged parent became aware of the views that had been expressed to the family report writer. With family reports generally released to the parties in the course of their legal proceedings, the following experience is unlikely to be rare:

And she kind of heard about it and stuff and then she – that was one of the points where she sent text message through and stuff, saying, like, 'Why do you – why did you say this?' Like, not in the way of, like, saying – it was in a, like, not in a way of saying, like, um, 'Why do you feel this way around me?' kind of thing. But more of a, like, accusing, 'Why did you say this about me in the court?' As in, like, I'm trying to knock her down, kind of way ... So, that was more of a, kind of, like, felt a little bit more scared to say what we actually felt around Mum in case she did actually hear it and then she did that kind of thing again. (Caitlin, F, 15+ years)

Another participant reflected on her experiences of family law system services and contrasted those experiences with her experiences of support outside the family law system. Her observations emphasised the significance of effective listening to young people and of following through to provide practical support and assistance in response to hearing children and young people's perspectives. The extract below emphasises the importance that this participant placed on genuinely listening to her views, and for this to lead to greater understanding of her perspectives and experiences:

I gotta be honest with you, anyone who helped me had nothing to do with court. Anyone who either made it worse or just didn't help me at all had something to do with court. Which is actually quite funny because, um, when mum told me – she was like, 'They're gonna help you, it's okay, it's gonna be all right, they're gonna help you.' They said – like, she – and she told me, 'It's gonna be all right, they're there to help you, they are your help.' And then they didn't help me and I was like, 'Well, ha-ha,' you know what I mean? And, like, 'You were supposed to help me here.' And, like, my mum thought they were gonna help me too, she thought they were gonna help me, and I just really was looking for someone to listen to me, for someone to respect my wishes and to not just take me as some dumb kid who doesn't know what she's doing ... And, um, and just someone who would listen and just, it's all about listening I guess, like, and just listening and then but, yeah, I guess it is one thing to listen but just to understand, you know? To understand me, to understand, you know, being – getting to, like, a teenage girl, it's pretty dramatic, you know ... And it does get hard and it gets emotional and it gets drama filled. Someone to just understand that and to go, 'Yeah, I get you, I actually get you, I am going to help you, I'm not gonna say all that stuff and then at the last minute turn my back on you and say "Oh, never mind, I'm just gonna, you know, continue with my work".' You know, someone nice, you know. (Zoe, F, 12–14 years)

The final clause in this extracted quote suggests that genuine and effective listening was sought and valued by children and young people engaging with service providers, with this young person describing what she experienced as a practitioner paying lip service to their stated role. The development of a trusted relationship over time also emerged as key for those participants who had engaged with multiple professionals providing services in the family law system:

Well, yeah, I sometimes find it hard, like, because in the court process I was like introduced to a lot of different people and I just want to stick with the person so I could like, I don't know, get close to them and feel comfortable ... So we wouldn't have to go over all that like basic like repetitive stuff like what do you like about Mum's house and Dad's house ... I think if I would have stayed with one counsellor like through the whole – like one comforting counsellor through the whole process that would be much easier ... Yeah. I would have just liked to have like one comforting solicitor ... who would like, like have more of a say in like the whole thing. (Emma, F, 12–14 years)

In addition to the development of a relationship of trust, having some level of agency in the process also emerged as paramount for some children and young people, with perceived breaches of trust damaging therapeutic relationships from the perspective of children and young people. One participant described her

experience of engaging with a counsellor who was initially supportive and encouraging but sought, in her view, to inappropriately direct her relationships:

And, um, she was helping out with that and then all of a sudden I was like, 'Okay, I'm gonna do this,' and then she was telling me, oh, I should talk on the phone with Dad first and I'm like, 'I don't really wanna do that,' and she's like, 'Oh, no, I'll do this and we'll organise a session and I'll do this and I'll be' - whatever. And then, so I told Mum, 'I'm not going back.' 'Cause she's - I trusted her, and that's the thing though, is that I feel like that's what they do. And, um, like they build my trust. I'm like, 'Okay, cool, this is going to be cool,' and then they basically just blow it out the window and they just chuck it away and they start telling me what I should be doing and they start, you know, telling me all this other stuff. And it was actually really a shame, I actually started crying because, like, when like - after I told my mum what happened in that session, because I trusted that lady so much, like, I trusted her so much and she was helping out so much, and then when she started telling me all this stuff and started being, like, really like, you know, like, 'Okay, you're doing this, that and the other with me.' I was really, like, bummed out and, like ... You know, like, 'What's going on here?' And it was just disappointing, and that didn't really go down well either. (Zoe, F, 12-14 years)

Interviewee Zoe (F, 12-14 years) and others reported that in their view, this approach was telling of a broader trend within the court system that engaged with children and young people as though they were incapable of having agency and of making informed decisions:

So, like, nothing to do with, like, the court thing has like really helped me in a way because they build my trust and then they start telling me what I should do. And it's like they think that I'm a kid and, 'Oh, she's dumb,' you know? And I was like, 'I don't really want you to do that,' and she wasn't listening to me anymore, you know what I mean? Like, she was listening to me the whole time and then she just stopped, you know what I mean? It's like she was sugar-coating it and then she chucked on a lot of spice, you know? (Zoe, F, 12-14 years)

I guess the decision is kind of about us so if it was kind of, if we were happy we think that would kind of be, um, ideal. So yeah, I wish I had a bit more say in it 'cause that is what it's ultimately about I guess so ... So, I think as I got older, kind of, they like appreciated what I had to say more, if that makes sense. (Oscar, M, 15+ years)

Some participants were more circumspect about their role in the decision-making process and the significance of their perspective in this process and regarding any difference that their suggestions might make:

Um, I think he probably did everything that he could have. Um, again, I just don't know what difference it would have made. (Hamish, M, 15+ years)

4.4 Distress and harm arising from perceived inaction on the part of service providers versus effective participation

The discussion above explored some young participants' reflections on the stressful nature of their experience with the family law process. Perceived inaction on the part of family law system professionals, particularly in response to safety concerns raised by children and young people, was also identified by a number of participants as causing distress. For example:

So many people um ... I remember one time, actually, I saw this counsellor and she was like, 'I'm gonna help you, I will stand up for you in court,' and then when it came to it she was, like, chickening out. She just chickened out and I - and, you know, she didn't help me. And um, like I said, all these people, like, to do with the court and they'd say, like, 'Oh, I'm gonna help you,' and they supervised stuff ... They didn't help at all either, they just made me see my father supervised. What do you know? Nothing helped. And just people have said they're gonna support me, really haven't, you know? (Zoe, F, 12-14 years).

I don't know. It didn't seem like it really helped because I told her a bunch of stuff and she didn't seem to - really seem to listen. To my opinion or thoughts ... She seemed very nice, yeah. She seemed very nice but I don't think anything that I said really affected what she said. Back to the court, yeah ... 'cause during some of the um ah visits with the - those visits with my father there was some bad occasions like my dad would get angry. Like shouting or some event like that and I told her about it and she seemed to ignore it or not listen to it. Not well. The fact that they would at least see me, that was pretty good 'cause you know ... The theory, yeah. In theory to have a say, yeah, that was - But it didn't end up like that. (Ryder, M, 12-14 years)

Personally, I believe the lawyers were completely and utterly useless. (Connor, M, 15+ years)

The following extract captures the exasperation of one young person following the inaction by some of the professionals in her case:

Um, not really, like, in the court system not really, there wasn't really someone that I just like spoke to that actually helped. 'Cause I remember there was one time, um, I was staying at Mum's for the week and I actually like called up someone, it was a different person to the lady I spoke to that was representing me, but it was some other guy that was representing me as well or something ... But I called him up and I spoke to him and, like - like, I told him to tell the judge that I want to stay with Mum so I don't wanna go back there ... And like I remember like he didn't actually tell - forward the message to the judge or anything, like [he said he would], he just like held it to himself I guess, like he didn't actually tell the judge ... I was like, 'Can you please, like, just tell like the judge that I just want to come home, like I don't want to stay there anymore,' and stuff. And then um yeah, he didn't actually like tell the judge. Um, yeah, he didn't really tell anyone like that we even had that phone call or anything, so yeah. (Eliza, F, 12-14 years)

For this young person (Eliza, F, 12-14 years), the circumstances were such that there was evidence suggesting no contact from the outset of her case:

(Interviewer: And how about after the decision, is there something that pops out or sticks in your mind if something could have been done a lot differently ... ?) To actually, like look into like reports that have been done like before or ... even the police reports or like any type of reports ... on either the father or the mother. And like not just push them aside and be like, oh, yeah, like that was a couple of years ago, like, to actually look at them and be like, 'Is this safe? ... there was like a lot of evidence on like FATHER where like it should have been like - we should have like straight out like never had to go there again but like we did, we had to keep going there and stuff. (Right.) 'Cause they were like, oh, yeah, it was a couple of years ago so it doesn't matter, so yeah ... I think it was ... in like the reports or something that like maybe like he's changed, give him a chance or something.

Some professionals were described as being inexperienced or unprepared for the circumstances arising in the cases and this consequential inaction was described in disappointing terms by relevant children and young people participating in this research:

Um, I can't remember like specifically, but most of the time it just ended up being - um, they said they would help but, you know, once I started explaining things to them, um, I ended up - like, they ended up just going, 'Oh, this is a lot deeper than I thought it was and I don't really know what to do in this situation.' So, it's not that they wouldn't or - it's just that they couldn't. (Hamish, M, 15+ years)

Another young participant reported that she felt that the court proceedings had detrimentally impacted on her sense of wellbeing. She described a particularly traumatic recurring dream, which she felt embodied her negative feelings towards the court process:

It's sort of like a traditional courtroom because I've only ever seen, like, one of those, like, in, like, you know, movies I've watched before. So ... the traditional courtroom and, like, stuff on, like, Judge Judy and stuff. And I'm sitting there, like, in ... sort of, like a boxy thing and then I can't ... see, like, when I look - I always look up at the judge's face and as I look up at the judge's face I just can't see their face at all and then I just see, like, you know, obviously, like, the mallet ... And then, um, I see a table and I see my mum, my step-dad, my nanna and then, like, two other people I don't know. And um, then, on the other table, I see my dad um, my grandmother, my grandfather and two people I don't know. Like, I don't even know, at all. And um, then, next thing you know, I hear the court slam the hammer down and say, 'Right, full custody goes to the father.' And then I start crying and screaming and then these two people, I don't know who they are, like, start dragging me away. And then I'm, like, trying to reach for my mum, I'm trying to say, 'No, I want to say goodbye, I want to say goodbye,' and then they pull me behind and then I just see these doors, like, close, and then I usually wake up. (Zoe, F, 12-14 years)

The court process was occasionally perceived as harmful not only for the children and young people themselves but for their family. One participant observed how his mother was stressed whenever she went to court, which, in turn, made him worried about his mother:

Well, um, Mum had to go there a lot. And we had to go to someone else's house. Which was annoying. And she seemed really stressed out when she had to go to court ... It made me feel worried about Mum. (Liam, M, 12-14 years)

Some participants also felt a sense of frustration at the length and complexity of court proceedings. For example, one participant indicated that the court process for him and his family had been more prolonged and complicated than it should have been:

I would like it to be a bit faster of a process and I think the whole thing, about, and sometimes I think like not so much general knowledge but just like in some of the circumstances, it shouldn't be so hard. Like it shouldn't take a year to get a date for certain things. For example, I was trying to get my passport because we'd booked a holiday in the middle of the year, five days before the holiday we were in court ... I think they spent like half a day arguing the matter. All I needed was to get that signature for my passport. Something like that I don't think should have taken six months or even half a day at court. And also I think, probably a bit hard, but try and get people to actually do something. Like once the court has told someone to do something, [it] takes like three other goes and two, actually three other court meetings, three more years until they actually do something ... But things like that made that frustrating for me, yeah. And that was just also things like a quick court date would have been really helpful then 'cause it pulled me out in the middle of school year. Things like that. So, if it's a quick court date, it's hard because there's lots of people. And not many judges. But if that was quicker that would have been really good. (Michael, M, 15+ years)

What does effective participation look like?

For some participants, having an ICL or family consultant to speak on their behalf was identified as important in enabling young people to have a say in the decision-making process (e.g. Hamish, M, 15+ years). More specifically, some participants described their engagement with these family law system professionals as facilitating their participation in this decision making regarding parental arrangements through having a professional to advocate on their behalf (in the case of the ICL) or to articulate their views (e.g. Amelia, F, 15+ years; Liam, M, 12-14 years; Ryder, M, 12-14 years).

Some participating children and young people reflected on what it was like to be listened to by service providers and the social cues that they observed that indicated to them that they had been heard. For example:

Um, I think she listened pretty good, so yeah. (Interviewer: And again, what indicated that to you?) Um, genuine ... yeah, she was taking lots of notes. (Did you feel like those notes would be put to use?) Um, I hope they were. (Eliza, F, 12-14 years)

(Interviewer: And what to you, what's, like, the ideal situation in terms of having a say, like, what does it look like to you for a young person?) People listening, like, sort of, like, no arguments getting my point across. (And what indicates to you that someone is listening to you and hearing your point of view?) Well, they're communicating as well so they're interacting, yeah. (Stephanie, F, 15+ years)

She's just really - she's a good listener and she doesn't sugar-coat things, which I think is awesome and she'll say, okay, here's what you need to do with your day and here's what you need to do about this friendship situation and here's what you need to do about your mum. I was, you know, getting into fights with my mum all hours of the night and shouting because I was - I used to blame my parents separating as my own - why I was, like, so angry and so negative and frustrated all the time and I realise that that's not it. Well, it is, but it's not a reason that I should - it's not a reason that is really valid for me to do that ... and she's given me all the strategies and provided me with some great - some just great strategies about how I can navigate my way through my relationship with my mum but also my relationship with my dad, so she's been really helpful. (Tatiana, F, 12-14 years)

Yeah, like, they actually listened. They didn't go off topic with me. When I went off topic they didn't care ... and they didn't just straightaway put in their input. They weren't like - when I was talking about it, they weren't like, 'Well that sounds like blah, blah, blah.' They'd let me talk and then be like, 'Okay, so ... yeah, and they gave me like coping strategies as well. It wasn't it, 'Okay, we listened to you, now goodbye.' They were like, 'Okay, try this this week.' Like, because I get really bad anxiety, they were like, 'Try this method.' And like, every week, they're like, 'Oh, that didn't work? Okay, here you go.' (Alana, F, 12-14 years)

Children and young people made positive observations of professionals who were patient and down to earth. The comments of two young people below details how the approach taken by the family consultant in their matter put them at ease and was effective as a means of engaging with, and learning about, his young clients:

Um, he was just, he's just a really down-to-earth person, um, I feel like that made a difference and, um, even though we're, you know, (indistinct) little kids and have a lot of other random stuff to say at the time, that's

not related to what we're doing, he was patient enough to, um, listen to all that and then continue on, like, with what he was trying to – the point that he was trying to get to. (Hamish, M, 15+ years)

Yeah, COUNSELLOR was awesome. Oh, he told – he told the best jokes ... Um, yeah, but he, he was very good, just being there and talk – and kind of like, I guess, answering questions to the best of his ability and listening to us, me and BROTHER, that is. (Jeremy, M, 12-14 years)

One young person described positive experiences with lawyers where there was a preparedness not only to genuinely listen to their views and to acknowledge their concerns but also to take action to address their situation:

Um, she was nice and she sounded like genuine and like caring and stuff, so it was good talking to her. (Interviewer: And what made her sound, you know, genuine and caring.) Um, I think just the fact that, like, when I spoke to her and told her that I really wanted to come home that she like told me, she's like, 'I promise, like, I'll get you home,' and stuff, like she actually just told me like she'll definitely do it ... I feel like she's like the main reason that like I got to come home. Because, like, she just kept like pushing and like fighting so it was like really good and she was genuinely, like, wanting to help me come home as well. (Eliza, F, 12-14 years)

As foreshadowed in the data extracted directly above, having the views that they had expressed inform the decision-making process was nominated as important by most children and young people who reported engagement with services. For example:

(So, you were saying that how it was – the previous person that you spoke to on the phone didn't put your views forward and that it was ... And with this report writer, did you feel like she did that?) Um, yeah, I felt like she at least put like something of what she wrote on her thing forward. (Eliza, F, 12-14 years)

While reflecting on their dislike of counselling sessions one young person described the value of these sessions when the engagement leads to change that addresses their identified areas of concern:

I personally hate going to see counsellors and therapists and stuff 'cause like I don't really like – 'cause they don't really do much to help me but I feel like this counsellor really did help with sort of, like, it sort of, my sister and I actually spoke about how we really disliked how much my parents like fought and that's – and since then my parents, they haven't fought as much. (Claire, F, 12-14 years)

Another participant described the support received via a general practitioner, describing what it was like to be genuinely heard and for action to be taken to address the concerns that they raised:

All the other counsellors, like, just general counsellors, um, in general, they all helped me ... They listened and they actually took action to help me, they weren't just, like, listening, going, 'Uh-huh, m'hmm.' They understood. They understood my situation and, I guess, even, like, my doctor, he doesn't – he didn't, obviously, didn't really have experience with that stuff. He was just my general GP. And, um, he still knew what to say, though. He knew what to say. And the funny thing is, people with all this 'experience' don't know what to say and it's like, 'Dude, my – if my GP knows what to say and my teacher knows what to say, who have no experience in this whatsoever, there's something wrong', you know what I mean? Like, and it's, like, they understood more than anyone who's ever been deal – like, to anything to do with the court or anything like that or any, 'Family supportive or blah, blah, separation, fixing.' No. You know what I mean? You don't fix anything, you break it more. You know what I mean? It's like – it's like the toy's broken, so, they snap it in half again. (Zoe, F, 12-14 years)

While some of these participants were unsure as to the impact of expressing their views in this context on their resulting arrangements, the ability to participate was identified as meaningful:

Um, I just feel like it would have, like, even if our opinions ended up meaning nothing, I feel like it would have, regardless, the fact that he was actually able to provide our opinion during the case was – is a really vital thing. Um, and whether it made a positive impact on the result, I do not know. (Hamish, M, 15+ years)

Some children and young people sought more targeted and sustained support beyond that experienced in the context of the decision-making process and this support could be contrasted with the support described earlier in this section as being general or cursory in nature. While broad-based discussions were identified as being useful at the beginning of the therapeutic relationship to encourage children and young people to feel at ease, there was an expectation among some participants that this relationship needed to develop beyond that point to be of therapeutic assistance:

It wasn't even like counselling, it was just like a chat, I guess, yeah ... I was hoping to get even just anything out of it. Like an opinion or anything, but nothing ... Well, like, the first few weeks were just, like, introduction, like, a bit about me and it didn't really change from there. (Jasper, M, 15+ years)

Like the counselling after court, like that was meant to be really good, didn't really do much, I didn't feel ... we went in there, it was like okay, it was kind of like the school counselling that I was kind of already having at school or on Kids Helpline. Pretty much the same thing ... I don't feel like it changed much really. (Hamish, M, 15+ years)

Other children and young people identified the service needs of families going forward. Circumstances change and parenting arrangements were identified as needing to accommodate these changes. One participant, in particular, articulated the need for ongoing support to reshape parenting arrangements in her case over time:

Because a lot of it - 'cause when, it's like, the mediation and the lawyers weren't set up, you know, to renew every - it was a one-off thing and then a lot of things changed, you know, the boys finished school, people's jobs would change or whatever and then they'd have to sort it out themselves. (Alana, F, 12-14 years)

This participant suggested the value in allowing for parties to return to access services that would allow families 'to continue dividing things up because it's such a kind of fluctuating thing'.

4.5 Experiences of non-participation in the decision-making process

Engagement with service providers facilitated effective engagement for some participating children and young people. However, for children who recalled accessing family law system services, the data illustrate that most had not been afforded the opportunity to participate in the decision-making process about parenting arrangements. From this category of young participants, a substantial proportion ($n = 17$) reported having no say or not having much say ($n = 17$) in their parenting arrangements (with most of the participants providing these response options meeting with a family law system service professional ($n = 10$ and $n = 11$ respectively)). Participants described these experiences as follows:

Ah, if there's any word less than none, then there we go. (Zoe, F, 12-14 years)

Um, but I also feel like it wasn't so much of what they thought or wanted it was just the court going, okay, well they're young kids, what would they know? Let's just leave them with both parents because otherwise they might not have had that opportunity growing up. (Hamish, M, 15+ years)

Participating children and young people commonly reported that they were either not consulted by the relevant family law system professionals in their case or, even where there were options to participate, that they were not heard by those professionals:

Yeah, probably just they didn't really consult, like they didn't really, like, they didn't really kind of consult us about what we wanted and kind of how we felt about the whole situation. (Oscar, M, 15+ years)

(Interviewer: And how well do you think they listened to you?) Not well ... Not well. Not well, at all ... Um, I can just tell. Like he - like he wasn't even writing notes down ... Like his pen was on his desk. Unless he has a magical pen. That's what I thought he might - I remember that from the day, I was like, 'What are you doing?' You - he wasn't writing anything ... at all. He didn't - he was just, he was just listening to me ... I'm like, how are you going to remember what I'm saying though? Because I went on and on and on. And he wasn't even writing ... But then he had like this, he had - he wrote like Dad and Mum. It had like two pages of what Mum and my dad wrote. But mine was just empty. And I was like ... 'Where's my page?' ... He probably - he might have listened, I'm not sure but like I thought well, I don't know how you're going to remember - I think it was like 50 minutes of just me talking. And I don't know how you can remember that. (Harry, M, 12-14 years)

One young participant reported that while an ICL had been appointed in her case, this was not helpful for her because she did not recall the ICL having any contact with her or asking her any questions:

Um, well I never really spoke to her so I can't really answer. Well, for not contacting me or seeing how I felt about the situation. Could have been a bit better to help out with the situation. (Chloe, F, 10-11 years)

While some children and young people were acutely aware of the family law proceedings or the dispute resolution processes attempted by their parents (e.g. Eliza, F, 12-14 years; Amy, F, 15+ years), others were not

well-informed in this regard (e.g. Caitlin, F, 15+ years; Xavier, M, 10–11 years; Noah, M, 15+ years). Some of these young people were unsure of the specifics of legal proceedings, including when proceedings relevant to them had commenced or concluded (e.g. Michael, M, 15+ years) and the matters covered and to whom they related. For example, one young person indicated that while he was aware of their parents' family law proceedings, he was of the understanding that the proceedings did not relate to him and was surprised when his father informed him that he was required to comply with the living arrangements made pursuant to this process:

I think it might've been at my dad's – my Nan, that weekend where they actually went to court. But like, I was thinking it was just for YOUNGER SIBLING. And then that's when he [Dad] came home and told me I'm living there now. (Interviewer: Right, so you weren't even sure that it was relating to you at all?) Yeah, like I'd, like at the time, I was like oh, it's definitely not for me, it's for YOUNGER SIBLING. So like, I wasn't even bothered about it [the proceedings] ... YOUNGER SIBLING was – like that's fine, YOUNGER SIBLING wants to move. But oh, yeah, I didn't have any say at all. (Hayden, M, 15+ years)

As a result, while participants relayed detailed recollections of their lack of interaction with these services, they were also unclear about the role of the service providers with whom their families had interacted (e.g. Savannah, F, 15+ years; Daniel, M, 12–14 years; Stephanie, F, 15+ years). This absence of interaction with service providers was, for some children and young people, at odds with their intimate engagement in the family violence characterising their parents' relationship and separation:

I didn't see anyone through that whole process it was just like all the whole communication, like through my parents. But if someone had actually like, I don't know, if I had a meeting with one of them and they just kind of talked me through what I could do and what they were doing. That would've been quite useful ... where my parents went wrong. I was exposed to everything. I knew what was going on, I knew all the bad things and if my parents had maybe, like, kind of kept that private and tried to, I don't know, maybe cover it up, it would've like helped me in the long run. Because it was just, it was just like violence, in front of my eyes. And it was just horrible to experience. (Rose, F, 15+ years)

Indeed, one young person described the family law services as being 'behind the scenes' and thought more visibility would encourage better awareness among children and young people of their existence and their capacity to facilitate participation:

Make themselves visible with the kids and not really so much behind the scenes. If that's the kid's option, like, if they want to make it so behind the scenes then awesome, but if the kids want the family law services to be involved obviously when they're that little bit older and they kind of understand how everything works then I think that, totally, there should be more things put in place for kids and family law services, yeah. (Tatiana, F, 12–14 years)

What emerged from these data was that a lack of direct engagement with service pathways correlated with a reported lack of participation in decision making. The interview data indicate that children and young people were more likely to feel excluded from parenting arrangements made pursuant to family law proceedings if they did not have the opportunity to speak with or meet with the legal professionals or court personnel in their cases. Consistent with previous Australian and international research discussed earlier in this chapter, the opportunity to voice their views and to engage in this decision-making process was broadly sought. More than one-third ($n = 26$) of the participating children and young people expressed a desire to engage with the court process and to communicate their views directly to the court so that they could play a more integral role in the decision-making process, be certain that their views were accurately communicated and/or gain a clear understanding of what was happening in court:

And I would've liked it if I was allowed to speak myself without someone else saying it for me. Like, I know that children aren't allowed in the courtroom or stuff like that but I believe that a certain age such as 10 or over should be allowed to come in for a short amount of time and sit there with a lawyer and have the lawyer say what the children want with the children there so they know and they can correct or, yeah. (Lily, F, 12–14 years)

I think, I don't know how easy it would be to do but, in some way, if I could have, like, my opinion out there, like, whether it be in quote or a voice or something. Because when you're in there and somebody is arguing for me ... that's not what he wants it's what you're saying he wants. Because when I'm sitting at home actually saying that to my mum, I'm pretty sure that's how it was happening in there. So, if there was like a way that I could have, you know, had my voice in there or a quote or something in there that would have meant yes we can actually see this is what he means ... or even if that was just like a standard thing that if the person like sent in a video ... something like that would have just made it a lot easier. (Michael, M, 15+ years)

Another participant described a sense of confusion and uncertainty during the court process and indicated that it would have been helpful to have an opportunity to talk to someone who could explain what was happening and involve him in making the post-separation arrangements. In particular, this young person suggested that if someone, such as the lawyer, had spoken to him in person, they would have been better able to understand how he was feeling and to, in turn, express his views to the court:

(Interviewer: So, would you have liked to have someone speak with you? Whether it be a lawyer or a psychologist or the judge or anyone like that?) Uh, maybe just to clarify like what was happening ... Maybe - maybe just like involve me. Like, because they didn't really like - I wasn't really like - they didn't, like, involve me in the thing. So, like, if I was there and I actually said what I wanted there, it would've been better. So then they know, like, I'm saying it there in person ... Well, I think if I talked to - if I talked to the lawyers and they would - it would be easier for them to like - like talk to the judge, because they know, like - they've met me in person. They know how I feel. (Max, M, 12-14 years)

As foreshadowed above, some participants specifically sought the option to speak with the judicial decision-maker or to 'speak directly to the court' (Ryder, M, 12-14 years):

(Interviewer: Would you have liked to have met with someone from the court?) Yes. (Yeah? And what would you like to say to them in that matter?) That - that you can't just let someone abuse a child. Especially your own child and, and not have consequences, like, you can't beat up a child and you can't - and not face the consequences. (Daniel, M, 12-14 years)

Um, yeah, I would've liked to have done that, 'cause, as I said before, the stuff that I said in the report didn't seem to um, like, or at least like I felt like it wasn't really, um, as - seen as that important, kind of thing. But, um, it would've - maybe I would like - would have liked to have seen, see someone from the court so I could just fill them in with, like, what I felt like they needed to know to make a good judgment about things ... Um, probably just, kind of, focused more on what we actually felt towards our situation. And, maybe, like, shown, like, that they had properly looked at the report and understood how we felt so they felt like they could make a final decision that would be more beneficial for what we would be comfortable with ... I don't know how it actually went out but if they, like, look more into, like, our personal situation and how we're actually, like, what our lives are like to make it more balanced in that, like, in that kind of sense. (Caitlin, F, 15+ years)

For some children and young people, the court was not identified as being in a position to make an informed decision without a better understanding of the children's views and experiences:

I think just that they don't, they don't really know what the situation was like and, yeah, they don't know what the best option would be just because they - because they have a very limited source of information. (Dominic, M, 12-14 years)

If they, like, look more into, like, our personal situation and how we're actually, like, what our lives are like to make it more balanced in that, like, in that kind of sense ... probably just, kind of, focused more on what we actually felt towards our situation. And, maybe, like, shown, like, that they had properly looked at the report and understood how we felt so they felt like they could make a final decision that would be more beneficial for what we would be comfortable with. (Caitlin, F, 15+ years)

As noted in Chapter 1, judicial interviews are uncommon in the family law context in Australia; however, the data detailed above is consistent with research and commentary identifying the potential for children and young people to speak directly with decision makers. For example, Fernando and Ross (2018; also see Fernando, 2013a, 2013b, 2013c) and Young (2017) have encouraged greater consideration of judicial interviews as a mechanism for facilitating participation by children and young people with respect to decisions affecting them. Judicial officers have been identified as generally reluctant to speak with children/young people due to a perceived lack of expertise and training or a concern that such meetings may negatively impact on a child or young person's wellbeing or family relationships (e.g. Fernando, 2012). As Fernando and Ross (2018) note, the presence of a family consultant during judicial interviews may be a means of supporting judicial officers when meeting directly with children and young people.

Recommendations have also been made for the development of guidelines that support judicial officers to meet with children/young people should they consider it appropriate to do so (Family Law Council, 2016; Beckhouse, 2015a). It is also noted that the international experience, particularly in New Zealand, may provide insight into potential measures to support greater uptake of this option (See further, e.g. Bala, Bertrand, & Birnbaum, 2013; Bala et al., 2015; Birnbaum & Bala 2014; Caldwell & Taylor, 2013; Dunbar, 2017; Fernando, 2012a; Hunter, 2007; Parkinson & Cashmore, 2007 & Young, 2017).

The experience of being kept ‘in the dark’ during the decision-making process, identified earlier in this report, was described by some young participants as leading to feelings of isolation, frustration and exclusion. Interviewee Hamish (M, 15+ years) described his frustration with the approach taken by his father and other family members, which shielded him from court proceedings:

Um, and even at the time where – like, in 2014 after that court case, the second one where I, like, said to Dad, hey, can you please get it for me, I would like to really read it ‘cause I want to know what’s going on for myself. Um, pretty much, you know, just kept procrastinating and putting it off until I just gave up asking him about it, so yeah, I never really knew what sort of happened, I’d just hear snippets here and there and get explained things by other family members and I just have to make, um, deductions from that (Interviewer: Okay. And how does that make you feel?) Oh, it’s pretty bloody frustrating. Um, like you don’t know what’s going on and you’d like to be able to know from yourself rather than hearing it from a third party everything ‘cause then it’s gonna be influenced by them. (Hamish, M, 15+ years)

In some instances, children and young people who were firm in their position that their views were not being acknowledged or listened to by the service providers when parenting arrangements were being made, expressed feelings of anger and frustration towards the family law system in general and/or in relation to associated individuals because their views and experiences were not informing the decision-making process:

Well, first of all they [the court] could just – children know what they want ... They do. And they didn’t listen whatsoever. As I said ... a lot of times. They don’t care. They don’t listen. They just kind of, like, oh the parents’ – the parents’ decision, the children have no say whatsoever ... Um, it’s as if they don’t even care and it’s just like, it’s really, it wasn’t fair. It just ... It was, it was like we were treated like, like very differently than the adults in the court case ... And, the adults, like ... Because we were just, like, SIBLING and I, we didn’t really have any say like ... We just kinda was like, like they, it – it felt like they were just talking to us ... so that we could like – so they, they could like intimidate us and like, hurt us. (Ellie, F, 10–11 years)

I’d just have them [family law system] abolished, from my personal experience, I believe it should be put in hands of psychologists instead, only psychologists that are elected legally by a board, undergo examinations before they’re deemed fit to practice making decisions about where children might live. (Connor, M, 15+ years)

More specifically, for some of these children and young people steps such as being informed of the parenting arrangements made by the professionals involved in the decision-making process, such as lawyers or court personnel, and having an opportunity to talk to someone about the arrangements made were steps identified as addressing some of their frustrations (e.g. Hayden, M, 15+ years). The lack of engagement with lawyers more generally and the perceptions of costs associated with legal services were also key features of participants’ reflections on their service provision. For example, when asked whether there were any ways in which the lawyers were helpful to them, one young person stated, ‘No, none of them talked to me ... They’re expensive’ (Amy, F, 15+ years). Another stated:

Well, all they did was, like, take a lot of money and then, like, said the exact same stuff that’s been going on for the five years beforehand anyway. So, yeah, and formal arrangements, like, exactly how the formal stuff that’s arranged. Except for the formal stuff it just cost – cost lots of money. (Scarlett, F, 15+ years)

One participant described her role in the decision-making process as akin to a ‘second opinion’ that was easily dismissed, without receiving genuine attention, with the result being that the young person ultimately voted with their feet and made their own parenting arrangements when those arranged via the court process were not workable. For this young person, the ability to speak with a key decision maker was identified as potentially providing her with the opportunity to play a more meaningful role in the decision-making process:

No. I don’t think I did. Yeah. I feel like I was kind of just the second opinion and like how they made the decision and they’re just like are you okay with this? ... So I didn’t actually put anything like – yeah, like I didn’t, I don’t think I was asked about how much time I’d like ... They just said how much you liked being at that person’s house ... So, yeah ... Well, I think I was a bit – like I found it a bit stressful and like hard to talk to them in the process. So, I think it would have been nice having, like, I don’t know, someone like stronger in the system who could like speak for me. Because I think they were kind of almost need to – the judge or ... Yeah. I don’t feel like they put much like say into the orders ... Yeah. I think in the court process it was more like the parents make the decision and (indistinct) is just like are you okay with that and I – I said yes because yeah, I didn’t really think about it at the time ... Then realised how difficult it would be. (Interviewer: Who would you have liked to have had talk to you during that process?) Well, I’m not sure.

I think I just – like I don't know to have more say in like to actually make like the decision instead of just having like a second opinion on that ... I kind of acted and I didn't really listen to them. Like I kind of just refused to go to my dad's and yeah. That's how it was – the decision was ... through the court system and I kind of just refused. Well, I think originally I thought we were going to like try to work with the, like, court orders but I just refused to go and ... Yeah. I kind of made up my own rules. (Emma, F, 12-14 years)

Consistent with previous research, these responses suggest that steps taken to shield children and young people from their parents' litigation, while benevolent in their intention, may be associated with the experience of harm on the part of the young person where their agency and capacity to participate in decision making affecting them is not acknowledged and accommodated.

There were also interesting reflections made in relation to the measures that children and young people felt were useful in communicating their views in circumstances where they felt they were not being heard in the decision-making process. One participant reflected that young people may feel that they are required to exaggerate their statements in order for their point of view to be heard, and that this technique may backfire where it is not employed judiciously:

Um, it's just because I – I know that a lot of the time, um, during the interviews with the kids, who might have the opportunity to have, they would exaggerate their points a lot. Thinking, okay, this will get it across. [This behaviour] will end up [with] the person whose doing the interview just, sort of, even thinking that they've just been brainwashed by the other parent. Or that the kid's just lying. So there's, there's a, a line to be drawn and it's really difficult. Because you can't, yeah, it's – it's too much of a grey area. (Hamish, M, 15+ years)

When reflecting on her experience engaging with a service akin to a children's contact service, one young person described how, despite her firm wishes not to interact with her father, the service did not remove her from the situation in accordance with these wishes. The participant described how she realised that, in that situation, it was only after she broke down crying that her perspective on the parenting arrangements was heard:

But I used to go to this, like, place ... it was more when I was younger and they would take me to a playroom and I would just, like, you know, basically interact with him and, um, they would basically just look and study me and I was like, 'I don't want to do this anymore.' And so I would do this little action that they discussed with me and they weren't listening or they just wouldn't – like, they just wouldn't take me out and say, 'Okay, that's the end of it.' You know, like, they wouldn't end it for me. I remember one time I didn't want to do it and I just was like, 'I'm not doing it,' and I just fell crying into my mum's chest and I was just burying my face in her chest ... I'm just like, 'I don't wanna do it, I don't wanna do it.' And then like, so they're like, 'Okay, you don't have to, you don't have to.' And like, 'We're just going to take you in there for five minutes, okay?' And I was like, 'Okay,' so they listened to me that time 'cause obviously a crying child, you know, you gotta listen to that and, um, I think (indistinct) and said, 'Okay, so CHILD doesn't want to do the session today,' and I still remember my dad eye rolling and everything, going – being all huffy, huffy about it. So, it was only five minutes and they just took me in to say hello and goodbye, and that was fine, that was like the one time they listened to me. And, um, when I had to put up an act, that's the thing though, I had to actually cry and I had to really say, 'I don't wanna do this.' It should have just been, you know, okay, I tugged my ear or I scratched my nose or I did, like, a little something and they should have listened to me then but I had to like put up an act to actually be recognised, you know what I mean? (Zoe, F, 12-14 years)

The vehemence with which children and young people were required to communicate their views emerged as striking in these and other interview extracts and perhaps contrasts with prevailing expectations in relation to the expression of views by adults. As described in Chapter 3, some participants reported their extreme distress at their lack of effective participation in the family law decision-making process that gave rise to parenting orders that were described as manifestly inconsistent with their safety, whereby they resorted to destroying property or running away to communicate their views. The service experiences, from the perspective of these young people, did not provide effective means of communicating their views and experiences in a way that contributed to the decision-making process for parenting arrangements.

4.6 Summary

The discussion in this chapter has explored the level and nature of engagement with family law system services. Participating children and young people described their experiences of the services that they accessed and their level of participation (and lack of participation) facilitated in the decision-making process. When asked what professionals could have done better, some children and young people had firm ideas regarding their interactions. Providing space for children and young people to speak their mind, and for professionals to actively listen to their views, emerged in the data explored in this chapter as key to meeting the needs expressed by children and young people participating in this research. One participant aptly articulated what was required: 'Give children a bigger voice more of the time' (Alana, F, 12-14 years).

Two-way communication between professionals and children and young people also emerged as central to the idea of genuine listening and effective participation in these data, together with advocacy that reflected their views and experiences in the decision-making process. Some young participants expressed confusion as to the family law system processes and a lack of clarity regarding the purpose for which their views were sought, and regarding the impact that these views might have had on the decision-making process. Other participants reflected not only their confusion but also their disappointment when describing the inability to penetrate the decision-making processes and to have their views and experiences heard in that context. Effective professional practices, together with services and supports identified by participating children and young people as being helpful, will be explored in more detail in Chapter 5.

5 What children and young people found to be of assistance when dealing with parental separation

This chapter provides a discussion of the support systems and services that the participating children and young people indicated were of assistance to them during or after their parents' separation (noting that the available data are cross-sectional rather than longitudinal in nature). Participants also reflected on other support networks that may have been useful for them during that period and these reflections will be considered in this discussion.

Participants described a variety of formal and informal sources of support but focused on the following:

- peers (friends and/or peer support programs)
- family (parents, siblings, extended family and/or family friends)
- schools (particularly school counsellors and teachers)
- mental health services and other professionals.

These networks will be explored further below. Drawing on the concerns raised by participants when engaging with professionals in Chapter 4, the discussion below will also consider the characteristics of effective professional practice from the perspectives of the participating children and young people.

5.1 Services and support

Chapter 3 involved a discussion of the experiences of the participating children and young people during the period of their parents' separation, which included navigating complex emotions such as guilt, sadness and anger and coping with changes to their lives, routines and relationships. Accordingly, it was important to identify the services and supports participants found to be of assistance during and after that transitional period. Participants were also asked to consider the additional forms of support that they would have liked to have had or known about during that period, to provide further insight into their needs and preferences.

Seeking support and speaking out

The majority of participating children and young people emphasised the importance of seeking support by speaking to a third party and expressing themselves and their views ($n = 38$). A number of those participants indicated that the ability to speak to someone that 'understands' their situation, and 'listens' to them was crucial in supporting them through their parents' separation. Several participants expressed a need to speak to 'someone who you really trust ... and who isn't your parent' (Lucy, F, 12-14 years) and someone who would take on board their views without judgement. For example, when asked to give advice to other children and young people, these participants suggested:

Yeah, talk to someone. That's what I'd - that's what I did ... it helps a lot ... So like everything that you have's just building up and then it just - you can't just spit it out in front of someone ... And then it's good to know because then they don't tell anyone, like what you said. (Harry, M, 12-14 years)

Oh, tell ... I would ... tell who you trust how ... and ask for their advice. And I ... and ask for their support. Because, like, the more support you get the better you feel about the situation. Um, don't be afraid to say what you truly want. (Max, M, 12-14 years)

Find someone that you trust wholly and completely and then talk to them and say, hi, you know, my parents have separated or my parents are fighting, can you either help me or can you give me some advice on how to navigate my way through this and listening. (Tatiana, F, 12-14 years)

Just to make sure – make sure your voice is being heard and what you want is being acknowledged and understood because if you don't, like, kind of express that with your parents and the other people then no one will really know how you feel. I talked to my mates about it but what really mattered was actually discussing that with my parents and other people [who] had a kind of influence on that decision. (Oscar, M, 15+ years)

However, some participants described the challenges that they faced in seeking and receiving help and speaking out. Even where services were accessible, the challenges associated with confiding in a professional were clearly articulated by this participant:

I sort of had to get myself through it. Mum did try and organise for me to talk to someone but it was just weird because I didn't know them and I feel like if I'm going to, like, share, like, dark things with someone then I sort of have to know them and have some sort of trust established. (Stephanie, F, 15+ years)

One participant explained that her reluctance to speak to others derived from a concern not to hurt her parents' feelings (Ellie, F, 10–11 years). Another participant described the personal barriers that she faced in seeking help, which involved a process of her growing comfortable with talking to someone about her feelings. She provided advice for other children and young people in a similar situation:

I would talk to more people about, I think, yeah. If I, like I wouldn't keep it all to myself and I would maybe approach my mum sooner about finding help or something. 'Cause it may not have been like entirely useful for me but it probably would be for other people. So, I don't know, I just like – 'cause I just, the whole time I was, like yeah, no one can really help me through this. This is kind of like my problem ... and it's just like my conflict with myself but I don't know, there is people to help ... so I needed to just like open up more I guess. (Rose, F, 15+ years)

Access to confidential counselling to help children and young people understand their situation was also identified as important (Beau, M, 12–14 years):

I think confidentiality. I think that if that person was able to – if a person was able to help me understand my situation, [I would have] felt a bit better. Because I wasn't able to understand it. And I think before I do that – and I just, you know, I completely disagree with telling my parents, because in my particular situation, that just didn't work. You know, that wasn't a good thing, because it just made it worse. For the child. And they're trying to do it for the child ... and you've just made it worse for me. So I think – I think if you're trying to find out what each side – each party wants ... that's fine, but if you're trying to find what the children want I think there are other ways you can go about doing that. Not – not breaking the child's trust in someone. (Savannah, F, 15+ years)

This therapeutic support was identified by interviewee Savannah as potentially helping children to reflect on their situation independently of their parents, and to evaluate their feelings and the options for their care post-separation, so as to better assist them in formulating their views:

Well, I think that for me, I needed a bit more understanding of what I actually wanted. And I don't think my parents gave me that. So, I think it's a very – it was very hard for me to actually go and tell somebody, because they're giving – because I hadn't had something to be able to reassure me of what I ... I wanted. So, I'm giving this person something that – one side of something that I want but not all of it. And I think it was worse that my mum was in the room but like I remember when my dad read out the court orders, you know, my face just went like oh, what have I done. Thinking like this is not what I want. (Savannah, F, 15+ years)

The independent and neutral nature of this therapeutic support was also identified as key:

I need someone who's neutral, and like, you don't always get that. You know, that's my friends, but if my friends don't understand, then how can I go to my friends? ... it really depends on if you like trust the person. But like I think they have to be – you know, they have to be really neutral, and they have to be really good with being able to explain it to somebody. And if there was somebody out there who could do that, like who was just there to be able to help children understand it as a neutral party, I think that would have been very helpful. (Savannah, F, 15+ years)

Interviewee Scarlett (F, 15+ years) described how she initially did not have anyone who helped her out with her parents' separation, partially because she preferred to keep her feelings to herself. She ultimately identified this absence of support as problematic:

No, I don't really have anyone to help me out with it. Like, it's been on forever so it's just a part of my life. You know, it's just something you deal with ... I've always been told to – like, to keep it on, like, the

down low ... So, yeah, just – I don't bring it up with anyone, it's just something that I keep to myself ... my relationship with my parents and everything like that and, like, how much time I'm happy when I'm spending with everyone else and, like, how it affects me, I just keep to myself.

I think a lot of stuff is probably, like, been, like, repressed over the years but it's probably not done wonders for how happy I am and everything like that. (Scarlett, F, 15+ years)

In another example of a participant who preferred to keep his feelings to himself, interviewee Connor (M, 15+ years) explained how, following his parents' separation, he 'chucked on a thick skin' in response to his dissatisfaction with his living arrangements:

Um, I didn't really, like seek help, I guess. I kind of, um, went out on my own and, um, yeah, basically chucked on a thick skin and just acted tough and, yeah, sort of dealt with it on my own. (Connor, M, 15+ years)

This participant did ultimately find professional assistance helpful and his experiences were previously discussed in section 4.2.

In addition, not all participants knew where to go or who to turn to if they felt that they needed support in dealing with their parents' separation or other issues affecting them. One participant suggested that family law system services needed to 'advertise more, so let people know that they've got that help ...' (Laurence, M, 15+ years). Other participants raised the issue of a lack of awareness of mental health and support services particularly when they were younger:

Just, like, making it more, like – I just wish that I was more aware about the services. Like, they, I don't know, advertise more or, like, you know, said, 'Hey, this is something that can help you out with, you know, whatever you're going through.' Like, 'These are some services available.' 'Cause, yeah, my first issue was the fact that I didn't know about anything and I was never offered any options or anything. Services, like, were – weren't offered to me or, like, even suggested at all. (Scarlett, F, 15+ years)

I probably know more now, I didn't know as much back then. I didn't, you know, about there's things like Headspace, you know, you've got a lot of community things like that. I didn't know about those kinds of things back then. Might have used them, don't know, I wouldn't know to be honest back then. (Michael, M, 15+ years)

Some participants raised the challenges associated with accessing support services, with these challenges ranging from the waiting time when calling helplines through to the difficulty that young people may face in obtaining referrals to mental health services, on top of the issues associated with accessing professionals who are prepared to listen:

'Cause when I was on the phone to, like, the kids line and helpline and all that, they took like 30–40 minutes to an hour for them to answer the phone call ... That – answer them for that 'cause sometimes I was in a really depressed state and I would have wished they answered the phone faster ... Or for the – or for the principal to, like, listen, or for when I talked to the police, for them to listen ... Instead of just going, oh, he's your father and, you know, your blood and ... 'Cause they just kept saying, oh, there was – there's – 'cause from what I remember they said that there's, like, no physical reports he – that there was any abuse, so we can't believe you. (Ashley, F, 12–14 years)

I don't know if it's something that they can improve, I think it was just maybe like – I mean it's kind of hard actually like to get, um, like to get access I guess. It's not hard but like in order to like go for it, you have to go like a GP and get a mental health care plan. And then from there they refer you to a place and stuff like that. And I think, if I were in a situation where I couldn't talk to either of my parents about it, then it would've been pretty hard for me to have like, organised that myself. So, if I just wanted to like seek like help and stuff like that, I think it should be easier for someone my age to access that, and stuff like that. (Rose, F, 15+ years)

A number of participants described a variety of strategies that they employed when on their own to assist in maintaining their emotional health and wellbeing in the post-separation context – ranging from 'writing a journal' (Eliza, F, 12–14 years) to spending some time alone or finding a fulfilling hobby – demonstrating the diversity and range of coping mechanisms employed by participants:

Well, most of them [children and young people] would have already been told, like, a million times that it's okay to cry, so, it's okay to cry. Um, but it's okay to cry doesn't mean that you have to cry in front of people, you can still go to your room or ask your teacher, if they know, to go to the bathroom or something like that, and that's still okay, it's fine to cry in front of people, it's fine to cry not in front of people. Um, it's fine

to just be able to talk to them and know that they are your parents and that, even if they are going through separation and they may have arguments, if you don't have siblings or pets then I'd recommend just go outside and either play on a trampoline, like, bounce on a trampoline for a bit or just sit with – under some trees or something and just relax and let all your thinking out. (Paul, M, 10-11 years)

I used to go out and when I'd build something I wouldn't finish it that day, the next day I'd, and I'd be excited all day about going home and doing it and that's, that's how I kind of coped through it. (Beau, M, 12-14 years)

As noted in section 4.5, it was important that family law system services were visible for children and young people as well as adults and that they were geared towards ensuring that children and young people had access to the services that they needed as they dealt with the repercussions of their parents' separation:

Maybe just make sure the children are okay. And make sure they're not overly upset or thinking about hurting themselves, I guess. (Amelia, F, 15+ years)

I think do everything that you possibly can to help the kids ... When you find out the situation of the parents' separation I think make sure that the kids are okay. Make sure that if – if the kids are in trouble or if the kids are, you know, angry, if the kids are upset about their parents' separation, I think the family law services can do so much to help them and I think that a lot of kids wouldn't have – wouldn't be so upset about their parents separating, wouldn't be upset in general ... I think just make sure that they're doing – that the parents are happy, that the parents are doing everything that they can to help the kids and then obviously the parents would help – the parents would look after the kids ... and then the family law services to kind of be behind the parents, like, still have a visible appearance – like, make themselves visible with the kids and not really so much behind the scenes. (Tatiana, F, 12-14 years)

The discussion in section 4.2 also identified the benefits that may arise for some children and young people if services such as family therapy are available to the family as a whole:

Even to just sit in on one of the sessions would've been good, just to kind of see what both of my parents felt and then also how the lawyer dealt with them and their completely opposite opinions, because often I'm in the position where I have to kind of mediate them and I would like to know a good way to do that. I think they could've organised like a whole family session so we could all kind of be a part of it, or at least just me because it does involve me as kind of one of the possessions of the two parents and as I said, like, it's harder that dividing up, like, a savings account because I am a person and I have emotions and I have other things going on in my life and I have opinions of my own. (Phoebe, F, 12-14 years)

Family support

The majority of young participants ($n = 43$) found family (one or both parents, grandparents, siblings or other extended family) to be of some assistance in coping with the circumstances of their parents' separation. Many children and young people identified a parent as their primary means of support or a source of information to find the help that they felt they needed:

Like, I always talked to Mum and she's supported me so much and ... I just think people need to listen to you ... Because no one's listening to you in the court system ... No one cares. (Ellie, F, 10-11 years)

Well, it's kind of weird because I reckon my mum's helping me the most about the separation. And she's probably going through the worst or something, I don't know. (Ryan, M, 12-14 years)

As noted in Chapter 3, young participants emphasised the importance of open and honest communication between parents and their children as a means of assisting children and young people to deal with separation:

Just be there to like listen to what your kids want and just um although like don't let your own kind of idea or ideal situation with like, don't let your own opinion kind of influence what, um, how do I word that, like it's ... So like maybe, yeah, just take more account into what the kids want 'cause what you want isn't always the best um for the whole situation, if that makes sense, yeah. (Oscar, M, 15+ years)

Include them ... And just kind of leave everything as open as possible I guess ... Because regardless of their age, like, kids are going to figure that kind of stuff out anyway and if you don't just tell them then they'll either worry about it and come up with a worse scenario in their head ... or, you know, then they'll feel like you're keeping things from them and then it'll just make things more complicated. Then they won't want to spend as much time with you. (Phoebe, F, 15+ years)

Extended family, particularly grandparents, were identified as playing a potentially vital role in supporting children and young people during their parents' separation. For some, this would be by helping out with a variety of tasks and activities with the family or in supporting their parent/s during the transition:

I guess my nan helps out a lot. Like my nan helps a lot ... And so does my pop, who are on my dad's side, 'cause my mum's parents are both passed away. (Claire, F, 12-14 years)

She's not exactly my nan, but she's like one, she's like a mum to my mum, as well, 'cause my mum's actual mum is kinda bad at being a mum. Um, and she's like - she was with my mum that whole time through court and she supported her. (Isabelle, F, 12-14 years)

For other participants, there was comfort from family in just getting a break from the ongoing issues relating to parental separation. Extended family provided a sounding board when participants needed someone to talk to as well as a place where participants could go to get away from complex dynamics at home:

My cousin, COUSIN, um, 'cause you know we - well, going and working on cars with him is, like, my (indistinct). It's how I sort of vent and just relax and get things off me mind as I just kind of spend time with him. (Hamish, M, 15+ years)

She [aunt] was just, like, empathetic and like just nice to be around and affectionate and stuff like that. And I could - 'cause like when they first separated it was like, it was so bad, like they were just like yelling and screaming all the time. And being at home was so horrible, so like she lives a couple of streets away from me so I'd just like go to my cousin's house and just sleep there for a night or something if it got like really hectic ... Yeah, like it was always like, she was always, she's just like a kind and generous person and I ... would talk about and she knew what was going on and she would offer and stuff like that and I just felt like I could trust her. (Rose, F, 15+ years)

My auntie did ... my dad's cousin is my auntie ... she did do, because like she'd - if I ever needed, like, to get away, I could. I could go to her house, and she didn't care. (Madeleine, F, 12-14 years)

The positive reflections on extended family focused on them being a source of readily available comfort and distraction. However, the potential for extended family to take sides or to appear 'biased' towards one side of the family impacted on the ability of some young people to be open and honest in sharing their feelings with extended family:

My parents, you know - my mum's side will believe what my mum says, and my dad's side will believe what my dad says. Which is how it goes. And that's happened ever since the divorce ... And it's like - so, I won't go to them about it, and like I won't bring it up. I just, you know, it won't benefit me. (Savannah, F, 15+ years)

They [dad's side] just always changed the conversation and they'd sort of just say, like, oh, that never happened, I don't know what you're talking about, and that was very difficult. (Stephanie, F, 15+ years)

Like, I know my aunties and stuff on my mum's side feel, like, a bit empathy for me but, yeah, like, no one actually supports me through any of it just 'cause it's, like, a really delicate topic and so they're just like, 'Oh, just stay away from this', yeah. (Scarlett, F, 15+ years)

Peer support

Participating children and young people indicated that friend and peer support could play a key role in assisting them to cope with their parents' separation and to form their views on post-separation parenting arrangements. Just over half of the participants ($n = 33$) identified friend and peer support as an important support structure in the context of their parents' separation:

Yeah, at first I had like a really close mate that I would just talk to about stuff and always talked to him if I needed to. (Oscar, M, 15+ years)

Um, yeah. I have this, like, friend who I've known since I was in prep. And she's kind of been like a bit of a big sister ever since, she's like a year above me. So, like, I told her about the situation and she's kind of always kind of been really supportive about it. (Chloe; F, 10-11 years)

My girl group, oh my gosh, they are so supportive. And, like, um, whenever anything, like, upsets me or anything like that, they just let me have a good cry and they're just there for me. (Zoe, F, 12-14 years)

In particular, having friends or peers to talk to was identified as important where children and young people did not feel comfortable discussing a particular issue with a parent, other family members or with professionals.

For example, one interviewee (Oscar, M, 15+ years) discussed his preference for speaking with peers rather than counsellors or other professionals:

Like with talking to my friends, they're kind of – they all had an understanding of what I'd gone through but they were like really close people that I could trust and had trusted previously so I could tell them about like anything and everything. And even though with the counsellors everything is confidential and stuff, you kind of, there still is – 'cause you've only just met them, there's still that kind of reluctance just to fully open up to them and discuss everything. Whereas with your mates you can just, yeah, talk to them about anything you want I'd say. (Oscar, M, 15+ years)

An important aspect of having peers to talk to was having people with shared experiences whom the child/young person could relate to and felt would understand their circumstances, as described by interviewees Caitlin (F, 15+ years) and Alana (F, 12–14 years):

I don't speak about my situation much with my other friends, but when I – I speak about it with her, because she's pretty much my only friend, like, one of my only friends that I can talk to that I know will actually get it. 'Cause she has gone through a similar kind of thing, where, like, I won't go into her situation, but she's been through a similar kind of experience, so, she knows about it and I felt like I could just, like, we connect about it a few times and we just kind of have some – it's a good outlet for both of us to just hang out and have a good time together ... we basically are each other's, kind of, like, outlets for things, which is nice. (Caitlin, F, 15+ years)

My friends kind of, because like – they haven't – when someone hasn't walked in the same steps you have, sometimes it can be like really hard for them to wrap their head around it. Like, I get – like I have friends that have like rich problems – like because I go to school in [TOWN] they have like rich kid problems and they're like, 'Oh, my Wi-Fi got cut off.' And I don't like, get that. So, like I can give them really bad advice and make them feel like they're not really getting help. Because I don't understand what they've been through because I'm in a completely different walk of life than them. (Alana, F, 12–14 years)

Another young person described how it was good to have someone other than their parent to talk to as her 'friends don't really understand' (Amelia, F, 15+ years).

Peer support programs were raised by this participant as being of assistance due to the potential for such programs to provide children and young people with a supportive environment and the opportunity to meet people going through similar circumstances who may be able to share advice and coping strategies:

I think it [support groups] could be helpful. I think if, you know, you've got other people, you can hear their, their story, you can hear, you know, how they dealt with it, because you can use that advice as well ... and you know, you might find someone who went through something so similar to you that you just weren't aware of. You know, I think that would be helpful. Depending on if you want to open up or not. (Savannah, F, 15+ years)

The data was able to provide some limited insight into the effectiveness of peer support programs. One participant recalled how participating in a Supporting Children After Separation Program³¹ provided him with an opportunity to meet and speak with other young people experiencing similar circumstances:

I was talking to this other kid who was, I think, a year younger than me ... Like, you got to meet people. It wasn't like organised but like you could just start talking and a few – I think it was like six of us. And then we were just talking ... And that – that was a good thing, so like I kind of got my point, or what, I thought I would have got my point across but then I meet other people ... it felt good because he sort of – we got each other. Like I know what he – like what he was going through ... I, I got him – what he meant and then, yeah, that was good to meet someone. Because I thought maybe I was like – I know I'm not the only one but I had never met someone who had the exact same situation as me. (Harry, M, 12–14 years)

However, as interviewee Zoe (F, 12–14 years) observed, such peer support programs were not necessarily well-suited to all children and young people and their utility may vary with the different stages of parental separation. Additionally, not all participants reported being comfortable talking to peers or friends about issues surrounding their parents' separation. This was particularly the case when participants reported that their peers

³¹ A Supporting Children After Separation Program provides support for children and young people whose parents have separated or are separating through services such as individual counselling or group sessions.

would not understand (e.g. Amelia, F, 15+ years) or where they felt that there was a general lack of awareness about issues surrounding parental separation:

Ah, not really, didn't have any friends that had any idea of what I was doing, it was kind of them, just, they know that my parents were being separated. Ah, but, you know, it's primary school, what are they gonna do about it. Um, in high school it was kind of the same again, they were just all like, yeah, we know that it's happened, mate, but we don't really understand so we can't offer much support. (Hamish, M, 15+ years)

Two participants described a sense of embarrassment at sharing personal details of their parents' separation and family circumstances with friends and peers:

I don't really talk to my friends about it 'cause I just felt like, I don't know, it was a bit of a toxic thing and I just didn't want my, like a lot of people to know it was happening. Like, but they - people knew like obviously that my parents were getting divorced. But I wasn't like telling them the extent of and like how I was feeling about it ... I viewed it as like airing my dirty laundry type of thing, like I didn't want them to think of me differently or think that my parents were bad 'cause that had happened, stuff like that so. (Rose, F, 15+ years)

I don't talk to them [friends] about that stuff. I don't want them to think I've got crazy parents or parent. (Amy, F, 15+ years)

While not all participants reported that they felt that they could divulge to their friends the entirety of what was going on in the context of their parents' separation, some participants explained that engaging with their friends enabled them to enjoy a break from thinking and talking about their parents' separation. This source of distraction from issues associated with their parents' separation, as well as advice and emotional support when the children and young people felt comfortable to discuss their parents' separation, was vital in assisting them to find support. As noted in Chapter 3, the proximity to friends and the ability to see them when desired was an important issue characterising young people's views of their parenting arrangements.

Schools

Approximately half of the participants described their school as being helpful and providing some assistance to them during or after their parents' separation ($n = 30$), and this support came primarily from interactions with counsellors ($n = 13$) or teachers ($n = 17$). During times of parental separation, school staff were identified as having the potential to provide children and young people with a sense of stability and support. However, this was often heavily dependent on individual teachers and staff rather than overarching school policies, programs or approaches. However, participants' accounts suggested that school staff were not always aware of the circumstances surrounding their parents' separation or of the complex dynamics of their family relationships:

Yeah, I had, um, I had a really supportive teacher in Year 4 ... She was TEACHER and she was just super supportive. (Ellie, F, 10-11 years)

My school - my old school was as useful as an ashtray on a motorbike, ah, but there was one person, ah the Vice Principal's really nice at my old school. (Chris, M, 12-14 years)

Like some of like the single teachers individually, like, they would help and they would talk to me when I was there. (Eliza, F, 12-14 years)

I don't know if they know. Because you have, like, different teachers for everything and I don't know, not really have any personal connections to any of the teachers so I don't know if the school knew. (Dominic, M, 12-14 years)

Two participants articulated their views on the importance of teachers and school staff being aware of issues surrounding parental separation and the child or young person's own individual familial circumstances so they would be able to understand the emotions and stresses that a child or young person may be experiencing during that time:

(Interviewer: Do you think it would be good if teachers did know that, like if someone's parents had separated, it would be good if teachers knew that or?) Yeah, 'cause like if they had like a random breakdown in class, they know why. And they won't have to go through, like, what are you crying about, blah, blah, blah. They'll just know why. Yeah, so you won't have to explain, yeah it would be good. (Angela, F, 10-11 years)

It's hard because every year, you know, I get a new coordinator who I then have to explain all of my anxiety and all of the things that they have to put in place and then they have to explain it to all my new teachers and it's frustrating because they have to have the process every year. And then, you know, sometimes you'll get a coordinator or you'll get a teacher throughout the school who, I don't know, tells me off for something but because they don't know me personally because they don't have me as a teacher, then they're not aware of how it could affect me kind of thing. (Phoebe, F, 15+ years)

Importantly, in one participant's case, her school was instrumental in identifying her needs and providing a referral to a psychological service provider:

Um, well, last year they [school] sent a referral through the Headspace for me, and they would like take me to and from Headspace. And that was really good, because, like, they'd just come into class and be like, 'Okay, come and grab a jumper now, class we're driving you to Headspace.' So that was good because like - it was also good because the parents didn't have to like drive you and stuff because a lot of the kids had the issue of their parents weren't home to drive them and stuff. (Alana, F, 12-14 years)

However, this participant also noted the difficulties she faced in accessing a counsellor at school and highlighted the importance of schools having an effective counselling system:

Schools need better counselling systems. Yeah, like - instead of just like - like, the school I'm at the moment, I went to their counselling and they're like, 'Oh, we'll have to put you on a waiting list.' It's like, they need - some schools need to get a better counselling system because, like, what these kids are going through when their parents separate some of the time, they need those people to talk to. And they need to make them more available for the kids. (Alana, F, 12-14 years)

The data indicated that schools were not always well-equipped to help young people adjust to the issues faced by children and young people during parental separation and some participants (e.g. Mason, M, 10-11 years; Hayley, F, 12-14 years) reported that their schools did not provide them with adequate or sufficient assistance. For example:

Well, the school knew at one point and I think we saw like this counsellor once but they weren't really helpful, like ... Yeah. They weren't that helpful ... Well, I think the stuff they went over, like was a bit too young for me ... I think it was really repetitive, a repetitive process but we weren't really going anywhere. (Emma, F, 12-14 years)

In another example, interviewee Amy (F, 15+ years) recalled feeling a sense of frustration at the inability of her school to understand her circumstances and respect her unwillingness to see her father:

He used to come up to my school all the time trying to find me ... he just comes up just looking for me. And like asking every single person because they'll even walk past his house to get home ... So he just goes out and asks them if they know me ... And then they come up to me. They're like, your dad was talking to me. It's kind of creepy. (Interviewer: And with the school though, like did they know that - did they know about your dad?) Yeah. Mum's told them. They're like, no, it's fine ... He's your dad. He should be allowed to see you ... They don't get it. (Amy, F, 15+ years)

Some participants raised the importance of awareness on the part of the broader school community of the issues surrounding parental separation. Interviewee Claire (F, 12-14 years) indicated that a lack of awareness led to a lack of understanding and, in some cases, a perception that families with separated parents were somehow inferior:

I feel like that could be a really good idea to help educate kids, one, to not - 'cause I have heard cases of kids bullying other kids because their parents have split up because they don't understand it. And it is one of things that is something that we don't really think about as much in some situations but I feel like it is something that we should and we should take it into account that some kids may feel bad about the fact that their parents are split up and they - they should know that it isn't their fault. It's never the kid's fault. Something a little bit more mature but sort of teaching kids that it's okay if your parents are going through a divorce. It's okay if your friend's parents are going through a divorce. It doesn't mean that they don't have a good enough family. They've got - they've got a fine family. If they don't see their dad that doesn't mean that - that they don't have a dad or that or whatever. It just means that they don't see their dad. It doesn't mean that they - that their relationship with their mum isn't a proper family. And I think kids need to understand that so that we can have a generation of people who think that and not a generation of people who think that failure in a relationship immediately results in failure in a family. (Claire, F, 12-14 years)

Some participants reflected on their experiences at two or more schools and shared their insights into the environments at those schools where there were insufficient support mechanisms and resources in place to help children going through difficult times:

So here at this school they're a lot more in your life, like, they try to be there to help you. If they ever see anything they'll come up and talk to you about it and that's pretty good. (Beau, M, 12-14 years)

So primary school had really no help there, like, no – there were I think – I don't think there were any counsellors at my primary school, which I thought – I said to Mum when I was about 10, like, I would really like a counsellor to talk to at school, like, just so I can tell him or her my problem and just to try and help them. (Tatiana, F, 12-14 years)

In one example of an inadequate response by the participant's school to her parents' separation, an interviewee raised the issue of insufficient communication between her school and both her parents after their separation, as the school liaised with one parent over another, leading to a sense of frustration on her part:

My primary school would always do like half – like a note to each parent. So, like, say I had a note for swimming carnival, they would always do a note to my mum and a note to my dad. But, and they would always have both parents' details. But my high school was just one parent. So, they don't, they don't do anything for two parents. And so my dad never gets information about school. It's only ever emails for my mum. And that's just because the school doesn't do it, and it frustrates me so much ... it's very frustrating, because they don't alter it, for which – for people who are in separated families. (Savannah, F, 15+ years)

In most cases, however, young participants reported appreciating teachers, principals and counsellors who offered support and were aware of the issues they were facing. Interviewee Caitlin (F, 15+ years) reported that her school environment was helpful in that it gave her something 'structured to focus on' and provided a constant during a time that was otherwise characterised by uncertainty and change. Along with friends and family, school environments were vital in enabling children and young people a space to accept the separation of their parents while still feeling like they were living 'normal' lives.

Mental health services

The data from interviews with children and young people provided insight into participants' experiences of counselling services as a source of support post separation. A majority of participants had some engagement with mental health professionals and services ($n = 38$) such as psychologists or psychiatrists and services such as Headspace and Kids Helpline. Out of the 38 participants, more than three-quarters described these services as helpful in some capacity ($n = 30$), and the more commonly identified bases for this assistance are described in this section.

As noted in Chapters 3 and 4, mental health professionals such as counsellors and psychologists were often fundamental in assisting children and young people to build the confidence needed to express their views to their parents, to process their emotional state and to accept their parents' separation by facilitating coping strategies. For example:

She [counsellor] helped me and my brother just get, like, more over it and more absorbed into, 'Now, you've got two families, you can't go back.' (Riley, M, 12-14 years)

They [counsellors] help me to communicate with Mum and Dad if – there's something that I'm embarrassed to communicate about or something like that. Ah, they help me, like, if something new happened, I can talk to them and they can give me a fresh idea on that ah, problem ... if I'm worried about something, they can, I guess, they communicate that and if I want they can keep it private, just like – well, just like you. I guess. Um, and they can just help me get through, ah, if I'm feeling extremely – extremely, um, sad or like it's a bit difficult. (Paul, M, 10-11 years)

I was, you know, getting into fights with my mum all hours of the night and shouting because ... I used to blame my parents separating as my own ... I was, like, so angry and so negative and frustrated all the time and I realise that that's not it ... she's [counsellor] given me all the strategies and provided me with some great ... strategies about how I can navigate my way through my relationship with my mum, but also my relationship with my dad. (Tatiana, F, 12-14 years)

In particular, one participant valued the experience of counselling where she was provided with practical, tailored suggestions. This can be contrasted with the experience of another participant who found the advice from counselling to be unhelpful on account of being 'generic' and repetitive:

That [counselling] was good, it helped 'cause like they give you tips on how to like go through things, like say something's happened and they'll tell you like how to deal with it and what to do if you've had a fight with something, and yeah. It's just tips and what to do and getting used to it. (Angela, F, 10-11 years)

Just, like, it - it's kinda, from what my experience, everything's kind of generic. Like, like people giving you advice and stuff, it's, like, you know, people just say it over and over again and it doesn't really mean anything and they use it for everyone else. (Scarlett, F, 15+ years)

As previously discussed, many participants frequently raised the importance of having someone to 'talk to' and express themselves. Mental health professionals and services were described as fundamental in providing an opportunity for some participants to express themselves and 'vent' in a safe space:

So when I first, when they broke up, I started to like go through a bit of like mental health issues with it. So, I went and saw Headspace. Which is a, like, a psychologist in like CITY and stuff that deals with teenagers and stuff like that. And like, I guess it was good but I don't know, I don't really feel like it did any - like it was good to like vent and like in a safe space and I talked to someone who didn't know me at all and ... like talk about things like that. (Rose, F, 15+ years)

Psychologist. (Interviewer: Yeah. In what way is he helping you?) Vent. Pretty much whenever I go and see him it's a vent session. (Nicholas, M, 15+ years)

The ability to direct the nature of the topics for discussion during their engagement with service providers emerged as important to a number of participating children and young people. As discussed in section 4.2, some children and young people focused on the support that they received from independent counselling as a means by which they could 'be heard', even in circumstances where they acknowledged that this did not impact on the post-separation outcome:

It kind of just helped to kind of talk these things through with just like an independent counsellor, was good ... It was like a long - it was a decent time (that I saw the counsellor), it wasn't short or anything, it was on like various occasions, I think it was over the course of maybe a year or a year and a half I think it was. I'd say once every month or two months ... yeah, I think my parents kind of organised for that to happen ... that was good. (Oscar, M, 15+ years)

The support received from an independent person who was prepared to listen and to hear what this young person had to say played an important role in his adjustment post-separation.

As noted earlier, some participants reflected on the benefit that they received from therapeutic services subsequent to the family law processes or to the resolution of post-separation arrangements. One participant described their long-standing engagement with professionals at various stages in their young life, describing each engagement (with counsellors at a younger age and with a psychologist when older) as beneficial (Amy, F, 15+ years). The extract below provides insight into the support that another participant had begun to receive from a psychologist subsequent to (rather than during) their parents' separation:

Oh, yeah, it is helping me. I've only seen them like twice. Because, like, it's hard to like get a spot and like talk to them, because it's - it's like a really popular one ... I didn't really like talking about it then (during parents' separation) ... I didn't, yeah. Kind of just kept it in. Uh, no. I never really thought about - like, I wasn't really like - I didn't really think I needed help. I think I was alright. Like, I wasn't like sad or anything really ... I felt like I, I could, I could handle it. (Max, M, 12-14 years)

As described in section 4.2, another participant described the therapeutic benefits of engaging in post-settlement family counselling:

We saw like a family counsellor a little while ago. It was for SISTER, my dad and my mum. Like just all of us. Just to sit down and talk about this sort of stuff and that helped, I think. That was before we went to [overseas location] and we had one after we, after we got back. And I think it really did help with all our relationships. My mother and my sister and I, we've been a lot better since then. Sort of seeing eye to eye with one another 'cause we had to do this thing about - like the counsellor was saying - psychiatrist/counsellor/therapist, I don't really know what she was. I think she was a therapist or counsellor but she, she was getting us to write down this thing of like all of our insecurities or whatever and like read that to the other person and my sister said like, 'Oh I didn't imagine you would be insecure about so much stuff.' And I - it sort of like opened my eyes up to the way my sister sees me and that, like my parents have always been telling me like my sister looks up to me ... Just because she wants to be like me and it's really, really cute and I think at that moment I sort of realised how much younger siblings can idolise their older siblings

and I think since then I've just sort of realised like well maybe I need to step it up a bit and not be a bad role model and be a better role model for my sister. (Claire, F, 12-14 years)

5.2 Effective professional practice

In this section of the report, the views and opinions of the young participants in the study will be addressed to consider how individual professionals may make improvements to the way they provide services and engage with children and young people. Regardless of the role of the professional and the scope of the services, patterns emerged in the data as to the conduct and behaviours that children and young people preferred in their interactions with family law system service professionals. Examples from the data are used to formulate the key characteristics of 'effective professional practice' from the perspectives of the participating children and young people as they apply to family law system service providers whether they are legal or non-legal professionals.

Overall, in addition to acting protectively, the data indicate that children and young people called for more effective listening to their perspectives by family law system professionals (64%), that steps be taken to build trust with the children and young people with whom they interact, as well as being more mindful of their needs (46%) and to communicate openly by providing more information relevant to the decision-making process in their cases (38%).

Space to speak and effective listening

A very prominent theme in the interview data was the general concern raised by participants around the conduct of relevant family law system service providers regarding a perceived inability on the part of some professionals to listen effectively and engage with the child and young person's opinions and perspectives. Providing a space for children and young people to speak their minds and for professionals to actively listen to their views and experiences emerged as a key theme in participants' accounts of what was of assistance to them in dealing with their parents' separation (e.g. Caitlin, F, 15+ years; Nicholas, M, 15+ years; Madeleine, F, 12-14 years; Alana, F, 12-14 years; Laurence, M, 15+ years):

If she [family consultant] let me say what I wanted to say and then you know wrote it down or just you know let me speak, instead of interrupting and saying what she thought should happen or not giving an opinion. Like not giving her views, just yeah. Write stuff that I - write my opinions and my reasons in the report, not just saying my dad's opinions and that I was wrong, just like actually sharing my reasons 'cause yeah, yeah. (Lily, F, 12-14 years)

I guess just, yeah, just like, like kind of listen to what we were saying but especially like focus on, more on like what we wanted and like what kind of who we wanted to stay with more, not necessarily what it was like staying at each other - like just to be like listened to more I think was the main basically one ... That we kind of like wanted to be just to be heard. (Oscar, M, 15+ years)

Listen to them and don't dismiss it and I think the people that we were dealing with were pretty good with that. (Robbie, M, 15+ years)

Um, to let kids have a say? Just because we're young, it doesn't mean that we - actually aren't - that just because we're young it doesn't mean that we're, um, telling a lie. We - we probably most likely would be telling the truth. (Tahlia, F, 12-14 years)

You need to let children speak up. (Andrew, M, 12-14 years)

The discussion in section 4.4 highlighted the importance of listening to children in families characterised by high risks or safety concerns, with children and young people articulating the crucial nature of this consultation:

Like, listen to them, like, listen to the children, not the parent because the parent isn't always right, and about, and also who the child's been with as well, because if they've been with the parent who is, like, that's, say have been smoking and drinking alcohol and all that sort of thing and who is really abusive towards them, they might be scared of that parent and that parent might have been, like, telling them about what to say and all that sort of thing as well. (Beau, M, 12-14 years)

Some participating children and young people reflected on what it was like to be listened to by service providers and the nonverbal or social cues that these participants observed when engaging with these professionals to identify that they had been heard. A 'genuine' and 'good listener' (Eliza, F, 12-14 years) emerged for the following young people as someone who focused on the discussion that they were having with the young person by taking

notes, not interrupting the young person and by actively participating in the conversation by considering and responding to the comments made (e.g. Lee, M, 15+ years; Beau, M, 12-14 years):

Definitely listened to us really well, took on what we were saying ... took things on board, considered it, made comment on what we were saying, anyone is a good listener if they do that. (Connor, M, 15+ years)

(What indicated to you that she was listening to you?) Well, she wouldn't speak over the top of me, of course. Um, she wouldn't fidget or look at her phone or anything, she would pay full attention to me and BROTHER when we were speaking and, yeah, that's what gave me the hint. (Paul, M, 10-11 years)

Um, he [family consultant] had about 10 pages of notes, yeah. Uh, which, yeah kind of meant that he was like truly like trying to get as much depth as he could out of me. That and a lot of the time, like because he was writing a lot but he was also not distant, I guess. Uh, if that makes any sense. It was just like, uh, uh, he interacted like, with me, I guess. Um, like he used a lot of like, physical analogies, I guess. He used, um, these like two - like the Russian nesting dolls. You know those? He just used like two of those and like an elastic band kind of just tried to describe what he thought I was saying to him and things like that. (Noah, M, 15+ years)

Well - well they'd have to be a really good listener and like I guess, I don't know, show like good traits of a listener and so you ... kind of like maybe repeat what you said and maybe ... go back to it and ... discover a bit more ... That would be reassuring. (Emma, F, 12-14 years)

Having an opportunity to review sections of their report relating to their expressed wishes may also be a means of reassuring children and young people that they have been accurately heard:

I would like to have maybe had a chance to read over or clarify anything afterwards, just to make sure that what they had in the report was an accurate representation of what I was feeling about the situation. 'Cause in such a big decision and all that that's happening, I would like it to be the most real answer and real, kind of, like, feeling from myself, that they can, like, judge from that. (Caitlin, F, 15+ years)

Certain participants also reflected on what they felt were examples of ineffective listening. For example, one participant described how he found it hard to communicate with a family consultant who he did not feel was 'engaging' in the conversation:

He was sort of hard to talk to because he was just, like, writing notes down the whole time and it sort of felt like he wasn't really listening. But I think it's just because he wasn't really making eye contact, he was just, you know, like, taking down notes. Yeah, I'm pretty sure he was listening but it was just hard to, like, talk to someone that wasn't, like, engaging. (Dominic, M, 12-14 years)

One participant described her experience of speaking with a family consultant where she felt that her views were being dismissed.

So, for example, if I was - if she asked me a question, who would you prefer to live with, your mum or your dad, and I would have said Mum, she would say, well, why would you not want to live with your dad? (Interviewer: Okay. So ... making you feel like you should be giving a particular answer or something?) Guilty, yeah. (Stephanie, F, 15+ years)

She described feeling anxious while expressing her views to this professional and went on to describe her experience with this professional as akin to an 'interrogation'. She went on to detail how she had expressed her concerns about her father and his abusive behaviour to the professional but she felt that her concerns were 'shut down' and brushed aside. A similar experience was described with a family consultant by another participant:

Well they listened but at the same time it was like it kind of felt like I was being not so much pressured or attacked but you know it was as I was saying things, they were like, 'Do you really think that, like is that what you fully believe?' Like that I was kind of sitting there like saying, they were like, 'Why do you not want to see your father?' and I was saying that and they were like, 'Is that a real reason though?' So I was kind - that was interesting. (Michael, M, 15+ years)

Of note, one participant (Ryder, M, 12-14 years), reflecting on his experiences of engaging with family law system professionals, observed that, 'Everyone seemed to not really like children - who worked with us ... And that felt pretty strange considering'. Ensuring that children and young people feel at ease with professionals who are genuinely attentive to and focused on achieving outcomes that meet their best interests emerged as a key feature of effective professional practice.

Case study 2: Hamish and Colleen

Listening to children and young people with disabilities

Hamish, (M, 15+ years) recounted his sister's experience in the court process. Hamish's sister Colleen had a physical and intellectual disability and he described how he felt that, during the court process, his sister's views were 'dismissed' and given less weight because of her disability:

Like, they just thought, um, she's got a disability so how is she able to make like an educated decision of what she does and doesn't want. But at the end of the day if you've got a disabled girl saying I don't want to go to my mum's house 'cause I don't like it there, I want to go to my dad's house 'cause I do like it there, clearly there's some sort of underlying thing going on regardless of any of the other stuff that's happening.

Hamish described how the court orders provided for Colleen to spend a longer period of time with his mother whereas it provided him with the opportunity to choose how much time he spent with each parent. He felt that it was because he was able to 'articulate' himself and 'explain things' better, while Colleen may have struggled with articulating her views or having those views understood. Hamish suggested that the court professionals may have been able to reach a more well-informed decision on what was in the best interests of children and young people in his situation by having a more 'personal' involvement in the case:

Like, just say hypothetically if someone – some other family was in the same situation who's asked – where they had a disabled kid or sibling that was not able to express that, that they sort of employ someone to go and be a carer or spend time at both houses, um, to see what it's like so that they can then apply that opinion. Um, I feel like that'd be a lot more helpful with the people with disabilities, um, because then they're not biased, they can see which house is better for the kid and how each house operates.

Act protectively and address concerns

As illustrated in Chapter 4, two-way communication between professionals and children and young people emerged as central to meeting their needs, together with advocacy that reflected their views and experiences in the decision-making process and addressed their concerns, rather than paying lip service to them. The discussion in Chapter 4 provided examples of experiences where participants described a sense of disappointment when they felt that professionals did not follow through on their arrangements with the child or act protectively, with illustrations of the distress and harm arising from perceived inaction on the part of professionals and service providers following engagement with children and young people. For example:

I would have thought they [school] would have cared a lot more because ...they're supposed to – I believe they're, like, supposed to, um – you know, if they feel like something's wrong or – they're meant to report it. (Interviewer: And they ... knew stuff was going on?) Yeah, but they didn't really say anything, like. (Ashley, F, 12-14 years)

DOCS [Child protection services] and police didn't help: my mum reported my dad to DOCS like fourteen times and nothing happened ... every time I'd go there I'd say what he did ... police: They said they would give my dad an AVO [apprehended violence order], which I don't remember what it is ... Yep, um, they said that – they said that he would face charges possibly ... And I basically poured my heart out and said everything, what he did. And I thought that'd at least give him one charge, but clearly not. And I just felt let down because I sprayed my guts out to that – to the – that guy and he kinda screwed me over. He didn't help me at all. I felt like he believed me but I don't think he – yeah, like, yeah, I don't know, he get – he told me to come back in and they did a recording and they got a police doctor to say questions about what he did. (Daniel, M, 12-14 years)

A traumatic experience was recounted by another participant (Zoe, F, 12-14 years) when she was approximately five years of age, describing her placement in a room with a one-way mirror – a 'room behind the glass' – for the purpose of the court professionals viewing her interactions with both of her parents. The young person stated that the professional told her:

'Look, if you wanna not do it with whichever parent you don't want any more,' they said to me, 'We'll do an action, okay, what do you want to do?' I said, 'Okay, I'll tug on my ear, like, really hard like it's itchy,' and they said, 'Okay, cool.'

Subsequently, her father was brought into the room and she proceeded to tug her ear while looking at the window:

'Cause I knew they were there and I was like – and they weren't listening to me. And they just like didn't do anything, no one decided to come and get me.

The young person indicated that she decided that she had to take action herself to get herself out of this situation:

So, I decided, you know what, I don't wanna do this anymore so I'm gonna leave. And I got up, went to the door, opened the door and closed it and I was looking around for my mum and then they came out like, 'No, no, no, you're going back.' I'm like, 'I don't want to anymore.'

This incident left her with feelings of sadness; she explained how she felt she had been 'lied' to and how this experience made her reluctant to trust other adults and professionals:

I ended up, like, you know, like with red ears and, you know, like all this stuff and, like, I've been doing it, like, really, really hard, like, 'Come on,' like, 'Are they noticing?' And they just don't listen and they don't do it and then they just – that's sort of how all the trust has been, like, thrown out the window, you know? Like, I do that and then they just – you know. And I do it multiple times, I'm like, 'Okay they might not be looking, all right, just keep doing it', and nothing happens, you know? (Zoe, F, 12–14 years)

This participant's experience exemplifies the importance of professionals responding appropriately to the child or young person's views and concerns both in the context of their direct engagement with the young person as well as in their recommendations when making post-separation arrangements (the latter discussed in detail in Chapter 4 and below).

Develop a relationship of trust

Consistent with observations in previous research (e.g. Bala, Birnbaum, & Cyr, 2015; Office for Children and Young People Commissioner, 2013; Taylor et al., 2000), numerous participating children and young people reported feeling that it was important for professionals to be patient, empathetic and to take the time and effort to build a relationship of trust with them and other children and young people in these situations.

Specialist training and expertise in working with children and young people to ascertain their views was raised by the following participant, along with the importance of service providers being 'supportive' and 'caring' by demonstrating an awareness of the expressed concerns and responding appropriately. Measures that 'scaffold' or support children and young people's participation in decision making (Horsfall, 2013) and steps such as repeating statements back to the child to ensure that they have been accurately understood are all means by which children and young people may participate in a manner that builds trust and reassurance (see further Bell, 2017; Kaspiew et al., 2014):

Maybe she [ICL] – like, first of all being more supportive ... And like, as I said, through a lot of times ... Like, listen to the kids ... Um, and we could've had like – like more supportive people that came and talk to us ... Because there was a time when you were really young and you didn't really realise what was going on. It was really hard to talk to people like that ... It was really hard. Especially when they were so serious and they just wanted to get it done and we had – I didn't understand it. I couldn't like ... They didn't really listen to us ... you could put people in that are like, like, they're trained in children and they know what they're doing and they know how children work. They know, like, how they feel and ... they know like, how – what they're going through. They know how not to hurt their feelings ... We could have more caring people that ... are put into the roles of like ... the lawyers and stuff. (Ellie, F, 10–11 years)

Being empathetic and 'down to earth' was identified as essential character traits for professionals working with children and young people. A focus on empathetic and respectful interactions enabled the young people to feel supported and safe, and that their feelings and views were valid and valued:

Just listen and go through with things you say you're going to do. So, if you say you're going to help them, help them. If you say, okay, if you want me to stop, we'll stop. Stop. Just show them and you've really got to build that trust but you've got to understand them. Like put yourself in their shoes and think, okay, how would a this many year old think about it. How would a this many year old think about it? And just think about what they're saying to you and remember what they say to you. Because when you say to them, I remember when you told me this, it actually really lights up their day and says, oh my gosh, they remembered. (Zoe, F, 12–14 years)

Probably, they just need to be more down to earth. They just need to be able to like understand the situation, and – like they understand it, but I feel like they need to, yeah. I know they're like professionals and they're really, like – I don't know, when I think of the court, I think like uptight, but like I just think they need to be really down to earth. And I think, you know, they have to be that, because they're representing the court, and they're representing law, but when you have those people who speak to kids and speak to parents, they need to just be – you know, need to put themselves in their shoes a bit more. I just think, yeah, I just think they need to be more human beings. (Savannah, F, 15+ years)

Interviewee Caitlin (F, 15+ years) reported how family law system professionals could learn that simply asking the child or young person how they were feeling and acknowledging these feelings could be a source of great comfort and support for a young person experiencing parental separation:

Um, I would say definitely take the time to acknowledge how the kids are feeling, like, the children are feeling through these kind of situations, and try and make it so it's a bit more – like, a bit nicer for them to go through. It's – if they're not sure on why things are happening, maybe try and explain why it has to be like that, or if there's a reason why a certain decision's been made and just – and if they feel like it's not exactly right, then maybe ask them how they would like it to be done and all that kind of stuff. (Caitlin, F, 15+ years)

Negative aspects of engagement with professionals were described and involved professionals being pushy, not supportive enough or insensitive to the child or young person's needs.

I remember at one point I started crying and he [family consultant] didn't seem to really care. So he just seemed pretty like – he seemed to ignore how I felt and just ask questions. (Ryder, M, 12-14 years)

Yeah, let them talk, don't like ask them ... be nice, don't like try and push them and stuff ... if they don't want to talk to you just leave them alone for day or just help them out, try to the best to help, don't be like rude and stuff and give up easily. (Isaac, M, 12-14 years)

Just to remember that they're kids, they're already scared enough as it is telling people what's happened to them and opening up and not to interrogate them. (Stephanie, F, 15+ years)

Further, a perceived lack of objectivity was flagged as being problematic:

Don't take – unless you're the actual lawyers who are fighting for each other, don't take sides until you've heard the whole story and until you want to make your decision because some people can be deceiving. (Lily, F, 12-14 years)

In fact, a number of participants perceived their family report writers (or in one instance, the child protection service staff member) to be prejudging their case and attempting to 'change my mind':

Personally, I think that he was just trying to, like, make me hate my mum because he was like saying lots of things about my mum and about my father ... Because all the counsellor things was trying to change my mind on other things. Like about FATHER. Trying to make me change my mind about him. When they should be listening to me and giving me, um, like, good answers that they – that I'm trying to – like, my questions are and I want them to give them my – an answer from my question not an answer from their question ... They were like telling me what to think and what to do ... And like, who I should be with and what I should think about FATHER ... Like, you should love him and you should call him daddy, and you should see him whenever you – whenever he wants to see you. (Tahlia, F, 12-14 years)

So without actually saying it, she would put my dad before my mum, like. So for example, if I was – if she asked me a question, who would you prefer to live with, your mum or your dad, and I would have said Mum, she would say, well, why would you not want to live with your dad ... I think that she was sort of just brushing that under the table, she didn't really want to hear that, she just wanted to hear what was good about him, and there probably wasn't much said. (Stephanie, F, 15+ years)

Creating a space where children and young people feel comfortable and safe to speak honestly and openly was also identified as important to gaining accurate information. For some this related to the relevant professionals not allowing parents to be in the room when meeting with their children to ascertain their views (Savannah, F, 15+ years), providing parent-free time before undertaking an interview for these purposes and informing the child or young person of the purpose of the meeting (Andrew, M, 12-14 years).

Several participants also expressed a strong desire to be treated as an 'equal', which involved having their views and autonomy respected and not being 'patronised' or disregarded:

Like, I'm not saying that they are but sometimes some therapists say things like ... They treat you as if you are like a four year old or something and if you are – as if you are completely – like you have no idea about anything. And it was just sort of that sort of tone and I know that's not the way that counsellors mean it but to me it sometimes comes off that way. (Claire, F, 12-14 years)

Just kind of treat them as if you would any other adult, because when a kid goes through a divorce a lot of the time the adults become very immature so the children grow up a lot quicker and so I find that they just, I don't know if it's just me, but I find that with me I preferred to be spoken to, like, as an equal rather than someone speaking to me as if I were, you know, just someone who didn't have any idea what was going on and didn't have any idea of the situation. (Phoebe, F, 15+ years)

Previous research has identified the disappointment children and young people have expressed about one-off or cursory meetings with a professional and with the lack of opportunity to explain or modify their views over time (e.g. Smith, Taylor, & Tapp, 2003). Several participants identified where they felt interactions with professionals were too brief and suggested it often took more than one meeting to develop rapport and to build a relationship of trust, which as foreshadowed above, in turn, facilitated greater participation on the part of the child or young person (see e.g. Dominic, M, 12-14 years):

Give children a bigger voice more of the time. And like, like, if it's like a psychologist or something talk to them more. Like, I've heard them talk – not just like one day send someone, 'Okay that's fine.' It, give them more of a voice and let them have more of a chance to be heard than just like – just a set amount of time on one day. (Alana, F, 12-14 years)

Another issue that emerged was the feeling several participants had that professionals gave more credence and weight to the views of their parents or other adults than them in a situation where the child's views were critical to informing a decision made in the best interests of the child:

Just because we're young it doesn't mean that we ... actually aren't ... that just because we're young it doesn't mean that we're, um, telling a lie. We – we probably most likely would be telling the truth. (Tahlia, F, 12-14 years)

Mmm, treat their ideas equal to their parents'. (Jeremy, M, 12-14 years)

Believe what the kid says, not the parents. The parents just want custody. (Hayley, F, 12-14 years)

I really don't know how it works and stuff like that but if they just make, made more of an effort to actually like, approach the children involved and really like found out how they feel about. Then that would've been helpful because like, yeah, the whole time I didn't, like hear from any of my parents. (Rose, F, 15+ years)

I'd probably tell them just to listen to what me and my brother had to say, because if they just – instead of, kind of, like, thinking about or, like, taking guesses about me and my brother would be feeling, they had it right there in front of them and stuff, it would've been really easy to see, from looking at it. (Caitlin, F, 15+ years)

Well for ... just listen to us ... Because no ... as I said, the kids know what they want ... Kids know if they don't feel comfortable in different houses ... They know ... And it was really hard because you didn't want to like hurt any ... I didn't really want to hurt anyone ... But I didn't really want to tell anyone anything. And so, just listen, they know what they want. They ... kids, they know ... They have feelings just as much as adults and probably stronger feelings. (Ellie, F, 10-11 years)

When reflecting on the court process, some young participants described how the court process needed to better focus on the children and young people as they are the ones experiencing the impact of the court's decisions:

[The court] could have just organised something better for children, for me. Could have – I think a lot more needs to be done for kids during it, because it's parents wanting custody, but it's not looking at kids ... and what they want and what they really want, and what's going on. Because, you know, they're the ones who suffer from it, and they're the ones that impacts, and if – if – if I was more aware of it, I would have made a better decision for myself. (Savannah, F, 15+ years)

Let the – child have a say, don't just do what suits the parents, the child, it's the child that's getting the most strain out of it. (Chris, M, 12-14 years)

Provide information

A key finding from the AIFS ICL Study (Kaspiew et al., 2014) related to the provision of greater information to children and young people about the role and activities of the professionals in their matter, and regarding the steps that will be followed in their case, as well as the extent to which they would be engaging with the professionals and in the decision-making process in their case. As noted in section 4.3, consistent with the AIFS ICL Study (Kaspiew et al., 2014), some participants expressed confusion as to the processes associated with the family law system and a lack of clarity regarding the purpose for which their views were sought and regarding the influence that they might have had on the decision-making process. In particular, concerns were raised about situations where certain participants felt they were kept 'in the dark' or given insufficient and incomplete information by professionals and raised the importance of being kept informed prior to and during their interactions with professionals.

Some participants reflected on their need to be made aware and kept informed throughout the separation and/or court process. For example:

Um, I feel like they [ICL] could have explained it a bit better. Like, when you have solicitor, if you don't understand something during court or whatever, um, they will explain it to you and give you more of a situational awareness of what's going on, but I feel like, ah, that they just kind of made the assumption that, oh, well these guys are kids, they don't really understand what's going on. And I had had things explained to me I am sure it would've, you know, changed my opinion or how I explained my side of the story vastly. Not in the way that I would've changed it to fit what was going on, you know, so that I could get my result, but just in a way that like, I could actually explain things the way that I knew. And you know, get rid of bits that didn't make sense. Um, might've made my opinion more valid for the independent children's lawyer when he took notes and then he - like, represented me in the court. (Hamish, M, 15+ years)

Probably, like, don't leave them - like, don't leave the kids in the dark about what's going on. Like, sure, they can't know everything ... 'cause it can be a little too hard when you're younger to wrap your head around it. But just, like, gauge where they're at and what they're level of understanding is and how much they need to know to understand stuff. (Scarlett, F, 15+ years)

Um no, I got very little information about what was going on and I would have preferred to know a bit more of what was going on. (Ryder, M, 12-14 years)

I think just like approaching them and asking them directly. Like, I said, I didn't see anyone through that whole process it was just like all the whole communication, like through my parents. But if someone had actually like, I don't know, if I had a meeting with one of them and they just kind of talked me through what I could do and what they were doing. That would've been quite useful. (Rose, F, 15+ years)

Maybe if, like I actually did speak with a lawyer and for him to kind of give me a run-down of what was going on. Because I only knew what was going through like my mum and dad like ... and in saying that it was sort of like the - Dad was saying Mum was bad and Mum was saying that Dad was bad. And like I didn't really know, have a good idea of what was the right thing to be done. So like if I'd actually met with someone they could've explained things and told me my position in it and stuff like that. 'Cause I only really knew from what my parents were telling me ... So, yeah like being able to talk to someone, like a lawyer or a professional in the family law services ... about, is just to explain how the, you know, separation works between people? Or is it like, you know, what say can you have potentially in this or? Yeah, I think for him to like clarify a few things about it all - it would've helped. (Rose, F, 15+ years)

Having an independent person to fulfil this role emerged as important for these participants:

Mum would tell me way too much and I wouldn't want to hear any more. Or my dad would keep it away from me as much as he could. (Noah, M, 15+ years)

I guess. I mean it's not that I don't trust Mum. I probably would trust her more than Dad but - it would have been good to get that clarity. (Amelia, F, 15+ years)

The importance of professionals prefacing their interactions with an introductory discussion about their role and the nature of their engagement with the child or young person was also a measure identified in the interview data:

Um, probably like before I actually like went in she started asking questions, like, she could have just like told me a bit about like what was going on, you know, like we're here because blah, blah, blah. But, like, she kind of just started asking questions. (Eliza, F, 12-14 years)

As described in Chapter 3, the difficulties children and young people faced when they were provided with incomplete information and left to fill in the gaps, fuelled a sense of confusion, uncertainty and stress. In particular, these feelings were heightened when participants interacted with family law professionals and other services in relation to their parents' separation. Having a professional who shared information and kept children and young people informed appeared to be an important aspect of children and young people building a strong and trusting relationship with professionals in the family law system.

5.3 Summary

This chapter has explored the services and support mechanisms that the participating children and young people identified as being useful for them throughout the period of their parents' separation and the resolution of parenting arrangements. In particular, young participants identified family, friends and other significant people in their lives as important sources of support during and after the period of parental separation. The potential of school staff and community to provide support and assistance during these often challenging and stressful times was a key theme emerging in the data; however, some participants also described a lack of awareness by school staff and school communities of the issues affecting children and young people experiencing parental separation and the, sometimes, limited resources available to support children in this context.

Formal services such as counselling and peer support programs were largely described as helpful, particularly when they involved engaging with people in similar circumstances or with a trusted and independent professional who could provide them with coping strategies. The data from this study suggest that a wide variety of supports and services are vital in supporting children and young people to cope with changes during the time of their parents' separation, process their thoughts in relation to parenting arrangements, and develop confidence in their ability to communicate their views.

Further, this chapter reflected on the characteristics of effective professional practice from the perspectives of participants. In particular, the children and young people participating in this study identified the following as key components of effective engagement by service professionals:

- effective listening and providing them with a space to speak
- acting protectively and addressing and responding to their concerns
- building a relationship of trust (which includes qualities such as patience, empathy and respect)
- providing information and keeping children and young people informed about issues affecting them.

6 Summary and conclusions

This report sets out the findings of the Children and Young People in Separated Families: Family Law System Experiences and Needs project. This qualitative study was commissioned and funded by the Australian Government Attorney-General's Department (AGD) with the aim to investigate the experiences and needs of children and young people whose parents had separated and had accessed family law system services. The focus of the investigation was on children and young people's experiences of these services and how the family law system may better meet their needs.

In responding to this research aim, the research questions explored were:

- In making parenting arrangements after separation, what are the important issues from the perspective of children and young people?
- What do children and young people find of assistance in dealing with parental separation; for example, services, peer support, family support?
- What is the nature of the experience of children and young people whose families have used various family law system services in relation to:
 - how the experiences of children and young people are acknowledged in the services and the extent to which children and young people are themselves the direct beneficiaries of services
 - whether engagement with these pathways supported their participation in decisions about parenting arrangements
 - what their experience of participation or non-participation was in this context
 - what the differences and similarities were in the experiences of children and young people using these different pathways
 - what the characteristics are of effective professional practice from the perspective of children and young people.

The discussion in Chapter 1 outlined legislative provisions, case law and Australian and international research literature relevant to decision-making about post-separation parenting arrangements, with a particular focus on those mechanisms facilitating children and young people's participation in this decision-making process. Specific consideration was given to the participatory options of independent children's lawyers (ICLs), family reports/memoranda and judicial interviews, together with the available options for participation in out-of-court decision making.

This discussion provided a backdrop for the analysis of data from the empirical component of this study, which comprised in-depth, semi-structured interviews carried out between May 2017 and April 2018, with 61 children and young people aged between 10 years and 17 years. These interviews included a 'survey-style component' followed by a series of open-ended questions. Interviews with 47 parents of these children were undertaken by telephone to enable the collection of demographic information by way of background to the data provided by children and young people. These data enabled the research team to understand the services used by these families and the pathways accessed to resolve their family law matters. The analysis in this report focuses on the data derived from the interviews with children and young people and provides important insight into the expectations and experiences of children and young people when engaging with family law system services in the context of their parents' separation. In doing so it explores how listening to the views and experiences of children and young people is critical to the improvement of family law system services.

6.1 Summary of family characteristics and access to family law system services

Among the participating sample of 61 children and young people, the vast majority were in either ‘shared-care’ arrangements (26%) or spent most or all nights with their mother (64%) (Table 2.16). The majority of children and young people in the study stated that the time that they spent with each of their parents was ‘about right’ (Table 2.13) and that they felt close to their parents, although closeness was notably higher regarding mothers than fathers (95% cf. 57%, respectively) (Table 2.10). Beyond the obvious proximity and convenience, parents’ effort to spend meaningful time with their children and to make themselves available were the most common reasons for higher ratings of ease of seeing each parent (Tables 2.11–2.12). Also of note, a majority of children and young people indicated that their parent/s consulted them when making decisions that directly affected them (Table 2.14).

Data relating to engagement with family law system services indicated that nearly two-thirds (61%) of participating children and young people recalled that their parents had contact with a lawyer, and nearly half (48%) recalled the involvement of the courts. Just over one-third (34%) of children and young people mentioned that a family consultant or report writer was involved and nearly one-quarter (23%) nominated an ICL. Just over one in four participating children and young people recalled that their parents accessed counselling (28%) and one in five recalled that they attended mediation (20%). Children and young people also indicated that their parent/s organised counselling for them or other family members (as opposed to relationship counselling) (18%), and two participants mentioned a children’s contact service and one participant mentioned that police were involved with their family (Table 2.24).

Apart from child psychologists/counsellors, the most common professionals that children and young people had direct contact with were family report writers (95% of those who recalled; $n = 20$), ICLs (79% of those who recalled; $n = 11$) and counsellors (65% of those who recalled; $n = 11$). Only 10% of participants ($n = 3$) who recalled their parents using the courts said that they met with court personnel. Similarly, only 14% of children and young people who mentioned that their parents contacted a lawyer reported that they had met the lawyer ($n = 5$) (Table 2.24).

When compared with parents’ reports of services accessed, where the parents had reported engaging with the courts (83%) just over half of their children and young people recalled this happening (57%) and just over half of the children and young people whose parents accessed a family consultant or report writer recalled this occurring (57%). Of the 36% of parents ($n = 17$) who reported that an ICL had been appointed in their case, less than half of their children recalled this occurring (46%), and of 94% of parents reported accessing Counselling/FDR/Mediation, only 44% of their children recalled their family accessing this service (Table 2.25).

In relation to main pathways accessed to finalise their post-separation parenting arrangements, more than half of participating parents (62%) nominated courts and lawyers, while counselling/FDR/mediation options were nominated by 21% of families. Less than half of parents reported that their main pathway ‘worked for their children’ or adequately considered their children’s needs (Tables 2.26–2.27). Agreement with these two statements among parents in this sample was notably lower compared with previous research among parents (see Kaspiew, Carson, Dunstan, De Maio et al., 2015), although the recruitment approach and sample varies significantly in this study. Of particular note, 50% of participating parents reported that they had safety concerns for themselves and/or their children in relation to ongoing contact with the other parent, with emotional abuse, anger and mental health issues being the most common reasons cited behind the concerns (Table 2.15).

6.2 Summary of findings relating to the experiences and needs of children and young people

The data from the interviews with children and young people participating in this study provided rich insights into the experiences and needs of children and young people whose parents had separated and had accessed the family law system.

In addressing the research questions, the following research findings were made and each will be considered in turn.

Research question A – What are the important issues from the perspective of children and young people when making parenting arrangements after separation?

Listening to and supporting children through parental separation

Consistent with the substantive body of Australian and international family law research establishing the importance of facilitating participation by children and young people in decision making affecting them, more than three-quarters of young participants wanted their parents to listen to their perspectives and communicate with them regarding the separation and when making parenting arrangements.

In stark contrast with this expressed need for participation, the majority of young participants said that they had limited say in the decision-making process about parenting arrangements in their case. In fact, most young participants indicated that their views had no impact or limited impact on the decision-making process (56%) and more than half (55%) stated that one or both of their parents did not listen to them, with a further third of young participants unable or preferring not to answer this question. Of those young participants who stated that both of their parents listened to their views during the separation process (21%), all except one reported being either quite close or very close to their parents.

When examining what it meant from the perspective of children and young people to be listened to, the data suggest that listening meant taking the time to hear and understand their point of view, informing them about what was going on in the separation process, and ensuring that open communication was ongoing throughout the process. It also meant allowing them time and space to contribute to the decision making about their parenting arrangements and to process their experiences and emotions during this participation. Participating children and young people indicated that they did not want to 'know everything that was going on', particularly regarding their parents potentially strong feelings of hatred, anger or frustration with each other, but they did not want to be left in the dark to fill in the gaps themselves.

When children and young people were asked when they felt ready to express their views, the age that some participants nominated contrasted with the age at which they felt that they had been listened to when their own post-separation parenting arrangements were being made. While some specified an age range, others suggested that the process of developing their views on the parenting arrangements came with time and, in some instances, support from counselling professionals.

Pre- and post-separation events shape participation of children and young people in decision-making about parenting arrangements

Children and young people participating in this study identified that the reasons for their parents' separation, how they found out about it and how their parents communicated with them around this time were important issues influencing their response to the decision-making process, as well as their views of the parenting arrangements made.

These experiences varied greatly amongst the participants and they influenced the separation process and the post-separation experiences of children and young people and the parenting arrangements made. The potential confusion and emotional turmoil arising from their parents' separation was noted as an important issue in the context of decision making, with young participants expressing a need to talk to someone other than their parents to 'vent', to process their emotions and to develop coping strategies in these circumstances.

Of particular note, familial relationships characterised by family violence or other child safety concerns were identified by participating children and young people as relevant issues in the decision-making process in just over half of the cases involving limited or no time with one parent. Parents and service providers were identified as facing challenges in supporting and 'thickening' (Tisdall, 2016) the agency and participatory rights of children and young people in circumstances characterised by family violence and/or abuse so as to avoid re-trauma from continuing exposure to parental conflict or violent or abusive behaviour.

Nevertheless, enabling appropriate means by which children and young people may safely and effectively participate in decision making about their parenting arrangements did emerge in the interview data as particularly important given that these circumstances and experiences were not always barriers to the child or young person being placed in the care of the parent about which there were safety concerns (either sole or shared) for a period of time. As observed in Chapter 3, facilitating participation is not only central to meeting our obligations pursuant to the UNCRC but important both from an evidentiary perspective and consistent with the expressed views of children and young people in these cases.

Communication and relationship development

Parent-child communication emerged as important to children and young people in helping them to accept their new living circumstances, build new post-separation relationships with their parents and better understand what the separation process and the making of parenting arrangements involved. Despite this importance, several children and young people described experiencing aspects of their parents' communication that distressed them. These behaviours included parents pressuring them to take sides and denigrating the other parent to them or in their presence.

Positive reflections on family communication emphasised examples of parents behaving amicably, not denigrating each other, and building or rebuilding open and supportive relationships with their children. The data indicate that strong post-separation relationships were experienced in circumstances where children and young people were able to spend quality time with their parents, which maintained or strengthened their relationship and eased them through the separation process. Importantly, where challenging issues were present, working through these issues emerged as vital if a relationship was to continue.

Flexibility to change, ongoing communication and a meaningful say

More than one-third (38%) of children and young people described wanting ongoing communication with parents and others to understand more about what was going on in the post-separation context. Additionally, consistent with earlier Australian and international research (e.g. Cashmore et al., 2010; Campo et al., 2012; Fortin et al., 2012; Lodge & Alexander, 2010; Sheehan & Carson, 2006; Trinder, 2009), an important issue emerging for children and young people was the ability to have some flexibility and to have a say in changing their parenting arrangements over time. A broad range of reasons were identified as necessitating change including a poor relationship with the relevant parent (or a stronger relationship with the other parent), a lack of quality parenting time, difficulties associated with maintaining social and other commitments while moving between two houses, additional duties in one parent's household, unsuitable living conditions and frustration with parenting styles.

Whether the changes were temporary or longer term in nature, children and young people expressed an ongoing need to be listened to by their parents when it came to the workability of their parenting arrangements, as well as a need for continued open communication to better understand their post-separation situation. Nevertheless, in many cases, the participating children and young people reported feeling that their opinion was not heard where their living arrangements were unsafe or unworkable, and their level of frustration at this was indicated in the responses. Significantly, in some instances, participating children and young people described developing alternative ways of making themselves heard by their parents and other adults. While some used the means of writing letters to their parents, others took more drastic measures that involved them running away from home or destroying parents' property.

The repercussions for children and young people's inability to secure changes in circumstances characterised by violence and abuse emerged in the data, with young participants describing their distress or disappointment at not being believed in relation to their disclosures of violence or abuse when decisions were made about their parenting arrangements. Almost one-sixth of participants reported feeling anxious at the prospect of going to one of their parents' homes pursuant to their existing shared-care arrangement, with nearly one-third indicating that they had not 'felt safe' at one of their parent's households. The data also indicate that nearly two-thirds (62%) of participating children and young people reported using a mental health service in relation to their parents' separation, with some participants suggesting that their communication with parents and their ongoing parenting arrangements were catalysts for this engagement.

Research question B – What is the nature of the experience of children and young people whose families have used various family law system services?

Children and young people's responses varied in the degree to which services engaged with, listened to and acknowledged their views and experiences

A key theme emerging from the analysis of data regarding experiences of family law system services was the significance to children and young people of having 'someone' to listen to and then communicate their views so that their views could inform decision making in their case.

Some children and young people described their direct engagement with service providers, including counsellors, family consultants/family report writers and ICLs in positive terms, with the acknowledgement of their views and experiences in some instances facilitating their input into the decision-making process. While counsellors were more commonly nominated as services acknowledging their views, in some instances this acknowledgement occurred in parallel with, or subsequent to, the making of parenting arrangements, rather than directly informing the decision-making process about these arrangements.

The quantitative data (Table 2.24) together with the qualitative descriptions of service experience from participants suggest that there were mixed experiences in relation to the extent to which children and young people identified service providers as acknowledging their views and experiences. Some participants were unclear on the extent to which their views and experiences had been acknowledged. Most participating children and young people who could recall accessing an ICL ($n = 14$) reported meeting their ICL and almost half of these participants reported that their ICL acknowledged their views. In relation to family consultants/family report writers, of those children and young people who could recall engaging with these professionals, half indicated that their views were not acknowledged ($n = 10$), although some reported that they were acknowledged or somewhat acknowledged ($n = 9$). Although only a small proportion of participants whose families accessed FDR could recall doing so ($n = 12$), and only three reported that they had met the FDR practitioner or mediator, each of these participants reported that their views had been acknowledged by these professionals.

Even where direct engagement occurred, some participants found the nature of the professional enquiry and interaction for the purposes of family law matters to insufficiently acknowledge their experiences and needs in the context of their parents' separation. More specifically, some participating children and young people reported that their views regarding parenting arrangements were not sufficiently acknowledged or valued on the basis of their young age.

Some children and young people identified as being direct beneficiaries of family law system services but positive experiences were more likely to be described in relation to non-family law related services

When reflecting on their outcomes, some children and young people identified as being beneficiaries of the family law system services. A small number of children and young people participating in this study demonstrated an awareness of the role of the court in determining their parenting arrangements and reflected on this process as being ultimately beneficial to them. In relation to services such as ICLs or family consultants/family report writers, even where their recommendations differed in some respects from their expressed views, some young participants were nevertheless able to identify benefit in engaging with professionals who were perceived to be genuine in their intentions and approach, and focused on making arrangements that were in their best interests.

Nevertheless, most children and young people who reported engaging with these family law system professionals reported feeling negatively towards the court process ($n = 11$), the family consultant/family report writer ($n = 11$) and the ICL ($n = 7$), and were more likely to report being direct beneficiaries of post-separation counselling. The benefit of having an independent means by which they could be heard and an avenue to vent and receive therapeutic support was identified as playing an important role in their post-separation adjustment.

The ability to engage with services providers on an as-needs ongoing basis was also identified as beneficial. In particular, services providing a whole-of-family therapeutic approach were nominated as beneficial by some

children and young people as they enabled the repair and strengthening of their familial relationships in the post-separation context. Benefits were also associated with services received from peer support programs or Children's Contact Services, with the latter identified as providing reassurance that 'nothing bad was going to happen' at changeover.

Mixed views and experiences of participation in family law system services

Young participants' responses suggested that children and young people had mixed views and experiences of their interactions with family law system professionals in relation to the extent to which these interactions facilitated participation in the decision-making process. While some positive experiences of participation emerged in the data, the responses of a substantial proportion of children and young people with experiences of the family law system suggest that the approaches adopted by the service professionals with whom they interacted, operated in a way that limited their practical impact or effectively marginalised their involvement in decision making about parenting arrangements. In particular, children and young people were more likely to describe feeling excluded from parenting arrangements made pursuant to family law proceedings if they did not have the opportunity to speak with or meet with the legal professionals or court personnel in their cases.

More specifically, when reflecting on their family's engagement with the legal system, the comments of children and young people suggest that they experienced some level of indifference on the part of courts and legal services. Some of these young participants described the legal process as focusing more on what their parents wanted, particularly where they had limited or no interaction with these service providers. Some also expressed strong dissatisfaction with their level of input in decision making via the ICL, with this more commonly associated with their ICLs lack of engagement or the manner in which they engaged. The comments of some children and young people reflected the dissatisfaction that they felt when the recommendations made by the ICL were contrary to their views regarding the parenting arrangements, particularly where their engagement had been cursory or non-existent. The length and complexity of legal proceedings was also identified as giving rise to detrimental effects from the perspective of children and young people.

While young participants were more likely to recall greater engagement with the social science professionals, some children and young people nevertheless described being marginalised by counsellors and family consultants/family report writers. The children and young people who reported accessing family consultants/family report writers also described varying levels of satisfaction with the consultants conducting their family reports, particularly in relation to whether they perceived this engagement to be helpful in facilitating their active contribution to the decision-making process. More specifically, there were concerns in relation to the conduct of the consultations informing the family report. Areas giving rise to particular concern included the short duration of the consultations, the order in which the consultations occurred and the settings in which they took place. The artificiality and discomfort associated with the conduct of the interviews and the limited nature of interactions upon which the recommendations were based emerged as key issues of concern associated with participation. The relative dearth of research on the practices of family consultants and family report writers, and of the nature and quality of family reports, does, however, highlight the need for further research in this area specific to the Australian context.

The data suggest that the experiences of many children and young people engaging with family law system services had led to disappointment when they identified a failure on the part of these professionals to genuinely listen to and value their views and experiences. They were also either unsure of the effect or perceived there to be limited effect arising from their engagement with the relevant professional. Some participating children and young people recounted particularly distressing experiences where, for example, they experienced breaches of their trust when, having recounted experiences of family violence, they were reunited with the perpetrator during the family report sessions or when they faced repercussions from a parent on the release of the family report. The uncertainty about the nature of their engagement in the family law process compounded the stress and distress that some children and young people experienced when interacting with family law professionals more generally. Of particular significance was the distress and harm that children and young people recounted experiencing as a result of perceived inaction on the part of service providers, with this contrasted with descriptions of effective participation.

As the discussion in the final section indicates, participants who recounted positive experiences of participation described their engagement with professionals who were genuine and effective listeners, who developed a relationship of trust that respected their agency in an interactive decision-making process and kept them informed of the progress of their matter. The avoidance of a partisan approach was also identified as a marker of a positive participation experience. More specifically, some participants described their engagement with

these family law system professionals as facilitating their participation in the decision making regarding parental arrangements. Having a 'genuine', 'good listener' to advocate on their behalf (in the case of the ICL) or to articulate their views and take action to address their situation emerged as key features of experiences of effective participation. Even where participants were unsure of the impact that expressing their views in this context had had on their resulting arrangements, the ability to participate was identified as meaningful.

Overall, while service providers facilitated effective engagement for some participating children and young people, most described not being afforded the opportunity to participate when parenting arrangements were being determined. Participating children and young people commonly stated that they were either not consulted by the relevant family law system professionals in their case or, as described above, even where there were options to participate, they were not heard by the relevant professionals. As such, while a lack of direct engagement with service pathways correlated with a reported lack of participation in decision making, even awareness of, or engagement with family law system services was not a guarantee of effective participation.

This led some participating children and young people to articulate a wish to 'speak directly to the court' to ensure that the ultimate decision maker could be appraised of their views and experiences and could, in turn, make an informed decision as to the appropriate parenting arrangements. These data, together with previous research (see e.g. Fernando & Ross, 2018; Kaspiw et al, 2014; Qu & Weston, 2015; Parkinson & Cashmore, 2008 and Tisdall, 2016), suggest that steps taken to shield children and young people from their parents' litigation, while benevolent in their intention, may be associated with the experience of harm on the part of children and young people where their agency and capacity to participate in decision making affecting them is not acknowledged and accommodated.

Research Question C – What are the services that children and young people find to be of assistance?

Family members, peers, schools and therapeutic services (e.g. counselling) were more commonly identified as being of assistance than family law system services

Participating children and young people described a range of services and supports that they found to be of assistance when dealing with parental separation. These services and supports tended to be associated with their peers, their family members, their schools and with therapeutic professional services (with counselling services the professional service most commonly nominated). A majority of young participants emphasised the importance of seeking support by speaking to a third party and expressing their views ($n = 38$), with several participants more specifically indicating that the third party needed to be someone they trusted and who had an understanding of their situation.

The need for accessible counselling and support services during and post separation

The availability of confidential counselling was prioritised by a number of young participants, as were a range of independent and neutral therapeutic services to support children and young people in adjusting to their post-separation circumstances, and in helping them to process their feelings about their changed living situation and to formulate their views about parenting arrangements. As noted above, therapeutic services directed at addressing the needs of the family as a whole were also described by some young participants in this context. Even children and young people who identified as being reluctant or determined not to seek support services stated that, on reflection, it would have been valuable to access support services in their circumstances.

Most prominent among the support services nominated by participating children and young people were mental health services, accessed by nearly two-thirds ($n = 38$) of participants. These services included counselling and support provided by mental health professionals such as psychologists or psychiatrists and services such as Headspace and Kids Helpline. More than three quarters ($n = 30$) of these young participants described these services as helpful in some capacity. Support from these services took the form of providing a sounding board for children and young people to discuss their concerns, assisting them to express their views and to process and adjust to their parents' separation. Practical and tailored counselling as opposed to general or generic advice was identified as important by these young participants. Having an independent person to listen to and hear what they had to say was also identified as important by children and young people accessing these services, together with their capacity to be accessed on a longer-term or as-needs basis and as circumstances change over time.

However, the visibility and accessibility of services emerged as an area for particular attention on the part of family law system services and, indeed, broader youth support services in order to better meet the needs of children and young people in the post-separation context. In spite of the majority response in favour of seeking support, young participants described both personal and practical barriers to accessing appropriate services. These ranged from children and young people not wanting to hurt parents' feelings through to difficulties in locating services that were available at the time that they needed them and that provided services in line with their needs. A lack of awareness of existing family law system services and mental health services among children and young people emerged as a primary practical challenge, as well as referral processes and waiting lists to access services once located. It was in this context that some participants described the importance of a family law system service that was visible to children and young people as well as adults, and which was geared towards ensuring that children and young people had access to the services that they needed as they dealt with the repercussions of their parents' separation.

The benefits of family and peer support

In addition to formal support services, participants described their reliance on family, be that parents, siblings, grandparents, extended family members or family friends, as a means of coping with their post-separation circumstances. These family members ranged from being their primary means of support, providing comfort and respite from their living arrangements to as a source of information to locate the help that they needed.

Just over half ($n = 33$) of participating children and young people also indicated that friends and peer support could play a key role in assisting them to cope with their parents' separation. Even where young participants indicated that they did not feel that they could discuss their issues with their friends, they described friends as providing an important source of distraction from the issues associated with their parents' separation.

While friends or peers were identified as a source of support, particularly where the children or young people did not feel comfortable discussing issues with family members or professionals, an important aspect of having peers to talk to was having people with shared experiences whom the child/young person could relate to and they felt would understand their circumstances. Peer support programs were identified as potentially providing children and young people with a supportive environment and the opportunity to meet people going through similar circumstances who may be able to share advice and coping strategies. Unfortunately, the data were not able to provide substantial insight into the effectiveness of peer support programs generally as only a very small number of participants had accessed these services, and their reported experiences varied in relation to their utility. Nevertheless, the insight provided in relation to the valuable support that may be provided to children and young people by peers with some knowledge and experience of post-separation issues emerges clearly in the data.

Access to support at school

A significant finding emerging from the data was that approximately half of the participating children and young people described receiving support from their school during or after their parents' separation ($n = 30$). This support came primarily from interactions with counsellors ($n = 13$) or teachers ($n = 17$). In addition to providing therapeutic services, this source of support enabled the identification of needs and the provision of referrals to service providers. Participants did, however, recount access issues where schools were not well-equipped to respond to the issues faced by children and young people during their parents' separation.

Awareness of the issues associated with parental separation on the part of the broader school community was also nominated as important by young participants. The potential for schools to be a more readily identifiable source of support and information to children and young people, if funded accordingly, emerged as consistent with the responses provided by this substantial proportion of participating children and young people.

Together, these findings suggest that consideration could be given to the professional development and support of school staff who are at the frontline of helping students affected by parental separation. Broadening avenues of access to supports and services that are aimed at assisting children and young people to manage issues arising in the post-separation context may facilitate a more timely and targeted receipt of services from trusted professionals at a location where children and young people are more familiar with, or more comfortable in, seeking support.

Research question D – What is effective professional practice from the perspective of children and young people?

Moving forward with effective professional practice: ‘Give children a bigger voice more of the time’

When reflecting on the findings of this research overall, a picture emerges of effective professional practice from the perspective of participating children and young people. Patterns emerged in the data with regard to the conduct and behaviours that children and young people needed in their interactions with family law system service professionals. Together these data have informed the formulation of key characteristics of ‘effective professional practice’ from the perspectives of the participating children and young people as they apply to family law system service providers, whether legal or non-legal professionals.

Overall, most young participants (64%) indicated that family law system service professionals should listen more effectively to their views and experiences. They also recommended that professionals take steps to build trust with the children and young people with whom they interacted (via qualities such as patience, empathy and respect), as well as be more mindful of their particular needs (46%). More than one-third (38%) also wanted professionals to engage in open communication by providing more information regarding the separation and decision-making process (e.g. who is representing them, when and how they will be permitted to have a say in the parenting arrangements and what options are to be discussed) and to keep them informed about issues affecting them. Just under one-third (30%) of young participants specified the need for professionals to stay ‘objective’ or ‘neutral’ in discussions on arrangements. Young participants also nominated the need for professionals to act protectively and to be genuine in their consideration of, and advocacy for, children and young people’s safety and best interests.

Providing a space for children and young people to speak their mind and for professionals to actively listen to their views emerged most prominently as a key theme throughout the analysis in the substantive chapters of this report based on participants’ accounts of what was of assistance to them in dealing with their parents’ separation and in relation to the making of their parenting arrangements. The discussion in Chapter 4 highlights the importance of listening to children in families characterised by high risks, with children and young people articulating the significance of this consultation to ensure that the parenting arrangements protected their safety. A ‘genuine’ and ‘good listener’ emerged as someone who focused on the discussion that they were having with the young person by taking notes, not interrupting them and by actively participating in the conversation by considering and responding to the comments made by the young person. This was contrasted with professional approaches that dismissed or ‘shut down’ the views and concerns of children and young people. In addition to two-way communication, acting protectively and advocacy that reflected their views and experiences in the decision-making process and addressed their concerns were key features of effective professional practice identified by participating children and young people.

Efforts on the part of professionals to be patient, down-to-earth, personable and empathetic in their dealings with children and young people and to take the time and effort to build a relationship of trust were identified as central to effective professional practice, particularly where supported by specialist training and expertise in working with children and young people. Several young participants identified that it often took more than one meeting to develop rapport and to build a relationship of trust, which would, in turn, facilitate greater participation on the part of the child or young person. Independence and avoiding a partisan approach were also identified as key requirements by some participating children and young people, as was respect for their views and autonomy. Creating a space where children and young people felt comfortable and safe to speak honestly and openly was identified as important to gaining accurate information. In addition, keeping children and young people informed of the decision-making process was a key feature of the effective professional practice emerging from the interviews with children and young people in this study.

These findings suggest that support is required to facilitate the professional development of family law system service professionals to better accommodate these key features of effective professional practice identified from the perspectives of children and young people. Increased education and training specifically relating to working with children and young people, and their parents, may support effective professional practice from the perspective of children and young people and address the need to accommodate their participation in post-separation decision making affecting them. The employment of child-inclusive approaches and practice methods in decision making relating to post-separation parenting arrangements also emerged in this research

as central to effectively listening to the views and experiences of children and young people, and to making well-informed decisions that are in their best interests.

Consistent with recent research and commentary (including, e.g. Beckhouse, 2016; 2015b; Family Law Council, 2016; House of Representatives Standing Committee on Social Policy and Legal Affairs, 2017; Taylor, 2017; Young, 2017), the data from children and young people in this study suggest that adopting more child-inclusive practices in the context of family law system service provision is not only important in recognising children and young people's rights pursuant to the UNCRC to participate in decision making in matters affecting them but, more broadly, is better positioned to lead to parenting arrangements that are more attuned to the needs, safety and best interests of the particular children and young people in given cases. The data in this current study suggest that a child-inclusive approach incorporating the features of effective professional practice outlined above would follow an approach that:

- enables the relevant children and young people to contribute to, and be accurately heard in, the decision-making process and to be kept independently informed of the nature and progress of this decision-making process
- provides a clear and accurate explanation of the decision made
- provides access to ongoing therapeutic support and assistance as required
- accommodates the potential for flexibility to change and for ongoing and meaningful communication.

This approach would be reflective of the needs of children and young people participating in this research, even where the decision making does not accord with their expectations or expressed views.

This research has demonstrated how listening to the views and experiences of children and young people is critical to the improvement of family law system services in terms of meeting their needs. The nuanced and complex insights into the operation of these services provided by young participants in this study highlight the value of engaging in research directly with children and young people as a means of better understanding their experiences and needs when their parents separate. Further in-depth research with children and young people whose families are accessing family law system services, including with those under 10 years of age, would serve to deepen our understanding of what works and what does not work from their perspectives. While further research may inform the development of professional practice and service delivery specific to particular judicial, legal and non-legal professionals and service providers, an increased commitment to child-inclusive approaches to post-separation decision making would be an important step towards meeting the loud and clear calls from participating children and young people to 'give children a bigger voice, more of the time'.

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