A situated ethical analysis of child inclusive practices in five Relationships Australia NSW Family Relationship Centres

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A thesis in fulfillment of the requirements for the degree of

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This thesis explores the child inclusive practices in high conflict post-separation family dispute resolution (FDR) of five Family Relationship Centres, managed by Relationships Australia New South Wales (RANSW). This thesis develops a situated ethical framework for child inclusion informed by a feminist ethic of care, and proposes good practice principles towards the development of meaningfully inclusive processes.

Child inclusive practice (CIP) is a model of post-separation FDR that was developed in Australia in the early 2000s (McIntosh, Long & Moloney, 2004) that involves direct consultation with children to inform parenting agreements. Following significant reforms to the Australian Family Law Act (1975) in 2006, the Federal Government established a national network of 65 Family Relationship Centres (FRCs) to provide affordable FDR, managed by existing non-government organisations. FRC practitioners, who were drawn from a wide range of professional backgrounds, were trained and encouraged to use CIP. However, there was very little guidance given in legislation, professional frameworks or broader FRC policy regarding the implementation of CIP. As a result, organisations were under no compulsion to include children in FDR, and a wide range of practice approaches developed.

This qualitative, empirical study explores FRC practitioners’ approaches to child inclusive practice, within a single case study organisation (RANSW). A total of 27 participants across multiple organisational roles engaged in in-depth, semi-structured interviews. Constructivist grounded theory was utilised in data analysis, revealing the ‘hidden ethical voice’ of practitioners (Ash, 2010; 2016), uncovering three very different ethical orientations towards child inclusion. In the absence of organisational criteria, practitioners had developed their own decision-making frameworks for screening cases into CIP. However, findings show these criteria were inconsistently applied and highly dependent on the individual workers’ ethical orientation towards CIP. Theories of professional social care ethics are applied to demonstrate how a dual emphasis on care and social justice, with the exercise of critical reflexivity, provides a helpful path towards ‘good practice’. The thesis concludes that FRC organisations and professionals must attend to their ethical responsibilities towards children in order to achieve the goal of children feeling heard, respected and meaningfully included in FDR processes.

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## Abbreviations

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<th>Description</th>
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<tr>
<td>AHRC</td>
<td>Australian Human Rights Commission</td>
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<td>AIFS</td>
<td>Australian Institute of Family Studies</td>
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<td>AIRS</td>
<td>Australian Institute of Relationship Studies</td>
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<td>ALRC</td>
<td>Australian Law Reform Commission</td>
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<td>CIP</td>
<td>Child Inclusive Practice</td>
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<td>COAG</td>
<td>Coalition of Australian Governments</td>
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<tr>
<td>DOCS</td>
<td>Department of Community Services (NSW)</td>
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<td>DOORS</td>
<td>Detection Of Overall Risk Screening</td>
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<td>FA</td>
<td>Family Advisor</td>
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<td>FDR</td>
<td>Family Dispute Resolution</td>
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<td>FDRP</td>
<td>Family Dispute Resolution Practitioner</td>
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<td>FRC</td>
<td>Family Relationship Centre</td>
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<td>KIF</td>
<td>Kids In Focus</td>
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<td>LSAC</td>
<td>Longitudinal Study of Australian Children</td>
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<td>OOHC</td>
<td>Out Of Home Care</td>
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<td>PRC</td>
<td>Parental Reflective Capacity</td>
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<td>RA</td>
<td>Relationships Australia</td>
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Section One: Introduction
Chapter One: Introduction

Introduction

My interest in child inclusive practice in the post-separation sector has been personal and longstanding. As a child of separated and highly conflictual parents who battled their way through Family Court, discovery of the Child Inclusive Practice (CIP) model of post-separation family dispute resolution (see McIntosh, 2000; McIntosh, 2003; McIntosh, Long & Moloney, 2004) in the second year of my undergraduate social work degree felt like a revelation. It strongly coincided with one of the fundamental reasons I decided to pursue a career in social work: I wanted to learn how to support separated families, particularly children and young people, outside of the adversarial Court-based system. These experiences led me to pursue my final year Social Work placement, and later to gain employment in the very Family Relationship Centres where this research was conducted.

In my work placement at a Family Relationship Centre (FRC) managed by Relationships Australia New South Wales (RANSW), I found a practice environment where workers from diverse professional backgrounds constantly managed questions around children’s interests, rights and needs. These questions needed to be balanced with the interests of each parent, more often than not in cases where parents were in high conflict with one another. Publicly funded FRCs were then, and remain, unique internationally for their provision of early intervention and support to separating parents. The FRCs were a brand-new frontline service, established between 2006 and 2008 by significant reforms to the Commonwealth of Australia’s Family Law Act (1975). The FRCs were created at a policy level without much, if any, prior research into what works for separated families in family dispute resolution. I embarked upon my social work field placement in 2009, at the very time in which this new Family Law initiative was beginning to take shape.

As a young social worker and a child of divorce myself, I was invigorated and excited by a mediation model that suggested the importance of actually engaging children and including them in decision-making about their future lives and relationships with
their parents. However, there was a stark contrast between the child inclusion I had hoped to see, and what I actually encountered in the practices of the FRCs. I quickly realised that there were no specific legislative, policy or organisational frameworks that outlined children’s rights to participate directly in post-separation family dispute resolution (FDR). While the Child Inclusive Practice (CIP) model had been developed specifically for use in FDR, this did not guarantee that children would be directly included across the network of FRCs. While there was some very early longitudinal research into Child Inclusive Practice, undertaken by the group of scholars who had developed the original CIP model (see McIntosh, Long & Moloney, 2004; McIntosh & Long, 2005; McIntosh & Long, 2006; McIntosh, Wells & Long, 2007; McIntosh, Long & Wells, 2009), at that time very little was known about the efficacy of CIP. I saw that frontline FRC workers were essentially gatekeepers to CIP: they were the ones who decided when and how children’s perspectives would be invited into mediation.

In the absence of higher order advice around children’s participatory rights, I noted that FRC workers were formulating their own approaches to screening and assessment for CIP. I began to conceptualise the ‘tacit knowledge’ of professionals in the FDR space as potential practice wisdom that could, in turn, inform theory and have the potential to improve practice (see Floersch, 2004: 169-170). Practice frameworks for child inclusion had begun to emerge over time, as a response to the lack of guidance in legislation, policy and within organisations (see Chapter 2, pp. 36-38 for a review of existing FRC-based frameworks).

I also noted that children were directly included in mediation only on rare occasions, despite workers’ oft-stated commitments to child inclusion. I noted that early evidence indicated CIP led to some positive outcomes for families, at least compared with cases where children had not participated (see McIntosh & Long, 2005; McIntosh & Long, 2006; McIntosh, Wells & Long, 2007; McIntosh, Long & Wells, 2009). Yet despite this evidence, many of my colleagues were ambivalent towards CIP and sceptical about its claims to efficacy.

The research presented in this thesis was born out of a desire to understand and bridge the many gaps between research, practice and policy on the subject of child
inclusion. As an organisational insider/outsider with post-separation practice experience and a deep knowledge of the FRC practice space, I was uniquely positioned to undertake such a study.

My research is focused on worker decision-making around child inclusion, and what informed those decisions in the absence of higher order policy and procedure. Through interviews with 27 RANSW FRC workers undertaken in late 2013, I uncovered the ‘hidden ethical voice’ (Ash, 2010; 2016) of practitioners, and three distinct ethical orientations towards child inclusion that influenced practice in very different ways. While this thesis represents a snapshot in time within a constantly evolving policy and practice context, child inclusive practice in post-separation FDR remains under-researched.

This study contributes to conversations around ‘good’ child participatory practices by proposing a situated ethical framework, along with 13 good practice principles for child inclusion in post-separation FDR. This thesis ultimately argues that children’s rights to protection, participation, and service provision must be considered alongside one another (Eriksson and Nasman, 2008: 271), and that a core ethic of care for children should replace concerns for calculating their ‘best interests’ in post-separation family dispute resolution. The practice principles developed here have relevance across the many sectors and disciplines where professionals are considering how to safely and meaningfully include young people in their work.

In this chapter I briefly describe the research site (5 Family Relationship Centres managed by Relationships Australia New South Wales) and outline my key research questions and methodological approach. I also define the key terms of children and young people, family dispute resolution, child inclusive practice, child inclusion, ‘high conflict’ cases and domestic violence. A summary of key findings is presented. The chapter concludes with an outline of the thesis structure.
Situation the research

The Family Relationship Centres

A total of 65 FRCs were established across Australia between 2006 and 2008 under the Howard Federal Government, as part of a range of significant and in part controversial reforms to the *Family Law Act (1975)*. The 2006 reforms nominated family dispute resolution (FDR) as the primary method for resolving post-separation parenting disputes, and created guidelines for the training and registration of Family Dispute Resolution Practitioners (known as FDRPs). Funding provided by the Commonwealth government established the FRCs and they remain federally funded services that provide FDR to separated parents, with up to the first three hours of dispute resolution free of charge. The FRCs were established to provide a ‘single entry point’ to the Family Law system (Australian Government, 2005: 1), by mandating an attempt at non-adversarial mediation (with some exceptions) prior to applying for parenting orders in the Family Court.

Under S. 60I (1) of the *Family Law Act (1975: Part VII)*, parents must make a ‘genuine effort’ to resolve child-related disputes by engaging in family dispute resolution, before they can seek consent orders via the court system. Mediators alone have the power to issue a S.60I Certificate, giving leave for parents to file in Court. This places FRC clients in an ambiguous category, somewhere between ‘voluntary’ and ‘involuntary’ client status. While a parent can choose to exit mediation at any point, this may entitle the other parent to request a S.60I Certificate. It is also possible that the Family Court may send parents back to FDR if it is assessed that a ‘genuine effort’ at mediation has not been made.

Workers from various professional backgrounds staff FRCs: primarily law, education, social sciences and social work (although this list is far from exhaustive). Given the very brief period between legislative reform and the opening of the FRCs, the government was delayed in devising rigorous training and accreditation processes for FDRPs (Parkinson, 2013: 210). Initially, this meant that FRC staff had ‘limited experience’ with the flow-on effect that ‘the quality of mediators across the FRCs has been variable’ (Parkinson, 2013: 210). While we may assume the quality of mediation
has improved since the FRCs first began, the published literature on developments in FDRP training and practice standards remains scarce. The literature presented in Chapters 2 and 3 paints a picture of a highly diverse practice space, in the sense that each FRC holds a high level of discretion in determining daily work. From intake and assessment procedures, to staff roles, and even the models of mediation informing their implementation of FDR, the Centres were designed to have a high level of autonomy (Henry & Hamilton, 2011: 110; Parkinson, 2013; Pidgeon, 2013).

Children’s ‘best interests’ is a paramount and long-established principle that guides practice across the Australian Family Law system (see *Family Law Act, 1975*, S. 60CC) as well as jurisdictional statutory child protection systems. While the Act outlines principles to help determine ‘best interests’, the way FRC workers construct ‘best interests’ in practice is largely unknown. The FRC Operational Framework (Attorney General’s Department, 2017: 9), which governs the National Network of FRCs, mentions that parenting arrangements should be ‘in the best interest[s] of children’, but does not offer any advice regarding how these interests should be determined. The Operational Framework states that children can be included in FDR services ‘if the family wishes and the Centre has capacity and skills (or) the Centre can make arrangements with other services with experience in child inclusive practice so that families can receive this type of assistance in appropriate cases’ (Attorney General’s Department, 2017: 16). Key constructions of children’s ‘best interests’ are explored in Chapter 2.

**Research questions**

The key research questions underpinning this inquiry are as follows:

1. How do workers in RANSW Family Relationship Centres decide when and how to include children’s perspectives in post-separation family dispute resolution?
2. What factors or circumstances influence worker decisions around whether and how to include children’s perspectives in the mediation process?
Methodology

The key questions underpinning this study necessitated a qualitative methodological approach, as they inquire about worker decision-making, understandings and constructions specific to the RANSW FRC practice space. Chapter 5 details my decision to adopt a constructivist grounded method in my analysis (Charmaz, 2008). A grounded theory approach fulfils my research aims to explore the ‘what’ and ‘how’ of child inclusive practices in a specific practice context through the gathering and analysis of rich, in-depth data. Grounded theory also allowed me to privilege the voices of my participants, while simultaneously situating myself in the research process.

Due to my longstanding relationship within RANSW, I knew prior to embarking upon this study that FRC practitioners were essentially the ‘gatekeepers’ for child inclusion. Workers were the ones who decided whether children would be invited into the process of family dispute resolution, and what form this inclusion would take. When considering the study design, I noted that worker decisions could not be separated from the organisational contexts in which they were made. Each FRC managing organisation (RANSW being one, with several more community-based organisations running FRCs across New South Wales) has a different funding model, and its own approaches to FDR and child inclusion. The decision to adopt a case-study approach and explore the practices of a single managing organisation (RANSW) enabled me to prioritise an in-depth investigation into the everyday practices of child inclusion, as opposed to a broad account of FDR practices across the sector. I wanted to explore how workers made meaning out of their responsibilities and duties towards children, and how they were utilising models that were minimally detailed at higher policy and legislative levels.

The participants in this study are 27 RANSW workers from 5 individual FRCs, drawn from the various organisational roles of Manager, Family Advisor, Family Dispute Resolution Practitioner and Child Consultant. Data was collected in late 2013 in a single, in-depth interview with each participant. My position within the organisation as student in 2009, and later as a newly qualified Social Worker and Family Advisor (2010-2011), and later again as a RANSW researcher (2012-2015), enabled me to
adopt an ‘insider observer’ stance. My ‘insider’ knowledge of the organisation afforded me access to participants and greatly enriched my conceptual analysis. Equally, my position as ‘outsider’ researcher and PhD Candidate empowered me to adopt a critically reflexive view across both the theoretical and practice-based aspects of the work. The research site is described in detail in Chapter 4.

Definitions

**Children and young people**

I use the terms ‘child’ and ‘young person’ as defined in New South Wales’ legislation (Children and Young Persons (Care and Protection) Act 1998: Chapter 1.3) to refer to any ‘person under the age of 16 years.’ This same definition is used within the RANSW FRCs. While occasionally parents may have one child over the age of 16 years, to qualify for FDR services there must be at least one child within the family under the age of 16.

**Family dispute resolution**

The Family Law Act (1975: S. 10F) defines family dispute resolution as a non-judicial process in which a practitioner ‘helps’ those affected by separation to resolve parenting disputes, and in which the practitioner is ‘independent of all of the parties involved.’ While the Family Dispute Resolution Practitioner is bound by principle to act in the ‘best interests’ of children (Family Law Act, 1975: S. 60CC), the legislative definition of the FDRP role is very broad. FDRPs must be accredited and registered under standards set out in the Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (‘the Regulations’). Chapter 2 (pp. 39-41) outlines the FDRP Regulations in detail, highlighting the almost complete lack of guidance for mediation professionals in the implementation of child inclusion.

It is important to highlight that mediation and family dispute resolution (FDR) are two very different interventions. In contrast to traditional models of mediation, FDR emphasises ‘independence’ from individual parties as opposed to neutrality towards outcomes, while also calling upon its practitioners to elevate the best interests of children (see Astor, 2007; Cooper & Field, 2008 and Polak, 2009 for discussion of these key differences). Crucially, FDRPs cannot be ‘neutral’ towards outcomes that they
assess would not be in the best interests of the young people affected. It is this central focus on children’s ‘best interests’ that sets FDR apart from more general mediation or alternative dispute resolution models. Despite these differences, the terms ‘mediation’ and ‘FDR’ are often used interchangeably in literature and practice. As such, I refer to ‘mediation’ as an alternative term to FDR throughout this thesis.

The goal of FDR within the FRCs is the creation of a written parenting agreement (Family Law Act, 1975: S. 63DA; see also Kaspiew et al., 2009: E1). Although the parenting agreement is not legally binding for either parent, it has more strength than an informal agreement. If disputes continue beyond FDR, the Family Court is informed by what was agreed upon in any historical parenting agreements (see Chapter 2, pp. 41-42, for a detailed account of parenting agreements). While parents are free to come to an informal agreement regarding matters to do with their children, with or without any formal support or intervention, parents must engage in the Family Law system if one or both desire a more formal written agreement. FRC clients therefore tend to be parents who have some level of ongoing conflict with one another, and who may feel unable to resolve disputes about their children without support.

While research shows that most separated parents are able to achieve a reasonable co-parenting relationship (see Pike, Campbell & Hannan, 2006: 1), there are estimates that between one quarter and one third of parents remain engaged in ‘persistent conflict’ after they separate (Anderson et al., 2010: 17). FRC clients tend to be those parents who desire either a more formal parenting agreement or want a S. 60I Certificate to take their case to the Family Court.

‘High conflict’ cases

Throughout my practice experience in the FRCs, and in the early days of my research, I observed that levels of parental conflict were vital to workers’ assessments of whether child inclusive practice was appropriate. My colleagues referred to ‘high conflict’ cases as those that were ethically fraught and difficult to work with. These were the cases where parents remained engaged in a level of conflict or disagreement, to the point that practitioners were unsure if child inclusive practice would be appropriate or effective. As such, I chose to focus my research inquiry on ‘high conflict’
cases and how workers made decisions about including children in these circumstances.

Parents involved in the Australian Family Law system are often labelled as ‘high conflict’ couples. However, the term ‘high conflict’ remains highly contested within the literature (see Birnbaum & Bala, 2010; Johnston, 2017; Smyth & Moloney, 2017). Common characteristics of ‘high conflict’ post-separation parents include a) ‘entrenched’ or ‘enduring’ conflict, most often seen through repetitive litigation (Davies & Cummings, 1994; McIntosh, 2003; Ramsey, 2001; Webb & Moloney, 2003); b) physical and verbal aggression, although physical violence is often described as ‘intermittent’ (Johnson, 1995; Johnson, 2006) or ‘situational’ (Johnson, 2006; Johnson, 2011), and; c) a lack of parental focus on the needs of their children (Hewlett, 2007; Ramsey, 2001; Webb & Moloney, 2003).

The term ‘high conflict’ comes from the tradition of ‘family conflict’ research. Proponents of family conflict research claim that the majority of violence experienced in intimate relationships is ‘common couple abuse’ (see Johnson, 1995), with violence mutually perpetrated by both parties. This view is one of gender symmetry (Dutton & Nicholls, 2005: 696-697), where the underlying cause of the majority of interparental violence is ‘intimacy and psychopathology’, as opposed to gender or gendered relationships (see Dutton, 1994; Dutton & Nicholls, 2005: 684; Reed et al., 2010: 349). Thus, the aetiology of ‘high conflict’ is very different to domestic violence, which has an asymmetrical gendered element (see discussion directly below).

There is a small but emerging body of evidence that Family Law workers may use the terms ‘conflict’ or ‘high conflict’ as blanket terms for cases that may, in fact, be characterised by domestic violence (see Anderson et al., 2010; Lynch & Sheehan, 2013; Stark, 2009; 2010; Wangmann, 2008; 2010; 2011). Significantly, FDR’s rise to prominence was not accompanied by concurrent explorations of differences between conflict and abuse, or between conflict and coercive controlling violence (Brown, 2010: 16). The point at which a separated couple’s conflict shifts from what may be considered ‘normal’ to ‘high’ remains unclear. Research into the category of ‘high conflict’ parents remains largely conceptual. There is a pronounced lack of empirical
investigation into the predictive factors of high conflict, or interventions that might effectively target sub-types (Birnbaum & Bala, 2010: 404, 406; Johnston, 2017; Smyth & Moloney, 2017). The present study is one of a small number of empirical works to explore FRC workers’ constructions of parental conflict in FDR, in light of child inclusive practices.

**Domestic violence**

The term ‘domestic violence’ (DV) is used throughout this thesis to refer to intimate partner violence. Many Family Law scholars, as well as much policy and legislation across different Australian jurisdictions, use the term ‘family violence’ (or ‘domestic and family violence’) to refer to any violence that occurs within the family (as well as between intimate partners; see Hooker, Kaspiew & Taft, 2016: 4). Where the publications referenced in this thesis use the term ‘family violence’, I retain this term, so as to stay true to the original meaning in these texts. However, I adopt the definition of DV used in the National Plan to Reduce Violence Against Women and their Children:

> Domestic violence refers to acts of violence that occur between people who have, or have had, an intimate relationship. While there is no single definition, the central element of DV is an ongoing pattern of behaviour aimed at controlling a partner through fear... In most cases, the violent behaviour is part of a range of tactics to exercise power and control over women and their children, and can be both criminal and noncriminal. DV includes physical, sexual, emotional and psychological abuse. (Commonwealth of Australia, 2016: 2)

It is well established in the Australian literature that the prevalence of DV in FDR is high, with recent evidence estimating that between 60-80% of all families who attend FDR have some experience of domestic violence (House of Representatives Standing Committee on Social Policy and Legal Affairs (hereafter ‘Standing Committee’), 2017: 4.29; see also Bagshaw et al., 2010; Cleak & Bickerdike, 2016; Family Law Council, 2016; Henry & Hamilton, 2011; Kaspiew et al., 2009; 2015; Moloney et al., 2013). In 2011 the *Family Law Act (1975: S. 4[1]*) expanded the definition of family violence to
include considerations of coercive and controlling behaviours. The definition of child abuse was also altered to incorporate exposure to family violence (S. 4AB). While some DV screening tools have been developed for use in the FRCs (see AVERT and DOORS training packages; see McIntosh, Lee & Ralfs, 2016), their use is not mandatory.

While it is beyond the scope of this study to explore the gender symmetry/asymmetry debate in domestic violence research, it is important to note that many of the key studies in the Australian Family Law context have primarily defined abuse in terms of physical violence between couples. Little attention has been paid to other forms of violence such as emotional, psychological and economic abuse, which may have an established pattern within the parental relationship over time. More recent studies tend to refer to the more general term of ‘interparental conflict’ as conflict separate to domestic violence, which ‘includes less severe but more common forms of conflict between parents, including verbal (e.g. disagreements, arguments, anger or hostility) and low-level physical conflict (e.g. pushing, hitting, kicking or shoving)’ (Westrupp et al., 2015: 1967; see also Kaspiew et al., 2017). Evidence from the Longitudinal Study of Australian Children (LSAC) shows that ‘more common forms of conflict (which may or may not involve violence)’ are associated with significant impairments in functioning for mothers and children especially (Kaspiew et al., 2017: 58). However, there is very little research which explores whether interparental conflict and DV have differential effects for children, and less still that explores how children’s perspectives can be safely included in FDR in cases of violence.

**Child inclusive practice and child inclusion**

Child inclusive practice, or CIP, refers to a distinct model utilised within FDR, developed primarily by Dr Jennifer McIntosh and colleagues in the early 2000s (McIntosh, Long & Moloney, 2004). CIP involves a one-off meeting between child and a trained Child Consultant specifically to inform the FDR process and the formation of parenting agreements. The Child Consultant delivers feedback from their session with the child to the parents and mediators, who then continue on with the FDR process (see Chapter 2 pp. 34-36 for a detailed account of McIntosh’s original CIP model, and Chapter 4 pp. 81-83 for a detailed account of the RANSW adaptations). Recent
accounts of FDR practice demonstrate that the terms ‘child inclusive’ and ‘child informed’ practice are interchangeable, with both terms referring to McIntosh’s model (see McIntosh, 2016: 1-2; Williams, 2016). In part due to McIntosh-led training sessions in 2008-09 that were funded by the Attorney-General’s Department, CIP was widely adopted across the FRCs and the broader FDR sector (Williams, 2016: 40).

In the course of this research, ‘child inclusion’ and ‘child participatory practices’ emerged as broader, more encompassing concepts than CIP alone. This thesis in one sense problematises ‘child inclusion’ by exploring worker definitions of inclusivity, and comparing these with empirical accounts of children’s own experiences of inclusion in Family Law and mediation processes. The theme of ‘meaningful’ inclusion is explored first in Chapter 3, and then throughout the findings and discussion chapters. While ‘CIP’ is used when discussing McIntosh’s model (and RANSW’s adaptations of the original model) throughout this thesis, ‘children’s perspectives’, ‘child participation’ and ‘child inclusion’ are drawn upon as broader terms to prompt conceptual discussions about inclusion.

Summary of key findings

The most striking finding of this study was the uncovering of the ‘hidden ethical voice’ of practitioners (Ash, 2010; 2016). In response to my second research question, participants’ ethical orientation towards child inclusion had the greatest influence on whether, and in what form, they would pursue children’s direct participation in FDR. Participants gave detailed accounts of their everyday engagement with child inclusion and framed many issues with existing CIP practices as essentially ethical concerns.

Three key themes emerged from the empirical data. First, it emerged that in the absence of organisational criteria, practitioners had developed their own decision-making frameworks for screening cases into CIP. Participants considered the child’s age, any pressing ‘needs’ for child consultation, the practicality of pursuing CIP due to its resource-intensity, and predictions of its likely efficacy to determine whether CIP was appropriate. However, findings show that this criterion was inconsistently applied and highly dependent on the individual workers’ ethical orientation towards child
inclusion. Participants’ criteria for CIP screening and assessment are detailed in Chapters 7 and 9.

Second, three distinct ethical orientations towards child inclusion were found across the participant cohort. These orientations were categorised into ‘activist’, ‘pragmatic’ and ‘sceptical’ approaches, with different ethical frameworks and narratives informing each. These three ethical orientations are explored in-depth in Chapter 8, with the practice implications of each approach extrapolated in Chapter 10. Essentially these individual ethical orientations, which encompassed beliefs about children, child inclusion and the role of parents and children in FDR, ‘filled the gaps’ in policy and seemed to have the most significant influence on worker decision-making around child inclusive practice.

Sceptic participants expressed a firm preference for work with parents and ambivalence towards the direct inclusion of children in FDR. While pragmatic participants adopted a risk-averse and parent-centric approach to CIP, activist participants argued that ‘good’ child inclusive practice embodied an ethics of care as well as attention to social justice principles. Activist accounts of ‘good’ practice drew my attention to the theory of feminist care ethics, as well as the broader literature on professional social care ethics. As my analysis deepened, I found that care ethics not only aligned with the ‘good’ practice accounts of my activist participants, but also married well with empirical accounts of what children have said they want and need when participating in Family Law processes.

Finally, the third key finding uncovered the concepts of ‘parental conflict’ and ‘parental reflective capacity’ (PRC) as the primary factors participants assessed when considering CIP. Participants constructed measurements of conflict and PRC as the most accurate way of predicting whether CIP could be effective, i.e. whether parents could ‘hear’ their children and minimise their conflict, thereby doing no further harm to the children. This is the first empirical study to explore the distinct concept of PRC, and how FRC workers conceptualised it in relation to child inclusion. While most participants framed assessments of PRC and conflict as vital to determining whether CIP could be a safe and worthwhile intervention, there were no consistent definitions.
or methods for assessing either concept. In a somewhat unexpected finding, only a small number of participants discussed domestic violence and how DV affected their approach to CIP. Findings on the complex relationships between conflict, PRC and DV are outlined in Chapter 9.

In Chapter 10, I consider my key findings within the theoretical framework of feminist care ethics. I draw out the practice implications of sceptic and pragmatic ethical orientations and demonstrate how a dual emphasis on care and social justice, within the exercise of critical reflexivity, provides a helpful path towards ‘good’, ethical child inclusive practice. I construct ‘good’ child inclusion as that which is meaningful to children themselves, and embodies ethically caring commitments to professional responsibility, competence and responsiveness. I re-engage with the literature presented in Chapters 2 and 3 to propose a situated ethical framework for child inclusion in FDR, along with 13 ‘good practice’ principles for application in the FRC practice context.

**Structure of the thesis**

This introductory chapter has explored my journey towards this research and my multi-faceted interest in child inclusive practices, as well as defining key terms, and outlining the research questions and key findings. Chapter 2 will now outline child inclusive practices within the broader frame of the Family Law reforms and draw out legal and professional constructions of children’s ‘best interests’ that directly inform FRC professionals. Chapter 2 also explores existing child inclusive practice frameworks in the Australian post-separation FDR setting. Chapter 3 explores children’s rights as a key additional discourse informing FRC workers’ approaches to child inclusion. Chapter 3 also provides a comprehensive overview of existing empirical research on child inclusive practices, outcomes and efficacy in post-separation FDR. The chapter concludes with a review of existing research of children’s own views on their participation in Family Law matters, with a focus on mediation and FRC-based interventions.

Chapters 4 and 5 outline my methodological approach and provide an account of the research site. Chapter 4 outlines the research site, including organisational policies
and procedures relating to child inclusive practices. Chapter 5 presents the constructivist grounded theory research design, including analysis of the case study approach, sampling strategy and a description of the 27 participants. Chapter 5 also explores my insider-outsider identities in relation to the case study organisation and draws out the strengths and limitations of the study.

Chapter 6 introduces my findings section, orienting the reader to the key findings in each of the following chapters and outlining how each chapter fits together. Chapters 7 to 9 present the key emergent findings, providing a detailed analysis of participant accounts. Chapter 10 synthesises the findings alongside existing literature on child participation and social care ethics to produce a situated ethical framework for child inclusion, concluding with 13 suggested ‘good’ practice principles for child inclusion in the FRC setting.

Chapter 11 concludes my thesis with a reflection on my professional formation throughout the research process. I provide brief recommendations for child inclusion in FRC and FDR programs, and future research directions.

Conclusion

When I first engaged with this research process, I questioned why children were rarely being included in the RANSW FRCs. Over time the very nature of my inquiry shifted as I began to question the meaning of ‘inclusion’ within this practice space. The findings of this study illuminate the differences between the ‘technical’ inclusion of children, and inclusion that is informed by a professional orientation of care and respect for children’s own ideas about meaningful participation. As my final analysis shows, an ethics of care that encompasses commitments to justice and critical reflexivity provides a valuable contribution to ongoing conversations around ‘good’ child inclusive practice in FDR.
Section Two: Literature Review
Chapter Two: Child inclusion in Family Law - Legal and policy constructions of ‘best interests’

Introduction to the literature review

This review of the literature explores the socio-legal network of the Australian Family Law system, with a specific focus on child inclusive mediation practices. The distinct lack of universal screening and decision-making tools around child inclusion, combined with the high level of professional discretion exercised in the FRC context, means there are a number of influential conceptual frameworks that inform RANSW worker constructions of children’s ‘best interests’ in high conflict parental disputes. Children’s ‘best interests’ are constructed within these frameworks in very different ways within the Australian Family Law system, and appraisal of each is required to understand the multiple influences on the individual RANSW FRC worker’s practice. These conceptual frameworks presented in this chapter are as follows: i) legal constructions of ‘best interests’; ii) FRC program constructions of ‘best interests’; iii) ethical constructions of professional FDR practice. This chapter analyses the legal, ethical and policy frameworks that govern child-related work in the RANSW FRCs. Children’s rights and existing research on children’s participation in FDR are explored in Chapter 3.

The practice of Family Relationship Centres (FRCs) is highly complex. While there is an overall legal mandate that the family dispute resolution practitioner (FDRP) will assist families ‘to reach agreements that are in the best interests of their child/ren’ (Family Law Act, 1975: S. 63DA), children’s participation in FDR is far from mandatory. Each individual FRC is quite autonomous in its operation, with individual practitioners exercising a high level of discretion to determine not only which cases are suitable for FDR, but also when and how children’s perspectives will be included. The determination of a child’s ‘best interests’ is highly subjective and difficult to define, and the individual exploring these interests has an undeniable influence in the interpretation of these interests (Australian Law Reform Commission (ALRC)
Literature regarding court-based approaches to child inclusion is not included in this review, given the focus of the current study on community-based FDR practices. However, some literature that explores Family Law professionals’ approaches to child participation has been integrated, and is clearly demarcated. This chapter outlines the 2006 and 2012 Family Law reforms before analysing the legal, policy and ethical literature influencing child inclusive practices in the FRCs. Chapter 3 explores select evidence focusing on children’s welfare and participatory rights, with an emphasis on empirical research undertaken to date on child participation in the FRC process.

**Family Law reforms**

In the late 1990s and early 2000s, the Australian government initiated several inquiries and empirical investigations regarding children’s participation in Family Law matters (Australian Law Reform Commission, 1997; Bagshaw, Quinn & Schmidt, 2006; Commonwealth of Australia, 2001; 2005; House of Representatives Standing Committee on Family and Community Affairs, 2003; McIntosh, Long & Moloney, 2004). In summary, these inquiries found that children were largely excluded from court-based Family Law processes, and that most children wanted to be more involved in the process of decision making after their parents’ separation. While reforms to the *Family Law Act (1975)* (hereafter ‘the Act’) in 1996 had been framed in language around the best interests of children and placed a much greater emphasis on mediation, conciliation and counselling as the primary dispute resolution processes following divorce (Pidgeon, 2013: 231; Webb & Moloney, 2003: 24), post-separation parenting disputes continued to be managed primarily by the courts up until major legislative reforms in 2006.

Significant changes to the management of post-separation parenting disputes were introduced by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (‘the 2006 reforms’). These reforms were largely made in response to a parliamentary inquiry, introduced by Prime Minister John Howard in June 2003 (see Commonwealth of Australia, 2005; House of Representatives Standing Committee on Family and
Community Affairs, 2003). The inquiry explored the potential addition of a rebuttable presumption of ‘joint custody’ to the *Family Law Act*, primarily due to concerns expressed by several Members of parliament regarding non-resident fathers’ contact with their children following separation (Parkinson, 2006; see also: James, 2006: 207; James, 2008: 64). A legislative emphasis on ‘shared care’, along with the connection this forged between the amounts of *time* children spent with each parent and the *quality* of their relationships, has had a longstanding influence on how FDR is conducted. While more detailed considerations are outside of the scope of this thesis, legislation regarding ‘shared care’ seems to have encouraged an emphasis on parental rights to time with children, and elevated cooperative co-parenting as the ultimate goal for post-separation parental relationships (see James, 2006; 2008; Kaspiew et al., 2009; Laing, 2010; Parkinson, 2006; Rhoades, 2008; Smyth, 2009; Trinder, 2009).

The 2006 reforms made a ‘genuine effort’ at non-adversarial dispute resolution mandatory for all parents (with some exceptions, including cases of family violence or child abuse), prior to filing an application with the Family Court (*Family Law Act, 1975*: S. 60I (1) VII). To service this requirement and as part of the 2006 reform package, the Australian Government (via the Federal Attorney General’s Department) funded the establishment of 65 Family Relationship Centres across the country, managed by dozens of non-government organisations (NGOs) who competed via a tender process. In New South Wales, 5 separate NGOs won tenders to establish their own networks of several Family Relationship Centres per organisation: RANSW; Anglicare; UnitingCare Unifam; Catholic Care (now ‘Centacare’); and Interrelate.

The 2006 amendments also introduced a mandatory training and accreditation process for the Family Dispute Resolution Practitioners (FDRPs) who would provide FDR, both within FRCs as well as via other mediation services (see: *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*; hereafter ‘FDRP Regulations’). The amendments signalled the coming together of several professional perspectives from the legal, mediation and social welfare sectors in an acknowledgement that the human dimensions of legal problems require multiple forms of expertise (see Kennedy, Richards & Leiman, 2013: 27).
Family Dispute Resolution

Family Dispute Resolution (FDR) is a model of post-separation mediation unique to Australia, sanctioned for delivery in federally funded FRCs through the 2006 Family Law reforms. Although parents may access FDR offered by any accredited Family Dispute Resolution Practitioner (FDRP), most FDR is provided by Family Relationship Centres (see Moloney, Qu, Weston & Hand, 2013; Parkinson, 2013). Any information disclosed during FDR is generally inadmissible in court proceedings (Standing Committee, 2017: 2.54), although there have been recent calls for the Government to ‘clarify the admissibility status of FDR intake assessments’ (Family Law Council, 2016: Recommendation 14).

FDR is defined in Section 10F of the Family Law Act (1975) as:

\[\text{...a process (other than a judicial process)}\]

a) in which FDR practitioner helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; and

b) in which the practitioner is independent of all the parties involved in the process.

Given the very broad nature of its legislative definition, it is perhaps unsurprising that a range of FDR models have developed and are in use across FRCs. As Field (2006:2) points out, the emphasis is on a practice that is ‘helping and not adjudicative’, which could refer to ‘any informal approaches to dispute resolution’. Brown, who at the time of writing was employed at Frankston FRC, suggests the model of mediation described in the 2006 reforms was facilitative (also referred to as ‘settlement-focused’) (2010: 28). Brown’s comments imply that FDR is focused on the resolution of disputes, and not on addressing underlying issues within the parental relationship (Brown, 2010: 28).

While some literature has emerged regarding practice models utilised within the FRCs (as explored below), FDR remains a dynamic and changing field. It is important to note
that published literature may not reflect the actual development of mediation models across the sector. New practice approaches tend to be siloed within the organisational environments in which they are developed, and formal evaluations are few and far between. Dissemination of models primarily takes place at cross-organisational conferences and does not always translate to peer-reviewed publication.

Despite the reported primary use of facilitative models, there have been trends towards the use of more therapeutic or transformative models of mediation within the FRCs (see Wheeler, Gray & Hewlett; 2015), with Child Inclusive Practice (CIP) being a prominent example of this. Transformative models of mediation ‘aim to generate behavioural change in addition to assisting parties to reach agreement’ (Dobinson & Gray, 2016: 201-202). The use of transformative or therapeutic models in mediation is controversial in cases of DV (see Goodhardt, Fisher & Moloney, 2005; Smyth & Moloney, 2003) and may also be considered inappropriate in short-term interventions such as FDR (see Field & Lynch, 2014 for discussion of transformative models in relation to the Coordinated FDR pilot model). Arguably this disconnect between the preferred facilitative model widely used in FDR, and the transformative goals of the CIP model, may have contributed to the low utilisation of CIP in some FRCs (see discussion in Williams, 2016).

**S. 60I Certificates**

Registered FDRPs are the only professionals able to issue S.60I Certificates, named after the corresponding section of the Act. A S.60I Certificate must be issued to enable a parent to file a matter with the Family Court, thereby placing FDRPs as essentially ‘gatekeepers to the Court system’ (Henry & Hamilton, 2011: 103-104). FDRPs have sole responsibility under the legislation for determining whether a case is ‘appropriate’ for FDR (FDRP Regulations, 2008: Reg. 25) as well as determining whether parents have made a ‘genuine effort’ at FDR (Family Law Act, 1975: S. 60I (1) VII).

There are five different types of S. 60I Certificates, two of which are particularly relevant to ‘high conflict’ disputes, which may involve domestic violence. A Certificate can be used under S. 60I (8) where ‘the FDRP considers that FDR would not be
appropriate’, bearing in mind the issues set out in Regulation 25 of the 2008 Regulations, which include family violence, the safety of individual parties to the dispute and the risk of child abuse (FDRP Regulations, 2008; Reg. 25). In practice, an FDRP may decide FDR is appropriate in cases of family violence ‘whilst continuing to monitor levels of conflict and violence and provide ongoing external support services’ (Interrelate Submission 15; House of Representatives Standing Committee on Social Policy and Legal Affairs, 2017: 4.28). A S. 60I (8) d) Certificate can be issued where FDR has been attempted, but at some point during the process the FDRP deems that it is inappropriate to continue, perhaps due to elevated risk (see FDRP Regulations, 2008; Regulation 29 c) ii)).

In summary, the requirement of a S. 60I Certificate to access Family Court, and the fact that FDRPs are the only professionals able to issue these certificates and determine whether ‘genuine attempts’ at FDR have been made, firmly places FDRPs as key decision-makers with a high level of responsibility. The various certificate types show that these workers are balancing concerns of safety, child abuse and/or family violence in assessing suitability for mediation, however the presence of these concerns do not necessarily mean FDR is inappropriate.

Family law evaluations and further reform

A series of large-scale evaluations of the 2006 Family Law reforms were commissioned and funded by the Australian Government Attorney General’s Department (Bagshaw et al., 2010; Kaspiew et al., 2009; Qu & Weston, 2010). Several other publications were released in light of, and response to issues cited with, the 2006 reforms (most significantly: Cashmore & Parkinson, 2009; 2011; Chisholm, 2009; Family Law Council, 2009; Parkinson, Cashmore & Single, 2011). As Cleak & Bickerdike (2016: 16-17) note, most of these reviews emphasised changes that needed to be made to the Family Law system in relation to family violence, with the 2012 Family Violence amendments adopting many of the recommendations of the publications just cited.

Evidence shows that since the implementation of the 2006 reforms, there have been fewer court filings over child-related disputes, and evidence that more families seem able to work out disagreements outside of the Family Court with the support of the
FRCs (Kaspiew et al., 2009: 5; Moloney et al., 2013: 246; Qu and Weston, 2010: 2). However, this data does not speak directly to the quality of parenting agreements, nor does it explore the welfare of children in detail. Significantly, the Kaspiew et al. evaluation (2009) ‘did not directly seek the perspectives of children in relation to the reforms and how well these were working for them’ (Fitzgerald & Graham, 2011b: 440).

Further reforms to the Family Law Act were implemented in 2012 under the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (widely referred to as ‘the Family Violence amendments’). These amendments updated the definition of child abuse to include living with (exposure only) to family violence, as well as broadening the definition of family violence to include notions of coercive control (Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth) S. 4(1); S. 4AB). Several changes to Part VII of the Act were also made. The changes most relevant to FRC practices included: specification that greater weight be given to the need to protect children from harm than the benefit of maintaining relationships with both parents in determining children’s ‘best interests’ (S. 60CC (2a)); and a new subsection referring to the United Nations Convention on the Rights of the Child (S. 60B (4)).

Research and evaluations following the 2012 reforms (Carson, 2016; De Maio et al., 2013; Kaspiew et al., 2015a; Kaspiew et al., 2015b; Kaspiew et al., 2015c) are explored below to outline current legal constructions of children’s ‘best interests’ (see pp. 26-28). Overall, the cited evaluations examining the post-2012 amendments reveal that the system is not working well for families where DV is an issue, and that child victims of DV are not well served across the broader Family Law system. These points are also explored in the below discussion on ethical issues in FDR practice (see pp. 39-41).

Additional Family Law system reforms are currently under consideration. In December 2017, the House of Representatives Standing Committee on Social Policy and Legal Affairs delivered a report on an inquiry into the family law system, relating to how those affected by family violence could be better supported and protected (Standing Committee, 2017). In September 2017, the Federal Attorney-General also commissioned the Australian Law Reform Commission to undertake a ‘comprehensive
review of the family law system’, which is due for completion by 31 March 2019 (Standing Committee, 2017: 1.36). Terms of reference for the current ALRC review include: a focus on how to best determine children’s interests and incorporate children’s views; a focus on Family Law services, including dispute resolution services; emphasis on families with complex needs, including where there is family violence; and the skills of professionals within the broader Family Law system (ALRC, 2018). These terms of reference serve to emphasise the significant gaps in policy and implementation for child participatory practices, especially for families with complex needs and those who have experienced DV.

**Legal constructions of children’s ‘best interests’**

*Best interests as a ‘meaningful relationship’ with both parents*

The primary stated aim of the 2006 reforms was ‘to shift from a discourse focused primarily on law and legal rights, to one concerned with the preservation of and negotiations about relationships’ (Moloney, 2006a: 5). This new discourse featured a strong narrative around the importance of ‘cooperative’ co-parenting to give children ‘the meaningful involvement of both their parents in their upbringing’ (Henry & Hamilton, 2011: 105; see also Qu & Weston, 2010: 11). This clear philosophical emphasis on ‘shared care’ arrangements as the ‘optimal post-separation arrangement for children’ (Fitzgerald & Graham, 2011b: 432) was accompanied by legislative changes that directed the Family Courts to presume shared parental responsibility and substantial or significant time with the child for both parents (*Family Law Act, 1975*: S. 61DA). Amendments to S. 60CC (2) of the Act listed two primary considerations in determining children’s best interests: a) the benefit to the child of having a ‘meaningful relationship’ with both of their parents, and b) the need to protect the child from physical or psychological harm (*Family Law Act, 1975*: S. 60CC (2) a)-b)).

The 2006 Family Law reforms strongly emphasised ‘co-parenting’ as the aspirational goal for separated couples (Brown, 2010: 15). Co-parenting in this context is defined as a collaborative relationship between former partners where they are able to

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1 Note that the ALRC Review was not available within the timeframe of this thesis, which was completed prior to the end of March 2019.
communicate enough to make decisions, both in everyday life and longer term, for their children. The positive co-parenting relationship belies a capacity to work with each other in understanding and addressing children’s needs (Lamela & Figueiredo, 2011: 182; Roberson, Sabo & Wickel, 2011: 189). However, not every separated couple is able to achieve a cooperative co-parenting relationship, especially where conflict or abuse is ongoing.

Field argues that the assumption that conflict ends at separation is false and denotes a significant misunderstanding of the dynamics of domestic violence (2005; see also Dalton, Carbon & Oleson, 2003: 11-12). Rather than the abuse ending as the relationship does, it is likely to only shift in its manifestation or location (see Hooker, Kaspiew & Taft, 2016; Laing, 2010; Wangmann, 2008; 2010). It is well established that children’s contact with a parent perpetrator of violence is a significant site where abuse can continue for both parent and child victims (Katzen & Kelly, 2000; Kernic et al., 2005; Shalansky, Ericksen & Henderson, 1999; Wangmann, 2008). Separation is also a time of increased risk of lethality for victims of domestic violence and their children (Braaf & Sneddon, 2007: 9).

The 2006 amendments were widely criticised by both Family Law practitioners and academics for the Act’s narrow definition of family violence, as well as for framing the benefit of children having a ‘meaningful relationship’ with each parent as an equal to consideration to their safety (Bagshaw et al., 2010; Brown, 2010; Combined Community Legal Centres, 2006; Laing, 2010; National Abuse Free Contact Campaign, 2006; Women’s Legal Services NSW, 2006). In response to these critiques, 2012 amendments to the Act updated the definition of child abuse to include exposure to family violence, as well as broadening the definition of family violence (Family Law Act, 1975: S. 4(AB)). Family violence is now defined in the Family Law Act as ‘violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family… or causes the family member to be fearful’ (Family Law Act, 1975: S. 4AB (1); emphasis mine). The Act also identified children witnessing violence as an abusive act (Family Law Act, 1975: S. 4AB (3)-(4)).
The 2012 amendments included the addition of S. 60CC (2A), which directs the Court to give greater weight to the primary consideration of ‘the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence’ (*Family Law Act, 1975*: S. 60CC (2) b); see also Kaspiew et al., 2015a). However, the consideration of ‘meaningful relationship’ remains a primary consideration in the Act, and as such remains a key influence on the determination of children’s ‘best interests’ across the Family Law sector (see Field et al., 2016; Graycar, 2012).

How children themselves define a ‘meaningful relationship’ with each parent following separation remains largely unknown (Fitzgerald & Graham, 2011b: 440). An important exception is a recent Australian study by Carson and colleagues, which explored children’s self-reported relationships with their parents and how these relationships changed following separation (Carson et al., 2018: 35-38). Despite some re-shaping of ‘shared care’ provisions in the 2012 amendments, ‘meaningful relationship’ remains a key concept in the Act and it, along with discourse regarding cooperative co-parenting, continues to influence constructions of children’s ‘best interests’.

Continuing contact with an abusive parent is not always in the best interests of children (Dalton, Carbon & Oleson, 2003; Hooker, Kaspiew & Taft, 2016; Laing, 2010). What *is* in a child’s best interests is dependent on the context and facts of each case, and there are ongoing concerns that the Act does not provide a high enough level of discretion to determine the different needs of children. This is of particular concern given significant evidence that the understanding of DV and its consequences for parenting arrangements remain misunderstood across the Family Law sector (see De Maio et al 2012; Kaspiew et al., 2009; Standing Committee, 2017: 6.18), as well as in the general population. Recent Australian research on community attitudes suggests that ‘some individuals do not see present threats and violence (post-separation) as an obstacle to a perceived need for children to continue to have both parents in their lives’ (Moloney, Weston & Qu, 2015: 70). Family Law practitioners’ understandings of DV are discussed in the final section of the chapter below (see pp. 42-46).
**Views of the child in determining their ‘best interests’**

Amendments to S. 68F (2) (a) of the Act (as part of the 2006 reforms) outlined a list of ‘additional’ considerations for the Court to refer to in determining the best interests of the child. Significantly, this amendment relegated the views of the child to fall under the category of ‘additional or secondary’ considerations. This amendment has been retained to the present day and has, arguably, significantly curtailed children’s options for participation in Family Law proceedings (see Fernando, 2013; Fitzgerald & Graham, 2011b). As such, under the law children have a very limited role in defining their own ‘best interests’. Consigning the views of children to secondary consideration, effectively means there is a distinct lack of a legal mandate to seek children’s views directly about family disputes that affect their everyday lives. Arguably the Australian legal framework around best interests constructs children as ‘less than competent’, passive subjects of the laws governing their own interests and ‘developmentally incomplete and vulnerable to their parents’ behaviour’ (Keddell, 2017: 329).

Reference to the United Nations Convention on the Rights of the Child (UNCRC) was included as an object in the Act (S. 60B (4)) as part of the 2012 amendments. This part states:

(4) An additional object of this Part is to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989. (Family Law Act, 1975: S. 60B (4))

Fernando (2013: 91) argues that mere reference to the Convention ‘does not implement any of the rights contained therein in the Act’, and in fact the replacement Explanatory Memorandum to the Act states that this additional object ‘is not equivalent to incorporating the Convention into domestic law’ (Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 (Cth): 24).

Children’s rights scholars have pointed out some limitations of ‘best interests’ directives. Lundy notes the significance influence of ‘best interests’ considerations in policy and law but cautions that ‘(children’s) right to have their views given due weight cannot be abandoned on the basis that the adults in their lives know what is best for them’ (2007: 938). Keddell makes the poignant point that reliance on ‘best interests’
to guide decision making requires workers to ‘reference social norms and make normative decisions’, despite the many legitimate and competing ways of interpreting these interests (2017: 327). Assessments of children’s best interests in turn often involve assumptions based on ‘normative’ constructions informed by developmental or attachment theory (see Woodhead, 1997), which may not provide the scope required to understand children’s needs on an individual let alone a culturally sensitive basis. Sociological frameworks have provided an alternative lens, constructing children as social actors and thereby opening up discourses beyond legal and developmental perspectives (see below discussion on children’s rights and worker beliefs regarding participation, pp. 49-53).

There are well documented concerns that Australia continues to fall short of its UNCRC obligations, particularly as they relate to children’s rights to participation in decisions that affect them directly in Family Law matters (see Australian Child Rights Taskforce, 2011; Carson et al., 2018; Kaspiew et al., 2014). In the absence of a legal mandate, the decision of whether to include children in FDR is left largely to the discretion of adult actors. It is therefore vital to understand organisational and individual practitioner assessments of whether, how, and in what ways children are being included in post-separation FDR.

**Programmatic constructions of ‘best interests’: The Family Relationship Centres**

The establishment of the Family Relationship Centres (FRCs) was a key part of the 2006 family law reforms, and as such, these organisations were essentially formed by legislative mandate. Program-oriented frameworks around FDR practices in the FRCs are therefore strongly influenced by legal constructions of children’s ‘best interests.’ However, as explored below, the FRCs were deliberately designed to have a high degree of operational autonomy, which has in turn led to a high degree of practice variation.
The Family Relationship Centres (FRCs)

The FRCs were established as part of a suite of legislative reform in 2006, which legitimised FDR as a key intervention with separated families by ordering parents to attempt it, prior to filing for parenting orders in the Family Court. All 65 Centres, managed by various established community organisations, were operational by late 2008 (Pidgeon, 2013: 228). The Australian Government made an investment of close to $400 million over the four-year establishment period under the Attorney General’s Department (Parkinson, 2013: 202).

The FRCs represented an ‘entirely new sort of service’ (Pidgeon, 2013: 227) intended as an alternative to court (Moloney et al., 2013: 246), as well as a referral point through which families could access more specialised services as required. In 2006, Relationships Australia New South Wales (RANSW) successfully tendered for funding from the Attorney General’s Department to establish six FRCs across the state of NSW. Five of these six FRCs comprise the site for this research. The practices of the RANSW FRCs are explored in Chapter 4.

One of the aims of the FRCs was to achieve ‘long-term cultural change’ in the way post-separation parenting disputes were managed (Kaspiew et al., 2009: 1). The emphasis in elevating FDR was an attempt to encourage parents in framing their post-separation dispute as ‘a relationship problem, not necessarily a legal problem’ (Parkinson, 2013: 197). The FRCs are guided by a broad Operational Framework. This Operational Framework requires each FRC managing organisation to report to the Government on various performance indicators. The FRCs were strategically designed so that not only service providers, but also individual Centres, were given a high level of autonomy and freedom to tailor their practices to the needs of their local community (Parkinson, 2013: 207).

While each managing NGO needed to prove in the tender process that they could provide a high quality, safe environment for clients, and appropriately qualified staff (Pidgeon, 2013: 229), they were also free to incorporate their ‘theoretical and philosophical viewpoints with respect to the best interests of children, the role of marriage and the family, parenting, and models of dispute resolution’ as they saw fit.
(Polak, 2009: 93). Therefore, a highly diverse network of services has resulted, in which Parkinson (one of the key architects of the FRCs) has acknowledged ‘some loss of consistency in mission’ (Parkinson, 2013: 207; see also Moloney et al., 2013: 237).

Each FRC has a high level of discretion in determining which models of mediation will be drawn upon, the roles of various staff members, and the process of client intake and assessment (Henry & Hamilton, 2011: 110). Henry & Hamilton (2011: 110) note that while this gives staff the freedom to pursue innovative approaches tailored to their client demographic, there is the potential for very different outcomes across the service network that may not be detected in the absence of rigorous evaluation.

Empirical research from the FRCs is explored in Chapter 3.

As discussed in Chapters 4 and 5, RANSW FRC staff are comprised of individuals from many professional backgrounds, which contributes to the diversity of this practice space as well as the range of conceptual frameworks that may influence individual practice. Current FDRP training and accreditation standards are explored below (pp. 39-41). In summary, the FRCs remain a highly diverse, autonomous and complex practice space.

**The FRC client group**

The FRCs provide services to a significant proportion of families in post-separation mediation: it is estimated that two thirds of FDR processes across Australia occur within FRCs (Moloney et al., 2013: 238). The FRCs offer initial meetings and case management to parents at no charge, as well as up to three hours of mediation for free, with any services following charged at a sliding income scale (see Parkinson, 2013; Polak, 2009: 94). The free/low cost model has had the desired effect of providing access to a broad range of clients (De Maio et al., 2015; Kaspiew et al., 2009; Moloney et al., 2013). While parents who had accessed Family Law services (including FRCs) following the 2006 reforms tended to be older, better educated and have higher incomes than their peers who had no contact with services, the latter group of parents were also more likely to have reported experiences of ‘some form of family violence, mental health problems, drug and alcohol issues, other addictions before separation,
or distant, highly conflicted or fearful relationships’ (Moloney et al., 2013: 235-236). Such evidence paints a picture of the high level of complexity across FRC cases.

While the FRCs were not initially established to manage complex disputes, including disputes involving coercive controlling violence (Brown, 2010: 16), there is significant evidence that clients with complex issues are the very families that make up the majority of the FRC clientele (Bagshaw et al., 2010; Cleak & Bickerdike, 2016; Family Law Council, 2016; Henry & Hamilton, 2011; Kaspiew et al., 2009; 2015; Moloney et al., 2013; Standing Committee, 2017). A survey of FRC staff undertaken not long after the establishment of the FRCs (Kaspiew et al., 2009) found that 62% reported that at least half or more of the families they saw at their Centre had experienced abuse or violence.

A later study found that 40% of survey respondents who attended FDR and had experienced emotional or physical violence in their relationship with the other parent, did not disclose this in FDR (Bagshaw et al., 2010). In more recent submissions to the recent Family Law and Family Violence Inquiry (Standing Committee, 2017: 4.29), the National Board of Relationships Australia and Family Relationship Services Australia (FRSA, the national peak body for family and relationship services) estimated that between 60-80% of all families who attend FDR have had some experiences of family violence.

**Including children in the FRCs**

There are two distinct approaches to including children in FDR in the FRCs: child focused practice and child inclusive practice. Child focused practice involves professionals ‘keeping children in mind’ and centralising their needs and interests while working solely with parents in FDR. Child Inclusive Practice or CIP involves a one-off consultation between a child and a trained Consultant, where the Consultant feeds information back from their session with the child to parents and mediators, in order to inform the FDR process. These approaches are described below.

**Child focused practice**

The child focused approach is a benchmark practice for Commonwealth-funded agencies such as the FRCs (McIntosh, Long & Moloney, 2004: 88), reflecting a
minimum ‘best practice’ model. Essentially, child focused practices ‘attempt to find the child’s voice in the absence of the child’ by surmising the needs of children in general when their parents separate (McIntosh, 2007: 5; emphasis mine). When utilising a child focused approach, practitioners assess children’s needs based on their age, developmental stages and what their parents communicate about their children. The focus of FDR is on child-related issues, and mediators invite parents to consider the needs of their children throughout sessions (McIntosh, Long & Moloney, 2004: 88). Instead of a neutral third party, the FDRP becomes more directive and advocates for the child’s interests (McIntosh, Wells & Long, 2007: 10), although the mediator is still inviting, as opposed to demanding, parents to focus on the needs of their children (Moloney, 2006b: 46). Yassenik and Graham (2016: 91) note that child focused mediation strategies have been ‘drawn from therapeutic interventions (but) it remains within the normal skill set of the mediator to provide a child focused process.’

There is evidence that child focused practice is the most commonly utilised model (compared with CIP) within the FRCs (Hannan, 2013: 270). In a 2009 survey of FRC workers, Kaspiew and colleagues found that 97.9% of staff ‘either agreed or strongly agreed that their service was child focused’ (Kaspiew et al., 2009: 54). However, there is a lack of more recent inquiries into child focused practices in the FRCs, as well as a distinct lack of research that considers children’s own appraisals of parenting agreements following child focused mediation.

**Child Inclusive Practice (CIP)**

Child inclusive practice, or CIP, refers to a distinct model utilised within FDR. Dr. Jenn McIntosh, a clinical psychologist and family therapist, along with her colleagues developed the CIP model, which has been widely implemented across the FRCs (McIntosh, 2000; 2003; 2007; McIntosh, Long & Moloney, 2004; McIntosh & Long, 2005; McIntosh, Wells & Long, 2007).

CIP is most often initiated at the suggestion of the FDRP through a referral to a child consultant. CIP involves a specially trained Child Consultant meeting with the child or children in what is typically a one-off session of approximately one-hour duration; however, the child is not actually present in the parents’ mediation (see Hewlett, 2007
for a detailed description of the CIP model). The Child Consultant, through the use of various tools (which may include drawing, play and/or talking therapies), gains information around how the children experience family life and their parents’ separation. The Consultant then strategically shapes information around the unique needs and expressions of each child and feeds back this information to the parents, often in a joint session with both mediators present.

CIP is a therapeutic model of mediation strongly informed by developmental and attachment theories (McIntosh, Long & Moloney, 2004: 88). CIP can also provide children with a forum to discuss experiences and feelings around their parents’ separation and conflict (Pike, Campbell & Hannan, 2006: 7). The Child Consultant aims to persuade parents that ongoing conflict between parents is damaging to their child/children and that change is needed; the parental ‘agenda’ must give way to the needs of the child (Hewlett, 2007: 101).

Essentially, the aim of CIP is to help parents focus on their desire to parent well and assist them to re-establish or consolidate a secure emotional base for their children after separation (Moloney, 2004: 166; McIntosh, Long & Moloney, 2004: 88). The original model places a high importance on the skills of the Child Consultant in feeding back information from the child in a sensitive, respectful way that engages and supports parents to reflect upon the needs of their children (McIntosh, 2007: 5; Moloney & McIntosh, 2004: 73). The importance of parents being able to hear and appropriately respond to their children’s perspectives places a strong focus on the assessment of parental capacity and ‘readiness’ to hear.

A small number of authors have critiqued the CIP model. CIP allows children to communicate their perspectives only via the Child Consultant, with some scholars noting that children’s actual participation in the FDR process remains quite limited. Fitzgerald & Graham (2011b: 438) critique child inclusive processes in FDR, stating that it is unclear whether CIP and child focused processes actually ‘reflect contemporary theory and evidence on children’s participation, and the intention of the UN Convention on the Rights of the Child.’ Other commentary criticises the emphasis in McIntosh’s original model on ‘parental readiness’ to hear from their children as the
key determinant of whether child inclusion is appropriate (Fitzgerald & Graham, 2011b: 438). Adequate parental ‘ego strength’ and ‘reflective function’, as well as the intention to improve the situation for their children and the potential to improve the child’s current situation, are key criteria for CIP entry (see McIntosh, Long & Wells, 2009). There is significant debate regarding whether CIP decreases or increases the safety of children in DV cases when implemented in FDR (see Dobinson & Gray, 2016: 202), and minimal research that explores stakeholder perspectives on this topic in the post-2012 family violence reform era.

Innovative models of FDR-based child inclusion

There have been a number of innovations from McIntosh’s original CIP model, many of which have been piloted in the FRCs. Some models may have arisen out of the Supporting Children after Separation Program (SCaSP) scheme, which was a second round of funding to provide child-specific post-separation services released between 2008-2009 (Institute of Child Protection Studies, 2011: 21). Some service providers managing FRCs (e.g. Unifam NSW) won SCaSP tenders; RANSW applied but was not granted funding for these programs. The models presented below provide evidence of promising practice and development of innovative approaches to FDR-based child inclusion, however not all have undergone evaluation.

The Coordinated FDR (‘CFDR’) model was developed for management of complex cases within the FRCs, in particular for cases where family violence was present. The CFDR pilot ran in various locations across Australia from late 2010 to August 2012 (Kaspiew et al., 2012: x). CFDR was quite resource-intensive, with a lawyer, specialised domestic violence support, and behaviour change workers engaged for each parent (Field & Lynch, 2014: 401). Its resource-intensity appears to be a primary reason why CFDR was not extended beyond the pilot stage.

CFDR was criticised for claiming to be ‘child-centred’ while including children via CIP in only 14% of cases nationally (Kaspiew et al., 2012; see also Brown & Campbell, 2013: 193). Several submissions to the 2017 Standing Committee review called for an extension of the CFDR pilot (Standing Committee, 2017: 4.47). Funding has been released under the Third Action Plan 2016-2019 of the National Plan to Reduce
Violence Against Women and Their Children 2010-2022 (Commonwealth of Australia, 2016) to pilot models of ‘legally assisted and culturally appropriate FDR’, which are currently being piloted in several FRCs across Australia (Standing Committee, 2017: 4.59). However, these newer pilot models are yet to be evaluated.

Another innovation is Anglicare Western Australia’s ‘safety assessment’ model of CIP (see Petridis & Hannan, 2011; Hannan, 2013). This model was developed by FRC staff in response to the high incidence of child protection issues they were identifying at intake (Hannan, 2013: 270). Whenever concern for a child’s safety or wellbeing is identified through intake interviews with parents, children are invited to their own interview (Hannan, 2013: 270). FRC practitioners exercise discretion in feedback to parents, only passing on feedback about the child interview ‘when it is deemed safe to do so’, at times only to the parent deemed to be ‘protective’ of the children, and alongside appropriate referrals to services that will support children’s wellbeing and safety (Hannan, 2013: 271).

Transplanting a safety assessment-type model into a different FRC environment would almost certainly prove challenging. Many FRCs lack resources such as time, child-specific funding and expertise that would be required to significantly increase the number of children seen (Hannan, 2013: 270). The implementation of this kind of CIP model necessitates ‘a re-thinking that information provided by parents gives enough information to protect children’, with the authors insisting that to ensure children’s safety, children themselves must be spoken to (Hannan, 2013: 270).

The ‘sole practitioner model’, documented by Williams (2016), was developed from an action research project at Logan FRC (Queensland). Williams, who initiated the project, spoke of her concern that ‘so few children of school age and over were not participating’ in FDR, either because FDRPs did not refer these cases to CIP, or because Child Consultants screened the cases out due to low parental readiness (Williams, 2016: 37). The sole practitioner model involves:

...an advanced FDR practitioner with a background in social science and child and family work solely implementing the intake, assessment, case
management, child sessions, joint parent sessions and parenting plan preparation stages of the process. (Williams, 2016: 38)

The sole practitioner model was piloted at Logan FRC with its introduction welcomed by staff and parents. FDRPs claimed the sole practitioner model increased the ‘authenticity of the feedback loop’ to parents (Williams, 2016: 39). Williams noted that the participation of children and young people increased during the pilot period ‘and has continued to increase in the improved child inclusive culture’ (Williams, 2016: 42). A framework for child inclusive FDR practice at Logan FRC was also developed out of the action research. There is no evidence in the literature that this model has been applied in any Centres beyond Logan FRC, however this does not mean that the sole practitioner model has not influenced FRC practices.

The most recent innovation in child inclusive FDR is the Child Centred Continuum Model or CCCM (Yasenik & Graham, 2016). The CCCM utilises the ‘Parental Readiness Scale’ (PRS), which is currently being piloted in Australia and Canada. While a focus on parental readiness is present and measured by the PRS, the CCCM is described as a ‘skill-based model’ that assesses not if children should be included, but at what level (Yasenik & Graham, 2016: 189).

The creators of the CCCM describe four levels of children’s involvement: a) managed child focus; b) child focus; c) assisted child participation; and d) direct child participation (Yasenik & Graham, 2016: 189). Children are initially seen and given information about the process, and the CCCM provides structured information for the practitioner about the discussions with parents at each level (Yasenik & Graham, 2016: 191). The creators of the CCCM run regular private training sessions targeted at workers across the Family Law sector who have a role in assessing for CIP. There is no evidence in the literature regarding the implementation of the CCCM across private mediation services or within the FRCs, nor is there any publicly available evaluation of this model to date.
Professional ethical constructions of child inclusion

This third and final section of the chapter considers professional ethical frameworks that influence FRC worker approaches to child inclusion. Firstly, the FDRP role and accreditation process is considered, followed by analysis of cooperative co-parenting and conflict minimisation narratives present in the Australian Family Law system. The chapter concludes with a summary of the evidence on key ethical issues in ‘high conflict’ cases as they relate to children, and an account of how different constructions of conflict influence the implementation of child inclusion in the FRC context.

Family Dispute Resolution Practitioners: Accreditation and Role

While not all FRC workers are FDRPs, FDR is the core business of the FRCs, and as such the ethical mandates that govern its practice are highly relevant. The Act defines the role of the FDR practitioner as ‘assisting families to reach agreements that are in the best interests of their children’ and to provide parents within information regarding parenting arrangements (Family Law Act 1975: S. 63DA). FDRPs must be accredited and registered under standards set out in the Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (‘the Regulations’).

Under the Regulations, FDRPs must hold an ‘appropriate’ qualification, defined as a higher education award in psychology, law, social work, conflict management, mediation, dispute resolution or in any other discipline that is relevant to the provision of FDR, in addition to having completed a Graduate Diploma in Family Dispute Resolution (Regulation 5). FDRPs must not be prohibited from working with children and must have access to a suitable complaints’ mechanism for clients’ use (Regulation 6). All accredited FDRPs are required to undertake ‘at least 24 hours (of) education, training or professional development in FDR in each 24-month period’ (Regulation 14) and must uphold ‘reasonable professional standards in the provision of FDR services’ (Regulation 15).

The elevation of FDR in the 2006 reforms was based on an assumption that children’s ‘best interests’ were in fact knowable, and that their interests would be better served in FDR and outside of a court-based setting. The reforms also implied that FDRPs would know the best interests of children and would be willing to act to achieve this.
outcome (Polak, 2009: 92). While the Attorney General’s Department provided core training for FRC staff when the network was established (Pidgeon, 2013: 229), the government was delayed in devising rigorous training and accreditation processes for FDRPs (Parkinson, 2013: 210). This meant that initial FRC staff had ‘limited experience’ with a flow-on effect that ‘the quality of mediators across the FRCs has been variable’ (Parkinson, 2013: 210). The participant cohort in the current study (see Chapter 5, pp. 89-92) confirms the highly diverse professional backgrounds of FDRPs as accounted in the literature.

As with other legislative directives governing FDR, the Regulations governing the accreditation and conduct of FDRPs is quite broad, providing scope for a wide range of individual practices. The most directive element is Regulation 25, which states that FDRPs must provide an assessment to determine whether FDR is appropriate (Regulations, 2008: 25(1)) that includes a consideration of ‘whether the ability of any party to negotiate freely in the dispute’ is affected by a number of matters, including: a history of family violence; equality of bargaining power; likely safety of the parties; the risk that a child may suffer abuse; the emotional, psychological and physical health of the parties; and any other matter the FDRP considers relevant (Regulations, 2008: 25(2)). The FDRP is instructed that they must not provide FDR where they are not satisfied that FDR is appropriate (Regulations, 2008: 25(4)).

Regulation 29 describes the general obligations of the FDRP, which include ensuring that ‘as far as possible, the FDR process is suited to the needs of the parties involved’ (Regulations, 2008: 29 a)). Interestingly, Regulation 29 does not discuss potential adjustments that might be made to address factors inhibiting free negotiation, such as family violence. Again, we see there is little guidance regarding the ways in which FDRPs may work with cases where there is a history of DV, and even less professional guidance regarding the inclusion of children’s perspectives in FDR.

Several academics and practitioners have explored the issue of mediator neutrality, i.e. freedom from bias or a pre-determined interest in the outcome of the mediation as a cornerstone of ethical mediation practices, and its place (if any) in FDR (see Astor, 2007; Cooper & Field, 2008; Polak, 2009). Arguably, FDRPs cannot claim to be ‘neutral’
or impartial to the outcome of a dispute, given their ethical mandate to help families reach agreements that are in their children’s best interests (*Family Law Act, 1975*: S. 63DA; see also Cooper & Field, 2008: 174-175; Polak, 2009: 88-89). The mandate of ‘best interests’ is thus a key departure from traditional mediation philosophy and practice. However, there is a distinct lack of guidance in policy or professional frameworks regarding how children’s interests should be understood and pursued in the context of FDR.

**Parenting agreements and cooperative co-parenting**

The primary goal of FDR is to help parents reach agreements about parenting (*Family Law Act 1975*: S. 63DA). While agreement rates are considered as part of FRCs’ performance reporting requirements, these rates ‘tell only one part of the post-separation parenting decision-making story’ (Moloney et al., 2013: 238). Provisions were made in the FRC establishment phase for families to return for ‘up to three different episodes of mediation over a two-year period’, in part due to recognition that long-term resolution of some disputes may not be possible or appropriate (Parkinson, 2013: 204). Reaching an agreement is much more likely in cases that have no reported violence (Moloney et al., 2013: 240), but plans for parenting do not necessarily remain active or relevant for families in the months and years to come. There is a lack of longitudinal research with separated families after their initial engagement with the Family Law system; particularly that which explores whether, in what ways, and why agreements around parenting may change.

The emphasis in FDR on assisting parents to reduce the conflict between them, transitioning from an intimate partnership and into the enduring role of parent, has grown in popularity (Brown, 2010: 15). However, some research has shown that despite this overarching goal to improve the parents’ relationship, and clients reporting reduced conflict in some cases, long lasting changes in attitude towards the other parent, and improved communication, do not appear common for parents after their engagement with FRCs have ceased (see Bell et al., 2013; Kaspiew et al., 2012; Parker, 2011).
The approach to cooperative co-parenting and mutual reduction of parental conflict is ethically fraught in DV cases, as explored below. Nevertheless, evidence shows the co-parenting ideal is still indiscriminately applied across the Family Law system, with victims of family violence reporting feeling coerced by Family Law professionals (including FDRPs) ‘to agree to arrangements that were unsafe or inadequate for their children, including shared parenting, overnight or unsupervised contact, or any contact’ (Bagshaw et al., 2010: 6-7; see also: Holtzworth-Munroe et al., 2009; Kaspiew et al., 2014).

The cooperative co-parenting narrative is so aligned with the transformative purpose of CIP that several complexities and tensions have arisen in the FRC context. Academics and practitioners have discussed concerns that children may only be engaged in FDR where it is seen to benefit their parents (Fitzgerald & Graham, 2011a; 2011b; Graham & Fitzgerald, 2010; Shea Hart, 2009; 2010; 2013; Williams, 2016), with Shea Hart (2009: 10) claiming that the Family Law system ‘(was) designed to address cases of “conflict” and not “violence”’. The tensions between ‘conflict’ and DV, as explored in Chapter 1 (pp. 10-13), are still present across the Family Law system, and are explored throughout this thesis.

**Family violence, family dispute resolution and child inclusion in the FRCs**

Within the discussion of programmatic and legal discourses, the issues of high parental conflict, DV, and where child inclusion ‘fits’ into FRC practices, are conceived in the literature as issues that are primarily ethical in nature. This section discusses FRC worker training on family violence, screening and assessment frameworks, and research regarding client experiences of the FRCs where DV was an issue. Understanding the screening and assessment framework for families that are in such a high level of ‘conflict’ is vital to the present study, as these are the cases where child inclusion is considered most fraught.

**Domestic violence and FDR suitability**

Decades into the practice of family mediation in Australia, and over ten years since a compulsory attempt to mediate has applied to post-separation disputes, controversy persists as to the appropriate intervention for relationships characterised by domestic
violence (DV). Debates continue around the appropriateness of FDR where DV is apparent, with one key concern being the inherent power imbalances between parents (Ballard et al., 2013: 241; Field, 2006: 38-39). There is general agreement in the literature that the ability of a party to be able to ‘negotiate freely’ is a requirement for FDR suitability (*FDRP Regulations, 2008*: 25(1)), and that this is not a possibility in situations of DV ‘which inevitably involve power imbalance, coercion and fear’ (Standing Committee, 2017: 4.56; see also: Bagshaw et al., 2010; Holtzworth-Munroe, 2011). DV advocates advise caution, particularly due to the danger of a coercive controlling partner using the process of mediation to harass further and intimidate their former partner (Dalton, Carbon & Oleson, 2003: 21; Field, 2006).

There is significant evidence that cases with DV are the rule, not the exception, in the FRCs (Cleak & Bickerdike, 2016: 23; see also: Bagshaw et al., 2010; Family Law Council, 2016; Henry & Hamilton, 2011; Kaspiew et al., 2009; 2015; Moloney et al., 2013; Standing Committee, 2017). Burnett-Smith, a Social Worker and Family Dispute Resolution Practitioner (FDRP) working in the FRC context, theorises that practitioners in this area are unlikely to see cases with either extreme or no intimate partner violence issues; rather, a ‘middle range’ of relationships characterised by DV are those which present for mediation (Burnett-Smith, 2012: 36). These are the cases where overt forms of physical or sexual violence may or may not be present, but other kinds of abusive behaviours are likely occurring.

Since the 2012 reforms, there have been several investments in appropriate screening and management of DV across the Family Law system. The AVERT package is a free training package specifically designed for use in the Family Law system to ‘improve understanding of family violence’ (Kaspiew et al., 2015a). The AVERT package includes training in the use of the DOORS instrument (Detection of Overall Risk Screen; see McIntosh & Ralfs, 2012a; 2012b). The DOORS tool was developed over several years as a collaboration between Relationships Australia South Australia (RASA), McIntosh, and other colleagues who were later ‘commissioned by the Attorney-General’s Department to refine and roll out the tool nationally’ (McIntosh, Lee & Ralfs, 2016: 36). However, the criteria used to assess risk and screen for DV continues to differ significantly between individual FRCs, as well as between practitioners (Dobinson &
Gray, 2016: 196; Henry & Hamilton, 2011: 106). There is no prerequisite that FDRPs must have prior experience or specialisations in domestic violence. There are currently no mandatory DV screening procedures in place in FDR, nor are there screening tools that are clearly preferred across the network of FRCs (Dobinson & Gray, 2016: 190).

A recent survey of Family Law professionals including lawyers, mediators and FRC workers (Kaspiew et al., 2015a) found that only a small number of professionals report using the DOORS tool to screen for DV. Professionals also raised concerns about the extent to which DOORS represents a workable approach in day-to-day practice (Kaspiew et al., 2015a: 188). However, this survey did reflect the ‘earliest uptake of DOORS in late 2013-early 2014’, hence the professionals surveyed would have had limited exposure to and experience utilising the tool (McIntosh, Lee and Ralfs, 2016: 36). There is a lack of more recent research regarding the use of the DOORS tool, or any other forms of DV screening, in FDR (Dobinson & Gray, 2016: 194).

While many FDRPs have at least some training in how to address power differentials on behalf of the victim of violence, there is a reported knowledge gap in strategies for working with the primary perpetrator within the mediation process (Burnett-Smith, 2012: 41; Yasenik & Graham, 2016). Families may assume that the mediator has been extensively trained, both in FDR and in specialised knowledge of intimate partner violence, and that they are able to address any power differentials that may emerge throughout mediation (Jaffe & Geffner, 1997: 394; see also Burnett-Smith, 2012; Field, 2006; Field & Lynch, 2014). Submissions to the recent Standing Committee Inquiry (2017: 8.8) noted that the standard of service delivery across the Family Law system is ‘far from uniform, and varies considerably by professions, as well as within each profession.’ A large number of Inquiry participants recommended ‘improved and ongoing training and development of all Family Law professionals in family violence and trauma-informed practice’ (Standing Committee, 2017: 8.8).

Many DV advocates express concern that mediators can misunderstand or misidentify coercive controlling violence, and these concerns are echoed in the literature. Mediators do not always recognise DV (Johnson, Saccuzzo & Koen, 2005; Kaspiew et al., 2009), or even inquire about it. In an evaluation report following the Australian
2012 reforms, 23% of FRC clients reported they were not asked about emotional abuse, with a similar percentage reporting that they were not asked about safety concerns (Kaspiew et al., 2015c).

Even when mediators recognise DV, ‘appropriate actions aimed at creating or preserving safety are not always taken’ (Cleak & Bickerdike, 2016: 20). Around 4 in 10 parents in the 2012 Survey of Separated Couples who experienced family violence before or after separation reported that ‘nothing happened’ when they disclosed their experiences of violence and safety concerns to Family Law professionals (De Maio et al., 2012: E1). Laing’s study of female victims of domestic violence navigating the Family Law system noted women’s shock that practitioners ‘had very limited understanding of the tactics employed by their abusers and of the abuser’s ability to manipulate and deceive them’, as well as inadequate knowledge of non-physical forms of abuse (Laing, 2010: 11-12).

There is a general agreement within the literature that DV should not automatically preclude participation in FDR (Madsen, 2012: 359). However, scholars and practitioners argue that, for mediation to proceed, special conditions must be applied to ensure that victims of violence are willing, safe and able to participate (Domestic Violence and Incest Resource Centre, 2007: 65; Field & Lynch, 2014; Madsen, 2012; Ver Steegh, 2003; 2005). The recent Inquiry into Family Violence in the Family Law system (Standing Committee, 2017: 4.231) recommended that a universal screening risk assessment tool for DV be developed for application across the entire Family Law system. However, Cleak & Bickerdike (2016: 22) argue that the complexities around DV disclosure may mean a standardised tool across all services might be inappropriate.

In summary, the literature provides significant evidence that DV is under-assessed, misunderstood, and potentially even ignored by Family Law professionals – with child victims of violence silenced to a large degree due to their minimal access across the system. The literature clearly identifies that professionals throughout the Family Law sector ‘often still fail to appropriately respond to indications that they are dealing with a domestic abuse situation’, and this places children and victims of violence in danger.
Fotheringham, Dunbar & Hensley, 2013: 313). Cleak and Bickerdike (2016: 23) argue that family violence is the ‘normative experience’ of clients attending FDR and that, as such, professionals ‘need to be looking for evidence of the absence of family violence, and to be suspicious and sceptical if they find none.’ Terms of reference for the current Australian Law Reform Commission review of the Family Law system (ALRC, 2018) include a focus on how to best determine children’s interests and incorporate children’s views, underlining the ongoing lack of policy and legislative direction regarding children’s participation.

**Conclusion**

Significant Reforms to the *Family Law Act*, first in 2006 and later in 2012, have been couched in the rhetoric of children’s ‘best interests.’ Legislative amendments, coupled with significant investment by the Federal Government in non-adversarial forms of dispute resolution, explicitly aimed to improve the Family Law system for those children and their parents experiencing family separation (Fitzgerald & Graham, 2011b: 423). The distinct lack of a legal mandate for the inclusion of children in Family Law matters, as well as the absence of broad FRC program guidelines and procedures for child participation, has resulted in a practice context where the professional judgement and discretion of individual practitioners predominate. Chapter 3 discusses other significant sources of FRC practitioner knowledge used to interpret their responsibilities to children: children’s rights discourses, and empirical research on children’s participation in the Family Law system.
Chapter Three: Children’s welfare, rights and participation in FDR

Introduction

This chapter further builds on the evidence presented in Chapter 2. The first part of this chapter explores a foundational source of knowledge influencing FRC practitioner understandings of child inclusion: recent literature on children’s legal and civil rights. The second half of the chapter critiques the available empirical research on child inclusive practices in family dispute resolution as a significant influence on how child inclusion is practiced in the FRCs, given the absence of clear policy and legislative frameworks, and program-level guidelines. The current state of knowledge regarding CIP in the FRCs is outlined, including identified barriers to child inclusion. Finally, empirical research that explores children’s own reported experiences of their inclusion in the Family Law system is presented, with a focus on FDR and FRC practices.

Children’s rights

Adult constructions of children, their ontological position in the family, and their developmental needs, largely determine whether, and in what ways, practitioners will work with children (Campbell 2008: 241; see also Campbell, 2013: 186). The definition of a ‘child’ and views about childhood and adolescence are largely constructed by political and social norms and mores, which may be reflected in legislative definitions of ‘child’ in areas such as employment and age of consent. The emergence of the children’s rights discourse in the late 21st Century (discussed below) recognised childhood as both a legal and social concept. Constructions of children and childhood are inevitably influenced by personal values, social relationships, and different understandings of what may constitute knowledge and experience (Australian Law Reform Commission 1997: 3.4; Bagshaw, Quinn & Schmidt 2006: 45). Insights from the field of childhood studies, as they relate to children’s participation in Family Law matters, are presented here to illuminate common discourses that may influence FRC workers.
Western societies have traditionally constructed childhood on the one hand as being a ‘time of innocence’, during which children are viewed as in need of protection and unable to be fully self-reliant, and; on the other as a period of irresponsibility ‘during which children are in need of firm and often coercive control’ (ALRC 1997: 3.2-3.3). These constructions both imply that children have a limited capacity for reasoning, and do not leave much room for the legitimacy of child participation in decision-making about their own lives more generally. The subjective nature of the construction of children is problematic, as the process of judging the capacity and competency of children to participate in decision making relies almost completely on adult discretion (Bagshaw, Quinn & Schmidt 2006: 80; Eriksson & Nasman, 2008: 262). Children may be viewed as ‘untrustworthy’ due to their ‘limited moral integrity’, and as such their views are not held in high regard (Neale, 2002: 457; see also Smart & Neale, 2000). In the human services sector as well as under the law, children can be generalised as ‘less competent’ than adults (Shea Hart 2003: 34; see also Campbell, 2008; 2013). This generalisation is particularly present in the FDR context, where child focused practices are often favoured over direct child consultation.

The way FRC practitioners view childhood can, consciously or unconsciously, influence the role they assign to children, as well as how they understand their role in work with children and their parents. There is longstanding evidence of Family Law practitioner reluctance to include children in separation-related disputes for fear that they may be ‘unduly traumatised’ by direct involvement (ALRC 1997: 16.27; Beckhouse, 2016; Graham & Fitzgerald, 2010; Gollop, Smith & Taylor, 2000; Kaspiew et al., 2014; Mackay, 2001; Parkinson & Cashmore, 2009). This evidence reflects beliefs about children’s limited competency to cope with parental dispute. Interestingly, Beckhouse observes that concerns regarding systems abuse seem unique to Australia, as she did not observe similar professional concerns during investigations of court-based child inclusive services in the United Kingdom, the USA or Canada (Beckhouse, 2016: 29).

There is longstanding evidence that some practitioners believe including children in FDR could potentially undermine the role and rights of their parents (Attorney General’s Department, 1998: 22; Cashmore & Parkinson, 2009; Graham & Fitzgerald, 2010; Williams, 2016). However, some scholars argue that children of all ages can
communicate ‘what is important to them’ (Smith & Taylor, 2003: 13) and that understanding children’s perspectives is more of an issue of adult willingness and ability than child capacity (Carson et al., 2016; 2018; Williams, 2016;).

Fears of causing children further trauma are perhaps inevitable in a complex practice context, but consideration of these tensions lead to an important question: when is it appropriate or important to involve children directly in FDR? In a movement away from the either/or question of children’s participation in FDR and other Family Law processes, recent literature (Beckhouse, 2016; Bell et al., 2013; Birnbaum & Saini, 2012; Williams; 2016; Yasenik & Graham, 2016) tends to refer to levels or opportunities for children’s direct participation. While this more current literature signals a discursive shift away from assessment of children’s competence towards enhanced participatory models, there is still ‘a lack of more direct and practical guidance’ as to how Family Law professionals might undertake participation (Bell, 2015: 12).

Professionals are influenced by their own assumptions about children, and potentially also by reigning discourses around what constitutes children’s ‘best interests,’ especially in highly autonomous practice spaces like FRCs (Bagshaw, Quinn & Smyth, 2006: 43). Shea Hart comments that the ‘best interests’ principle ‘may only be an expression of hope that decisions will work well for the child’ (Shea Hart, 2006: 33), particularly given that its assessment involves projecting future outcomes for children and their families. Helm’s argument that the path to meaningful, child-centred practice must include an understanding of a worker’s conscious and unconscious ideas about children is relevant here (Helm, 2011: 899-900). Some authors urge professionals to engage with the question of who is defining the best interests of the child, and to consider what may have influenced their views (see Helm, 2011; Shea Hart, 2009; 2010; 2013). However, the degree to which FRC practitioners engage in critical reflexivity around these issues is currently unclear.

**Children’s rights and beliefs about participation in Family Law matters**

The children’s rights movement has had a significant influence on the Australian child welfare sector. In 1989, the United Nations passed the Convention on the Rights of
the Child (UNCROC), of which Australia became a signatory to in 1990. Most relevant to children in post-separation matters is Article 12 of the Convention, which reads:

States shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, whether directly or through a representative or an appropriate body... (United Nations, 1989: Article 12; emphasis mine)

While the UNCROC undoubtedly provided a powerful impetus for reimagining children’s social status (see Martineau, 1997: 233-34), there is evidence of limited practical affects in the Australian Family Law context. Despite claims that the Convention has been incorporated into Australian law, there are no mechanisms by which children’s participatory rights in court or FDR settings can be enforced (Fernando, 2013; Fitzgerald & Graham, 2011b; Nicholson, 2006).

The very conceptualisation of ‘rights’ as something possible to ‘give’ to children reinforces perceptions of children as powerless, and adults as powerful (Pike, Campbell & Hannan, 2006: 6; see also Graham, Fitzgerald & Cashmore, 2015: 268; Hearst, 1997: 202, 219; Martineau, 1997: 234). As Shea Hart argues, the rights of children under Australian law can easily be superseded by the interests of their carers (2006: 36). Scholars criticise the construction of the child underpinning the Convention, which conceptualises young people as ‘future citizens’ (Hearst, 1997: 202-03) or ‘emerging adults’ (Shea Hart, 2006: 36) but not as social actors in their own right (see also: Graham, Fitzgerald & Cashmore, 2015; Fitzgerald & Graham, 2011b). As discussed in the previous chapter, the inclusion of reference to the UNCRC as an object in the Family Law Act (1975: S. 60B (4)) has had little effect on children’s direct participation across the sector (Fernando, 2013: 89-91).

The UNCROC is one of many legal influences that inform FDR services. However, it is questionable whether its reach stretches as far, or as effectively, to parents when parents’ construction of children, their rights, and their needs can be just as influential.
in practice (see Hannan, 2013; Shea Hart, 2009; Williams, 2016). Parents’ views on children’s rights are especially relevant in the context of the FRCs, where it is common practice that parents must give their permission for their children to be seen directly by practitioners (see Bell et al., 2013; Fitzgerald & Graham, 2011a; Hannan, 2013; Williams, 2016).

While the purported focus of Family Law policy is children’s wellbeing, there is arguably an implicit notion that services should not impinge on the rights of individual parent-citizens (see Fitzgerald & Graham, 2011; Parkinson & Cashmore, 2009). It must be acknowledged that including children in any decision-making forum is a fundamental ideological shift that calls into question long-held (and often uncritically accepted) constructions of children and childhood (see Campbell, 2008; Fitzgerald & Graham, 2011a; 2011b; Parkinson & Cashmore, 2009; Williams, 2016). The conceptualisation of children as ‘rights-bearers’ is a significant social and political shift that seems to be taking time to incorporate into policy and practice fully (see Aubrey & Dahl, 2006; Fitzgerald & Graham, 2011b; Parkinson & Cashmore, 2009; Shea Hart, 2009; 2013; Williams, 2016).

It is important to note that the mandate of the State and its representative bodies to protect children from harm can conflict directly with children’s rights to participate and articulate their own views (see Moloney & Fisher, 2003: 13). Eriksson and Nasman understand this dichotomy as the ‘care perspective’ versus the ‘participation/rights perspective’ (2008: 265). The same authors firmly insist that children’s rights to provision, protection and participation are not mutually exclusive, and must be considered in relation to one another (Eriksson and Nasman, 2008: 271). Children can alternatively be constructed as ‘meaning-givers’: social agents who influence and are influenced by their environments and may require assistance to navigate difficult situations (Campbell, 2008: 252; Jans, 2004: 36;).

The ‘children’s rights’ approach in the post-separation context advocates for the direct involvement of children in decision-making processes (Fotheringham, Dunbar & Henley, 2013: 313). Proponents of the children’s rights perspective offer several arguments for child inclusion. The first of these three major arguments can be referred
to as the ‘empowerment’ perspective: the proposition that involving children directly benefits them in various ways (Cashmore, 2011: 515). Some advocates claim that when children’s autonomy is encouraged, and their views respected, their capacity to cope is increased (Bagshaw, 2007; Carson et al., 2018; Grotberg, 1997). Others claim that consulting children in matters that affect them teaches them skills in citizenship (Gollop, Smith & Taylor, 2000: 384; Head, 2011: 543-44) and increases their self-esteem and sense of control (Bell, 2002; Campbell, 2008; Carson et al., 2018; Smart & Neale, 2000; Williams, 2016). Further claims include the proposition that listening to children can allow any fears, distress or questions about their parents’ separation to be addressed in a supportive environment (Carson et al., 2018; Smith & Taylor, 2003: 3).

Other reasons relating to children’s rights to participation offer further justification for their inclusion in FDR. The ‘enlightenment’ perspective is one common discourse, which focuses on the idea that children can and do provide important information that is vital to making full and accurate assessments of the family situation (Cashmore, 2011: 515). This perspective is commonly adopted by FRC practitioners in recent ‘safety-focused’ adaptations to the CIP model (see Hannan, 2013; Petridis & Hannan, 2011; Williams, 2016).

The ‘enlightenment’ discourse has much in common with a third perspective, perhaps best termed the ‘moral’ or ‘ethical’ argument, which claims that children should be included in the process of post-separation decision-making because the consequences of not involving them are potentially dire (Gollop, Smith & Taylor 2000: 384; Smart & Neale, 2000: 2). Domestic violence advocates tend to draw upon this argument, claiming that speaking to a child in the context of FDR might be the only chance for the child to disclose important information, or to receive support (Petridis & Hannan, 2011: 42; see also Hannan, 2013; Shea Hart, 2009; 2013). There is also evidence to show that children are more likely to feel positive about parenting arrangements if they are somehow involved in forming them. Kelly and Emery (2003: 359) found an association between children being given a voice in the mediation process and more positive feelings about their movement from one parent to the other. Research that
involves input from children themselves about what they want from Family Law processes is explored below (pp. 62-68).

Overall, centring children in the decision-making processes that affect their lives is now considered best practice in the Australian child welfare/child protection field. There has been an accompanying policy shift in recent years towards increasing participation and access for children, especially where children are service users. The recent Australian Royal Commission into Institutional Responses to Child Sexual Abuse (‘Australian Royal Commission’, 2013-2017) developed and recommended 10 Child Safety Standards, although these have yet to be implemented in NSW. Standard 2 reads: ‘children participate in decisions affecting them and are taken seriously’ (Australian Royal Commission, 2017). Public consultation is currently ongoing regarding the implementation of these standards (Office of the Children’s Guardian NSW, 2018). Despite this shift in broader child welfare sector policies, debate persists around children’s participatory rights in Family Law interventions.

Research on child inclusive practice (CIP)

Given the subjectivity of determining children’s ‘best interests’ and the lack of legislative, organisational and professional guidelines regarding children’s participation in Family Law settings, research on child inclusive practice (CIP) has emerged as a ‘particularly powerful influence in FDR’ (Polak, 2009: 93). The CIP model originally developed by McIntosh and colleagues (see the following for accounts of the model and respective evaluations: McIntosh & Long, 2005; McIntosh & Long, 2006; McIntosh, Wells & Long, 2007; McIntosh, Long & Wells, 2009) has had a significant influence on FDR practice across Australia (Polak, 2009: 93). However, despite its wide influence, research on the efficacy of child inclusive FDR is extremely limited (Bell et al., 2013: 118). The literature presented below explores the efficacy of CIP and the perceptions of practitioners and parents regarding this intervention.

Effectiveness of CIP

There is mixed evidence as to the efficacy of child inclusive FDR, and a very small number of empirical evaluations. A single Australian-based longitudinal study (see
McIntosh, Long & Wells, 2009) and a U.S.-based randomised control trial (Ballard et al., 2013; Holtzworth-Munroe et al., 2010) showed mixed results when comparing child inclusive and standard mediation interventions, with populations that were not easily generalisable to FRC clientele. A small number of Australian-based qualitative studies (Bell et al., 2013; Williams, 2016) have focused primarily on the experiences of FRC parent-clients, with very few children interviewed.

In the first and only longitudinal study comparing CIP with standard child focused interventions (McIntosh & Long, 2005; McIntosh & Long, 2006; McIntosh, Wells & Long, 2007; McIntosh, Long & Wells, 2009), CIP seemed to result in some positive outcomes. At the conclusion of the study, recorded outcomes included: lower conflict between parents as perceived by children and parents; lower levels of conduct disorders in children; improved relationships between children and fathers; more stable care and contact patterns and higher satisfaction with these arrangements (fathers and children) and; preservation or improvement of the mother-child relationship (from the perspective of both mother and child) (McIntosh, Long & Wells, 2009). However, the applicability of the study’s findings to the complex cases seen in the FRCs are arguably limited, due to the lower parental conflict levels amongst the participant cohort (Bell et al., 2013: 118; McIntosh, Long & Wells, 2009: 95). McIntosh and colleagues’ longitudinal study has been critiqued for the lack of information on parenting agreements, including the number of agreements reached across child focused and CIP groups (Bell et al., 2013: 136). It is also notable that the creator of the CIP model, Jenn McIntosh, was the lead researcher in this evaluation.

Bell and colleagues’ small study of 14 parents participating in CIP was based in the UnitingCare Unifam FRCs in New South Wales (Bell et al., 2013). This study found CIP seemed to have little effect on parents’ outcomes and satisfaction and suggested that the therapeutic value of CIP for both parents and children ‘may be more beneficial than its value in promoting dispute resolution and improving parental relationships’ (Bell et al., 2013: 132). The authors noted that parents had high expectations that the involvement of their children would greatly influence the other parent’s behaviours and attitudes, and noted these same parents were ‘correspondingly disappointed when (CIP) failed to achieve the outcomes they had hoped for’ (Bell et al., 2013: 129-
Interestingly, the most reliable predictors of the overall resolution of parental disputes seemed to be the levels of conflict and cooperation within parental relationships – not whether children were seen directly (Bell et al., 2013: 132).

Ballard et al. (2013; see Holtzworth-Munroe et al., 2010 for study protocol) published a US-based randomised controlled trial of child informed mediation with separated parents. Significantly, this study combined child focused (CF) and child inclusive (CI) mediation into a single category (‘child informed mediation’) and compared this with a control group of parents who underwent ‘mediation as usual’ (i.e. mediation without a distinct child focus). No data was sought from children regarding their experiences of their parents’ mediation, parenting agreements, or their inclusion in (or exclusion from) the mediation process.

Ballard et al.’s study had a much smaller proportion of cases assigned to the CI group (n = 14, compared with 35 cases in the CF group) since those cases where children were under 5 years of age were screened out, because they ‘may have had difficulties completing child interviews’ (Ballard et al., 2013: 275). Analysis showed very little difference between CF and CI conditions in terms of parent satisfaction and agreement rates, which may have been due to limited statistical power due to the small sample of CI cases (Ballard et al., 2013: 279). Overall the authors recommended further research to determine ‘whether there are truly incremental benefits to CI over CF that justify the extra time and effort of conducting child interviews’ (Ballard et al., 2013: 279; see also Nuto, 2016: 181).

A more recent US-based study by Rudd and colleagues (Rudd et al., 2015a) utilised court records of cases from the same data set as the Ballard study, to explore re-litigation rates following mediation. Rudd and colleagues found CI cases had lower rates of parental re-litigation when compared to CF cases, providing some evidence that child inclusive mediation may help reduce inter-parental conflict longer-term (Rudd et al., 2015a; 455-456). However, these authors echoed the conclusions of Ballard and colleagues, emphasising the need for more research including longitudinal accounts from parents and children in order to determine the efficacy of child inclusive mediation (Rudd et al., 2015a: 456).
Since the longitudinal study by McIntosh and colleagues, there has only been one publication that specifically explores the outcome effectiveness of the CIP model in the FRC practice context. A recent action-research project at Logan FRC (Williams, 2016) aimed to evaluate the efficacy of child inclusive practice at the service. This study aimed to determine whether improvements to the parental relationship and/or the wellbeing of children occurred following implementation of the ‘sole practitioner’ model (further explored in Chapter 2, pp. 37-38). Feedback from a small number of child participants showed ‘improved immediate wellbeing in terms of being included, consulted and heard when having their say in FDR’ (Williams, 2016: 39-40). Data also showed a small increase in parents reporting satisfaction at 3-6 months post-FDR, reflecting the ‘(belief that) their children have benefitted from participating and that they have benefitted from hearing from their children in the FDR process’ (Williams, 2016: 40). This study noted the importance of additional longitudinal measures to determine if children can ‘assess whether their input and participation during the FDR process has improved emotional wellbeing and (the) parenting relationship’ (Williams, 2016: 39).

Overall, it is too early to determine whether processes that include children directly in FDR improve the experience or outcomes of mediation, for parents or for children (Bell et al., 2013: 139; see also: Ballard et al., 2013; Rudd et al., 2015a; 2015b). There also appears to be a lack of clarity regarding appropriate measures of effectiveness and agreed outcomes for CIP, both in practice and research. Given this lack of empirical evidence base, FDRPs tend to ‘modify the practice of FDR on the basis of assumptions drawn exclusively from practice wisdom’ (Henry & Hamilton, 2012: 109-110; emphasis mine). While practice wisdom is one important source of knowledge, it is vital that empirical evidence informs ‘good’, ethical practice in FRCs.

**FRC staff perceptions of CIP**

*Lack of clarity around CIP suitability in domestic violence cases*

Where conflict is low and DV is absent, there is little argument that the process of CIP ‘either does no harm or offers significant benefits in the form of personal empowerment and improved family relations’ (Henry & Hamilton, 2012: 599).
However, the FRC client cohort is comprised of cases with high levels of DV, and it is in these cases where CIP models must attend to the risks of involving children in FDR (Henry & Hamilton, 2012: 599). In Graham and Fitzgerald’s study (2010: 57), FRC staff were ‘firm in contextualising and qualifying their comments around notions of “appropriateness”, stating clearly that children’s participation was not appropriate in a range of circumstances’. Williams (2016: 37) notes that concern regarding the low number of children of school age and over seen at Logan FRC (63 children in total were seen in the period 2012-2013) was one of the reasons staff initiated the CIP action research project. Cases were being screened out due to ‘assessment of (low) parental capacity, attachment disruption, strength to receive feedback and a history of family violence’ (Williams, 2016: 37). This is where the aforementioned tensions between children’s ‘rights’ to participation and protection arise. FRC workers must balance several complex considerations around children’s rights and safety when it comes to their inclusion in FDR (Graham & Fitzgerald, 2010: 54).

The requirement in many FRCs, including at RANSW, that both parents must consent to their child’s involvement in CIP, can serve to automatically preclude children’s involvement in DV cases. Permission requirements place parents firmly as gatekeepers to their children’s participation (see Brown & Campbell, 2013: 194; Campbell, 2008). The original CIP model necessitated parental consent in part due to its transformative intent: children were seen so that information could be provided to parents, which would not only assist in formulating parenting plans, but might also motivate them to change their conflict behaviours (see Hewlett, 2007; Holtzworth-Munroe et al., 2010; McIntosh, Long & Moloney, 2004). This focus on building cooperative co-parenting relationships seemed particularly present within the RANSW FRCs, as explored in Chapter 4 and throughout the findings chapters.

The ‘safety assessment’ and ‘sole practitioner’ models of CIP (Hannan, 2013; Williams, 2016) seem to have developed in part in response to ethical concerns regarding children’s safety, parental gatekeeping and many children being left out of processes in DV cases. These safety-focused models (Hannan, 2013; Williams, 2016) only require the permission of one parent (usually the parent deemed ‘protective’, i.e. the non-perpetrator) for children to be interviewed, and staff are not obligated to feed back
information about the child session to either parent. Adapted CIP models (including the Child Centred Continuum Model, see Yasenik & Graham, 2016) tend to emphasise the notion that FDR can be utilised to develop parental capacity over time, and that CIP can be a part of this process (see Williams, 2016: 37). However, there is no published evidence that neither these adapted models, nor changes to dual-parent permission requirements, have been applied across the broader network of FRCs.

In Henry and Hamilton’s study, FDRPs and parents raised concern that children included in FDR ‘might face punishment by angered parents (already in heightened emotional turmoil) post-consultation,’ with a higher assessed risk of this occurring in cases involving DV (2012: 592). Another concern regarding the appropriateness of child inclusion was the possibility that children’s views might be ‘contaminated’ by their parents, i.e. one parent may unduly influence or ‘coach’ the child as to what they should say in the session with the Child Consultant (Henry & Hamilton, 2012: 593). Counsellors working in the FRC context argued that the brief, one-off consultation with children in the standard CIP model is unlikely to provide enough time for children to open up about their experiences, which may include DV, nor to meaningfully reflect on questions about their preferred care arrangements (Henry & Hamilton, 2012: 594). FRC workers have also expressed concerns that CIP may burden children with decision-making responsibilities, as well as undermine adult decision-making (Graham & Fitzgerald, 2010: 54).

The weighing of various risks and concerns appears commonplace when it comes to the question of CIP suitability in FRC practices. There remains a real need for the development of ‘an evidence-based child inclusive model of mediation in cases of domestic violence’ (Shea Hart, 2009: 21).

**Lack of clarity regarding the purpose of CIP**

FRC-based studies of CIP consistently demonstrate ambivalence and confusion amongst workers, particularly regarding the core purposes of CIP as well as children’s very rights to participate. While it is common for FRC practitioners to express strong support for the principle of children’s participation, ‘views differ as to how the principle should translate into practice’ (Graham & Fitzgerald, 2010: 58). As noted in
an FRC-specific study by Fitzgerald and Graham (2011b: 439), perspectives among professionals varied ‘as to the weight to be attributed to the views of the child and, indeed whether children’s views on parenting arrangements should be sought at all’. Fitzgerald and Graham’s earlier study (2010) found:

...significant differences in stakeholder understandings about whether the main emphasis and intent of the child consultation was on establishing a parental alliance, for children to be heard, for children to be assessed, to reduce parental conflict, for children to have someone to speak with – or all of the above. (Fitzgerald & Graham, 2010: 58-59)

There appears to be ongoing tension regarding the primary purpose of children’s participation in FDR. FRC workers in Graham and Fitzgerald’s study (2010: 59) identified three possible purposes for children’s participation in FDR: parents’ educative and transformative purposes (also see Williams, 2016); ‘evidentiary’ reasons, i.e. safety assessment and desire to protect the child from further harm; or, reasons of ‘advocacy’, i.e. children’s rights to participate in matters directly affecting them. As the authors note, these three approaches frame children’s role in the decision-making process in very different ways (Graham & Fitzgerald, 2010: 59).

Cashmore and Parkinson’s study found that family mediators thought ‘the most important aspect of the involvement of children was to enlighten the parents’, with mediators assuming that ‘parents did not know what their children really thought’ (2009: 19-20). In one sense, the traditional model of CIP could be viewed as gaining ‘data’ from the child to better inform the decisions of parents, rather than concerning itself with the meaningful involvement of children (Eriksson & Nasman, 2008: 265). If parental enlightenment is viewed as the core purpose of child inclusion, it follows that ‘parental readiness’ would be a key determinant of children’s participation (see McIntosh & Long, 2005; McIntosh, Wells & Long, 2007). However, there is consistent professional concern that parental readiness should not be the sole basis of decisions regarding child inclusion, as this assessment method can negate children’s participatory rights (see Beckhouse, 2016; Bell, 2015; Birnbaum & Saini, 2012; Graham & Fitzgerald, 2010; Williams; 2016; Yasenik & Graham, 2016).
In contrast to findings on the centrality of parental readiness and ‘enlightenment’, Brown & Campbell’s study found that FRC practitioners reported inviting children’s participation ‘to give voice to the children who are central to the work they do’ (2013: 195), indicating a focus on advocacy and perhaps the therapeutic benefits that might flow from children’s participation. Divergence in professional approaches to CIP can also be seen in Henry & Hamilton’s research (2012), which indicated that FRC practitioners invite children’s participation for the more practical purpose of ensuring parenting plans are tailored as closely to children’s needs as possible.

The most recent account of professional perspectives regarding CIP in FDR (Williams, 2016) detailed Logan FRC’s efforts to articulate a ‘collective professional practice framework’ for child inclusion; they noted that prior to their research project such a framework was ‘non-existent’ (Williams, 2016: 37). Williams’ conference paper describes a ‘paradigm shift’ amongst FRC staff which took place over a number of years, and which required staff to reflect upon ‘the roots of our own conditioned assumptions about children’s capacities (and) challenging protectionist notions about how children should and should not be consulted and by whom in the Family Law system’ (Williams, 2016: 41). The paper notes that the rates at which children and young people participated in FDR increased during the period of action research, and ‘has continued to increase in the improved child inclusive culture’ (Williams, 2016: 42). It is possible, even likely given the large number of FRCs, that innovative practices regarding child inclusion have been more widely developed and implemented. However, details of these innovations have not translated into evaluation and knowledge exchange via publication.

**Parental readiness for CIP**

As noted above, ‘parental readiness’ as a core criterion for entry into CIP has been explored in recent FDR-specific literature (Fitzgerald & Graham, 2011b; Yasenik & Graham, 2016; Williams, 2016). Earlier studies on CIP linked parental readiness to the concept of ‘parental reflective functioning’ (PRF) – a term drawn from the literature on attachment theory, used to describe the attunement and emotional availability towards children needed in the post-separation family environment (see McIntosh,
Long & Moloney, 2006: 14). The concept of ‘reflective functioning’ was originally developed by Fonagy and colleagues (Fonagy et al., 1991) and was applied to parent-child relationships by Slade over a decade later (Slade, 2005). In theory, PRF may allow a parent to anticipate their children’s emotional and physical needs as well as ‘adapt to these needs and help their child to regulate themselves’, thereby creating an environment of security (Ordway et al., 2014: 3492). This description has much in common with the goal of the original CIP model, which was to provide a secure emotional base for children following their parents’ separation (Moloney & McIntosh, 2004; McIntosh, Long & Moloney, 2004: 88).

PRF refers to ‘the parent’s capacity to hold the child’s mental states in mind (and the) capacity to reflect upon their own and their child’s internal mental experience’ (Slade, 2005: 269). Considered a ‘meta-cognitive process’ where one has the capacity ‘to think about feeling and to feel about thinking’ (Slade, 2005: 271), PRF also requires a high level of emotional regulation for the parent to exercise a ‘non-defensive willingness to engage emotionally (without) shutting down’ (Slade, 2005: 271). The idea is that where a caregiver has the capacity to ‘hold and contain the child’s experience’, this helps the child to develop an understanding of themselves as separate, subjective beings, providing the foundations needed for them to experience a rich self-knowledge and ‘inner life’, as well as the capacity to experience intimacy and sustained connection in relationships with others (Slade, 2005: 271-273).

Perhaps most relevant to the process of CIP assessment is the underlying concept of ‘impact awareness’: where parents understand that ‘their own actions, thoughts and feelings may influence their children... (and that) parents trust that their children’s thoughts and feelings are not a significant threat to them as parents’ (Ordway et al., 2014: 3493). FDR and FRC workers across a number of studies considered the possibility that parents might try and manipulate their children prior to a child consultation, or punish them later for what they had disclosed, as safety risks that might preclude CIP intervention (Bell et al., 2013; Cashmore & Parkinson, 2009; Fitzgerald & Graham, 2011b; Graham & Fitzgerald, 2010; Hannan, 2013; Henry & Hamilton, 2012; Petridis & Hannan, 2011; Williams, 2016). The current study explores
FRC worker understandings of parental reflective functioning and its applicability to CIP assessment.

Organisational constraints noted with CIP implementation

There are several organisational and FRC program-level barriers to CIP implementation that have been well documented in the literature. The most commonly cited constraints include: lack of resources; a lack of suitably trained and experienced practitioners; and a lack of funding to employ them (Bagshaw, Quinn & Schmidt, 2006: 27; Moloney & Fisher, 2003: 13; Smyth & Moloney, 2003: 181; Williams, 2016: 37). Staff members have also indicated that FRCs are not resourced to manage child safety concerns in a climate where tertiary child protection services are already overloaded (Petridis & Hannan, 2011: 37). The time-consuming nature of CIP processes, which require several extra sessions in addition to standard FDR processes, is another barrier (see Williams, 2016: 37). Significantly, CIP is not included under the standard FRC funding model, where parents are provided FDR services at no cost up to the first three hours of mediation (Bell et al., 2013: 139). While organisations exercise discretion around charges to clients, there is an indication that cost might be an additional barrier to some parents engaging with CIP. Chapter 4 details the CIP process across the RANSW FRCs (pp. 79-83).

Children’s views on their participation in Family Law matters

There is very little research regarding children’s experiences of FRC processes, despite extensive evaluation of the 2006 Family Law Reforms (De Maio et al., 2012; Kaspiew et al., 2009; 2012; Qu & Weston, 2010) and documentation of action research within the FRCs (Bell et al., 2013; Caruana & Parker, 2009; Parker, 2011; Williams, 2016). Given the high level of public investment in making the Australian Family Law system ‘better’ for children, it seems ironic that ‘we are still failing to routinely collect and report the views of children as part of the “evidence base” of Australian Family Law and policy’ (Fitzgerald & Graham, 2011b: 239-240). There are ongoing ethical concerns about researching children’s experiences in such complex and high-risk contexts, which is one reason why the current study chose not to invite children’s participation. Given the very small number of evaluations that consider children’s experiences in
FRCs, a consideration of children’s views on their participation across Family Law processes generally are presented below. Where data are specific to FDR or the FRCs, this is noted.

There is extensive Australian and international research which clearly outlines that children want to have a say in Family Law proceedings (see Bagshaw et al., 2010; Campbell, 2008; Carson et al., 2018; Cashmore & Parkinson, 2009; 2011; Graham & Fitzgerald, 2010). Not only do children want to be heard in Family Law processes, they also want to be informed of the outcomes, build meaningful relationships with relevant workers, and exercise choice regarding the form of their participation (Bell, 2002; Carson et al., 2018). Campbell’s study of Australian children’s perspectives on their involvement in their parents’ post-separation dispute resolution processes found that all children, across various ages and family situations, expressed the desire to be heard by adults, and said that their opinions should be heard (Campbell, 2008: 249; see also Bagshaw 2007: 460).

For children consulted in these various research studies, ‘having a say’ did not equate with making a final decision in Family Law matters (see Carson et al., 2018; Fitzgerald & Graham, 2011a; 2011b; Graham & Fitzgerald, 2010). In one small, qualitative FRC-based study, children suggested many ways that they could contribute and be included in mediation processes: being listened to and having some influence on the outcomes of their parents’ dispute; having some flexibility and choice in arrangements and; being able to communicate about the matters at hand with important people in their lives, especially their parents (Graham & Fitzgerald, 2010: 54-55).

Cashmore and Parkinson’s Australian-based study (for accounts on this common data set, see: Cashmore & Parkinson, 2009; Cashmore & Parkinson, 2011; Cashmore, 2011) interviewed 47 children and young people from a mix of contested (court-based) and non-contested (mediation-based) matters. This study found that 91% of young people thought they should be involved in decisions that affected them, with just over half of the respondents saying they wanted more ‘say’ than what they had (Cashmore, 2011: 517). Children spoke about the importance of being ‘taken seriously’, which seemed
to equate with adults respecting their perspectives and giving them some control in how their thoughts were expressed in the process (Cashmore, 2011: 519).

The most recent Australian-specific research on children’s involvement in the Family Law system is Carson et al.’s (2018) qualitative study. In this project, 61 children and young people aged between 10 and 17 years whose parents had accessed the Family Law system, were interviewed to investigate their needs and experiences. Forty-seven parents of these same young people were also interviewed – 50% of whom reported safety concerns either for their children or themselves in relation to ongoing contact with the other parent (Carson et al., 2018: vi). Most of the children and young people in this study had not been given any opportunity to participate in the process of forming parenting arrangements (n = 17) (Carson et al., 2018: 63). The number of interviewees who recalled their parents accessing FDR/mediation was quite small (n=12), with only three of these young participants stating they had personally met with an FDR practitioner. However, all three of these young people stated that the FDR practitioners had ‘acknowledged their views’ (Carson et al., 2018: 45).

‘Choice, not just voice’: domestic violence, abuse and children’s participation

There is significant evidence that children who have experienced DV want their voices to be heard in Family Law processes. In the children’s survey that formed part of the 2006 reform evaluations (Bagshaw et al., 2010: 3-4), child victims of DV reported feelings of ‘hopelessness and powerlessness’ in light of the ‘lack of opportunity to express their views’ about their care arrangements. In a more recent study, children who had experienced violence and abuse from a parent reported distress where their experiences had not adequately informed parenting arrangements, and also expressed a strong desire for their perspectives to be taken seriously within the Family Law system (Carson et al., 2018: 34; see also Cashmore & Parkinson, 2009: 18; Fitzgerald & Graham, 2011a; 498).

Cashmore & Parkinson (2008: 20) noted that, for some children whose experience of abuse and violence had ‘disturbed children’s trust in those relationships and concern for maintaining them’, children wanted ‘more say in the decision – choice, not just a
voice’. Child victims of DV may present as resistant to spending time with one parent or might have rejected one parental relationship altogether (Beckhouse, 2016: 30). Given the persistent presence of the pro-contact, cooperative co-parenting discourse in the Australian Family Law system (Henry & Hamilton, 2011; Holtzworth-Munroe et al., 2010; Kaspi et al., 2014; Shea Hart, 2009; Qu & Weston, 2010), practitioners must remain vigilant in the face of evidence that DV is most likely to be encountered and is not the exception in the FRCs (Cleak & Bickerdike, 2016: 23; Hannan, 2013: 270). Children have reported instances where their disclosures of abuse or violence were not believed by Family Law professionals and have described ensuing experiences of distress and disappointment, particularly where they were not able to affect changes to their living or contact arrangements (Carson et al., 2018: 90).

Beckhouse, writing in the context of the Australian Family Court with specific reference to the practices of Independent Children’s Lawyers (ICLs), observes that children who have rejected, or are resisting contact with, one parent can be ‘uncomfortable with a best interest model and seek access to processes that allow them to directly participate’ (Beckhouse, 2016: 30). This group of child clients may pose a particular challenge for FRCs, where traditional CIP models do not allow for children to participate in joint sessions with their parents directly. Neale (2002: 469) discussed the potential need for ‘specialist support, an independent voice and legal representation’ to be available to children of divorce whose family relationships are abusive or oppressive.

The evidence clearly suggests that children who have experienced violence and abuse have a strong desire for input into post-separation decisions that will have tangible effects on their lives. Thus, it is pertinent to consider the distinct lack of frameworks for CIP practices in the FRCs, and the particular absence of protocols regarding child inclusion in cases of DV.

**Meaningful participation**

‘Meaningfulness’ is a subtle yet recurring theme in the literature on children’s participation. The term ‘meaningful’ as it is considered here is of a different import than the concept of ‘meaningful relationship’ found in S. 60CC (2) a) of the Act. While
including children in and of itself may be a useful practice, ‘involving children’ in a 
bland or perfunctory way or notionally ‘hearing their voices’ in FDR does not 
guarantee that children will feel listened to or empowered, or even that the consulting 
adults will communicate their views accurately. Moloney (2006b: 42) highlights that 
‘most children feel disempowered by dispute-resolution processes that are about 
them, but do not include them in any meaningful way’ (emphasis mine). Children may 
reasonably require support to engage with post-separation services. Fitzgerald and 
Graham (2011b: 499) offer a number of suggestions that may support children to 
participate in FDR in ‘meaningful and constructive ways’:

...from having someone to talk to that they can trust or have confidence in, 
through to having access to information and resources. In addition to 
information, children need the opportunity for conversations that support the 
process of discernment – about whether they want to have a say at all, what it 
is they want heard, and how they might participate in the process. 
Opportunities to learn from other children with similar experiences, and access 
to follow up information are further ways of supporting children to 
participate... (Fitzgerald & Graham, 2011b: 499)

The children and young people interviewed in Carson et al.’s study (2018), particularly 
those who had experienced or were experiencing abuse or violence, identified their 
need to have a ‘meaningful say’ as vital to the formation of parenting arrangements, 
with some calling for their views to be treated as an ‘integral and respected’ part of 
the process (Carson et al., 2018: 42). The idea of ‘genuine listening’ on the part of 
Family Law professionals emerged as a key theme in the study (Carson et al., 2018: 
68). Professionals who took steps to build trust with children and young people, as 
well as prioritised open communication (by providing information about the decision-
making process and how children’s views would be considered within it) were highly 
valued by young participants (Carson et al., 2018: 79). In the current FRC climate, 
where standard CIP meetings with children are around one hour in length, it may 
prove very difficult to provide ongoing feedback, support and the expression of care 
as described by the young people in this research.
Fitzgerald & Graham’s (2011b) study of children attending post-separation Child Contact Services (services that facilitate supervised contact in cases that are highly contested) found the most important feature of ‘having a say’ for children involved ‘being listened to’, but that this was not such a straightforward process. ‘Having a say’ involved the offer of ‘space and possibilities for thinking through choices, and for (clarification) of children’s understandings of events’ (Fitzgerald & Graham, 2011b: 495). In this way, participation was important and needed an ‘act of recognition’, in which children felt they should be ‘treated as individuals, separate from their parents’ (2011b: 497-498). Where children felt that recognition was absent in their relationships with adults, they expressed an even greater awareness and desire for it in Family Law processes (2011b: 497-498). Significantly, an absence of recognition appeared to ‘compromise (their) ability to understand, cope and adapt to the change in their families’ circumstances’ (Fitzgerald & Graham, 2011: 497-498).

Research that explores the aspects of ‘meaningful’ participation provides emerging evidence that children’s participation in the FDR space may in fact be an important contributor towards their longer-term wellbeing, health and safety. However, the question remains as to whether the FRCs are currently resourced to provide the kind of engagement that children would find meaningful. Fitzgerald and Graham suggest practitioners consider ‘whether the invitation to children to participate is accompanied by an intention on their part to take the views of children seriously, to respond to what they have to say and, if necessary, change’ (2011b: 499). Poignantly, Fitzgerald and Graham also note that ‘while listening to the voices of children represents an important start, actually engaging adequately and authentically in the listening (and responding) in Family Law contexts is challenging’ (2011b: 441).

**Participation in the FRCs: Children’s views**

A small number of studies provide insights into children’s experiences of their participation in the FRCs. Many of these studies engaged with children as one key stakeholder group within wider investigations of systems and processes, where other stakeholders (primarily parents, FRC workers and FDRPs) were also participants. Given
empirical investigations with children in the FRCs are few and far between, those that are available are explored in some depth here.

Henry and Hamilton (2012) interviewed 24 children who were involved in child inclusive FDR at Midland FRC. While most children reported a positive experience of consultation, a small minority who had experienced parental neglect and/or abuse or DV reported the experience of inclusion as distressing, primarily due to fears of anger or retaliation (from one or both parents). This study highlights the complexity of children’s participation in FDR cases of violence and abuse, a point which is well established amongst existing studies (Bagshaw et al., 2010; Brown & Campbell, 2013; Fitzgerald & Graham, 2011b; Graham & Fitzgerald, 2010; Hannan, 2013; Petridis & Hannan, 2011; Shea Hart, 2009; Williams, 2016).

Graham & Fitzgerald (2010) interviewed 12 children who had participated in child consultation sessions within the previous 24 months, as part of a wider study of the practices of a single FRC in regional NSW (2010: 54). The majority of children (n = 11) reported enjoyment of ‘some aspect’ of the child consultation experience, and ‘strongly encouraged other children to take up the option’ (Graham & Fitzgerald, 2010: 55). However, some children also described feeling ‘scared’ in the lead up to the consultation, in part due to a lack of information, preparation and knowledge regarding the purpose of their meeting with the Child Consultant (Graham & Fitzgerald, 2010: 55). Children also expressed some disappointment at the lack of feedback regarding the outcomes of parenting agreements. Some young people wanted to know how, or whether, their views had influenced their parents’ agreement (Graham & Fitzgerald, 2010: 55).

Four children conveyed disappointment and unhappiness with their existing living arrangements in Graham & Fitzgerald’s study. For these children, there was a sense of expectation that things would change because of their consultation, and dissatisfaction emerged when no change occurred (Graham & Fitzgerald, 2010: 55). While none of these children raised issues of violence, the authors note that this was likely attributable to screening out DV-affected cases (Graham & Fitzgerald, 2010: 59).
Towards ‘good practice’ in children’s participation

Considering the complexities of children’s participation in FDR, several recommendations have been made to encourage a move towards ‘good practice’. Suggestions that an alternative to the use of language around ‘best interests’, such as an assessment of children’s needs or a measure of a ‘least detrimental alternative’ (Hansen & Ainsworth, 2009) have been raised (Brown & Campbell, 2013: 192-193). Recommendations have been made for the Act to align with all children’s rights to have their views considered in matters that affect them, as expressed in the UNCRC (see Graham & Fitzgerald, 2010: 60). A stronger mandate for children’s participatory rights would be a truly significant reform to the Act as it currently stands.

Recent insights from children and young people themselves about effective child inclusive practice in the Australian Family Law setting highlight the importance of children being independently informed about decision-making processes, progress and outcomes (Carson et al., 2018: 96). The provision of ongoing therapeutic support for children where required and accommodation of children’s need for flexibility in parenting arrangements were also important to young people.

Carson and colleagues call for further research to inform the ‘development of professional practice and service delivery’ regarding child inclusion in Family Law processes (Carson et al., 2018: ix). The strongest recurring theme in the literature is for clarification of the criteria, processes and purpose of child inclusion across the Family Law system (Banham et al., 2017; Beckhouse, 2016) and in in FDR processes as utilised in the FRCs (see Cashmore & Parkinson, 2009; Dobinson & Gray, 2016; Fitzgerald & Graham, 2011b; Graham Fitzgerald &, 2010; McIntosh, Wells & Long, 2007; Shea Hart, 2009; Williams, 2016).

Conclusion: Summary of the literature review

FRC practitioners, who come from diverse professional backgrounds, are directed by governing legislation and policy to pursue the ‘best interests’ of children in their work. However, practitioners possess a high level of discretion in interpreting ‘best interests’, which has been critiqued as a highly subjective term in the context of Family
Law (Kelly, 1996; Moloney & Fisher, 2003; Shea Hart, 2009; 2010). FRC practitioners also exercise a high level of autonomy within the individual Centres that employ them, which in turn are operated by several very different community-based organisations across Australia.

The FRCs were intended at the highest legislative and policy levels to operate in a highly autonomous manner. While this has resulted in a certain level of practice innovation, it has also given rise to highly complex and individualised practices. The empirical research on children’s participation is currently a small but growing body, which includes some studies of children’s own perspectives on FDR, and a number of legal, policy, sociological and ethical discourses that inform workers’ understandings of children’s ‘best interests.’ To date, very little research has explored how FRC workers exercise their professional judgement to include children’s perspectives in the process of FDR. The lack of clarity regarding the purpose and meaning of children’s participation is striking (Fitzgerald & Graham, 2011b: 439), as is the lack of consistent screening and decision-making processes regarding case streaming into CIP across the FRCs (Graham & Fitzgerald, 2010: 60).

While there is little Australian and FRC-specific research around the efficacy of CIP and children’s participation in FDR, children have made it clear that they want to have a say in post-separation dispute resolution. Children’s expressed desire for participation is even stronger in cases where they have experienced DV or abuse, and yet current evidence shows these are the very children who are likely to be screened out of participatory FRC processes. The emerging theme within the literature of ‘meaningful participation’ serves to highlight recent calls to clarify child participatory practices within the FRCs. Overall, the literature presented here indicates several gaps in existing knowledge and provides a strong rationale for further exploration of child inclusive practices in the FRCs and the development of ‘good’ practice frameworks.
Section Three: Research site and methods
Chapter Four: The Research Site – The Relationships Australia

New South Wales Family Relationship Centres

Introduction

In order to fully situate participant accounts of child inclusion, it is necessary to first understand the specific practices and policies of the case study organisation. This chapter describes the research site, namely five of the FRCs managed by Relationships Australia New South Wales (RANSW). The chapter provides an overview of where the research site fits within the broader national network of FRCs, followed by an explanation of the RANSW organisational structure, FRC employee roles, and the FRC client pathway. RANSW’s child inclusive policies, in place at the time of data collection, are briefly summarised.

Description of the research site

RANSW is a medium-sized, not-for-profit, secular organisation based primarily in the Greater Sydney area of New South Wales. Service provision at RANSW is focused on ‘relationships’, as its name implies. The organisation provides couple and family counselling, relationship education programs, and mediation and dispute resolution services to families across the State. The bulk of RANSW’s work is with adults: at the time of data collection (2013-14 financial year) of the 42,500 client sessions recorded, only 16% were with children (RANSW, 2014: 3). This focus has continued to the present day, with RANSW’s 2017-2018 Annual Report noting that 6% of the clients seen within that year were children (RANSW, 2018: 10). RANSW is one of eight State and Territory-based chapters of Relationships Australia (RA), a national community services organisation.

RA is an Australia-wide organisation, originally established in 1953 as the National Marriage Guidance Council (RA, 2017a). The National Marriage Guidance Council was designed to help families recovering in the post-World War II era and was originally staffed by voluntary trained counsellors (RA, 2017a). The name of the organisation was changed in 1994 to ‘Relationships Australia’ to reflect the broader scope of its
work (RA, 2017a). A national office based in Canberra currently manages the Australia-wide RA network. However, each State-based organisation has an independent board, CEO, executive team, and staff that provide a range of services to clients (RA, 2017b). Each State-based chapter receives a large portion of its funding from the Federal Government, with additional funding for specific services from respective Territory and State Governments (RA, 2017b).

RANSW receives the majority of its funding from government departments, including the Attorney General’s Department and the Australian Department of Social Services (Federal) as well as the NSW Department of Family and Community Services, the NSW Department of Juvenile Justice and the NSW Ministry of Health (State) (RANSW, 2018: 11). At the time of data collection RANSW employed 450 staff at 28 sites across New South Wales, with an annual budget of approximately $28 million (RANSW, 2014: 2). The figure below provides a high-level overview of the various programs operating across the State, contemporaneous with data collection. The FRCs come under the post-separation program area, which is highlighted. The counselling and post-separation programs are linked, as FRC workers can refer clients to counsellors for an initial free session, and counsellors are co-located at some FRCs. However, the counselling and FRC programs are managed separately.

Fig. 1: Broad overview of services provided by RANSW at the time of data collection (with a focus on post-separation programs), adapted from RANSW Intranet (2014)

This study relates to a very particular part of RANSW’s organisation: its six Family Relationship Centres, five of which were included in data collection. Each of the FRCs
represents a separate office location, however some of the FRCs were co-located alongside other RANSW services. For example, while North Ryde FRC had a separate entrance and some independent offices, it was co-located alongside the head office, sharing some spaces with management and executive staff. The FRCs were managed independently from other post-separation programs, maintaining their strongest organisational connection with counselling staff (as detailed above). The figure below provides an overview of the post-separation programs. The FRCs involved in this study are highlighted and appear in no particular order.

![Diagram of RANSW Post-separation Programs]

Fig. 2: Overview of RANSW post-separation programs with research sites shaded (adapted from RANSW Intranet, 2014)

**The story of the RANSW FRCs**

**The RANSW FRCs in context**

In 2006, RANSW competed for and won a Commonwealth Government tender to establish 6 Family Relationship Centres across the state of New South Wales. Four other non-government organisations also succeeded in the tendering process, establishing several other FRCs across the State.²

² These organisations are: Anglicare; UnitingCare Unifam; Catholic Care (now ‘Centacare’); and Interrelate.
As explored in Chapter 2 (pp. 34-37), several FDR and FRC-based approaches to child inclusion have emerged (see Field & Lynch, 2014; Hannan, 2013; Williams, 2016; Yasenik and Graham, 2016). There is a trend in the more recent CIP model adaptations towards inviting children to be part of FDR on a near-mandatory basis. At the time of data collection RANSW did not mandate child consultation, and children were seen via CIP on few occasions.

**Individual RANSW FRCs: Commonalities and differences**

It is important to understand both the common framework and practice adaptations of the RANSW FRCs, as this provides essential context for child inclusive practices. While the FRCs are centrally managed under RANSW’s post-separation program stream, each Centre is fairly independent in terms of its management and approach. Due to the diversity of practice approaches across the five FRCs included in this study, key commonalities and differences are briefly described below.

<table>
<thead>
<tr>
<th>Centre</th>
<th>On site Child Consultant/s?</th>
<th>On site counselling staff?</th>
<th>Adaptations to standard FRC process?</th>
<th>Groups for children available?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Centre B</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Centre C</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Centre D</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Centre E</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Centre F</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

*Table 1: Comparison of key features of the RANSW FRCs included in the current study*

As described in the above table, at the time of data collection three of the Centres (C, D and E) had access to an on-site Child Consultant (i.e. a Consultant was located within their team or office), while two did not have this access. Although FRC workers frequently referred clients for individual counselling, only two of the five Centres (Centres C and D) had access to co-located RANSW counselling staff. Only a single Centre (Centre D) had a group work program for children of separated parents seen
at their FRC. It was unclear why Centre D alone had an established group program for children.

Centres varied in terms of team cohesion and rapport, commitment to different practice approaches, and the strength of referral networks in their geographical area. Centres B and F had each slightly modified the standard RANSW FRC process. The staff in Centres B and F had workshopped and developed these modified processes over time, based on their understanding of client needs. Centre B had introduced a focused model for Family Advisor intake and assessment processes ('Focus on Communication' or FoC sessions), while Centre F had developed an additional group work intervention for parents (entitled ‘Understanding FDR’). For Centre F clients, attendance at ‘Understanding FDR’ was compulsory prior to beginning the formal FDR process. These slight modifications were not directly relevant to child inclusive practices, and as such are not explored in detail here. However, these variations are highlighted to show the relative independence of each Centre and the diversity of practice approaches, even within a single organisation and program.

**Employee roles**

Each RANSW FRC was staffed by a number of workers, employed across various roles. Participants had the primary roles of Family Advisor (FA), Family Dispute Resolution Practitioner (FDRP) or Child Consultant. Each role-group played a different part in assessing suitability for Child Inclusive Practice (CIP) and working with parents. Thus, each role is briefly described below prior to an explanation of the client pathway through FDR.

**Worker 1: Family Advisor**

The Family Advisor (or FA) met with each parent when they first attended the FRC. The FA spent 1.5 hours with each parent, with sessions often booked on separate days to avoid any conflicted encounters between previous partners. FAs generally came from a social science, counselling, or social work background.

FAs assessed initial suitability for FDR and conducted initial safety and risk screening (although in 2013 there were no screening tools that were consistently used within or across the RANSW FRCs). FAs also explored the nature of the parenting dispute, taking
a history of the parental relationship and inquiring about patterns of conflict and communication. The FA provided short to medium-term case management and telephone support for clients, with case management responsibilities transferred to the mediator once parents attended their first pre-FDR session. Once they had undertaken internal training, FAs were qualified to co-facilitate the Kids In Focus (KIF) psycho-educational group for parents, alongside their FDRP colleagues.

The FA’s role was also to inquire about the children from the relationship ‘and their particular needs or concerns’ (Wheeler, Gray & Hewlett, 2015: 52), as well as make referrals to relevant services for both parents and children. FAs could give parents some information about Child Inclusive Practice (CIP) in their session if they thought CIP could be relevant. However, FAs emphasised that CIP had to be assessed as suitable by FDRPs and Child Consultants as the case continued through the FRC.

**Worker 2: Family Dispute Resolution Practitioner**

One Family Dispute Resolution Practitioner (FDRP) was assigned as the ‘primary’ mediator for each case, once both parents had completed the KIF group. As explored in Chapter 2 (see pp. 39-41), to be registered as an FDRP individuals were required to complete a Graduate Diploma in Family Dispute Resolution and hold an ‘appropriate’ qualification with relevance to FDR (Family Law (Family Dispute Resolution Practitioners) Regulations 2008: Regulation 5). As explored in the below section on the participants, FDRPs in this study cohort came from highly diverse professional backgrounds.

The primary FDRP met with each parent individually for a 1.5-hour pre-FDR session, to assess suitability and readiness for mediation. Following the pre-FDR stage, the primary FDRP and a second FDRP of the opposite sex facilitated the first joint mediation session between parents (RANSW policy requires a gender-balanced mediation team). The same two FDRPs continued to facilitate joint sessions with parents, with the goal of reaching parenting agreements.

FDRPs had an essential role in child inclusion: they were the workers who decided if a case should be referred to CIP, and were responsible both for recommending CIP to parents as well as making a formal referral to a Child Consultant (RANSW, 2010a: 7a:
Generally, if CIP was suggested and both parents agreed to it, the FDRP would give parents a consent form to sign in the first joint session (RANSW, 2010a: 7a: 3).

The primary FDRP would then brief the Child Consultant on the circumstances of the case, either via referral form or over the phone (RANSW, 2010a: 7a: 4), before the Consultant met with the child. RANSW policy also stated that the primary FDRP would meet with the Consultant to plan the feedback session to parents (RANSW, 2010a: 7a: 4). The FDRP was responsible for ‘ensuring that the children's perspectives can be adequately reintroduced at the beginning of the next joint session’, and throughout any further joint sessions (RANSW, 2010a: 7a: 7), as the Consultant generally did not attend any sessions beyond the delivery of feedback to parents.

(Optional) Worker 3: Child Consultant

Where an FDRP referred a case for CIP, and both parents gave their written consent, a Child Consultant would be engaged. At the time of data collection, most of the Child Consultants that were engaged in CIP work were RANSW workers primarily employed in other roles (generally, as FDRPs or RANSW counsellors). Centre B appeared to be the only Centre to employ external child specialist workers as Child Consultants, potentially due to the lack of co-located Child Consultants or adjacent RANSW counselling services.

The RANSW Practice Standards and Training Requirements to conduct child consultations (2009; see Appendix C) was the only documentation of its kind available at the time of data collection, and in at least the two years following (D. Roberts Pers. Comm., 15th November 2015). According to the RANSW Standards, the ‘minimum entry requirement’ for a Child Consultant was:

An award of an appropriate bachelor degree with an orientation to the behavioural or social sciences, education, and psychology or other relevant degree with a post graduate qualification in counselling, psychology or psychotherapy and a minimum of two years direct experience in working with children, adolescents and their families in a health professional setting. (RANSW, 2009: 1; emphasis mine).
Supplementary requirements for RANSW Child Consultants included extra training, supervision, competency assessments and performance appraisals to ensure a high standard of practice (RANSW, 2009: 1-2). Child Consultants were responsible for: undertaking individual assessments with each parent (via telephone or in person) prior to meeting with the children; facilitating a one-hour interview with each child of the family; preparing for and delivering feedback from the child interview in a joint session to parents and the FDRPs; and, debriefing with the primary FDRP to ensure the mediator could continue to communicate the children’s needs in future joint sessions (RANSW, 2010a: 7a: 2-7).

**The RANSW FRC client pathway**

The figure below shows the step-by-step process for each case that came through the RANSW FRCs. While there were some variations in this process, for example the teams at Centres B and F had made slight modifications, all Centres followed this general process fairly closely.

*Fig. 3: Standard FRC process at RANSW (*denotes optional / non-essential step in the process)*
**Step 1:** Family Advisor (FA) facilitates an assessment session with each parent. Each session is approximately 1.5 hours in length.

**Step 2:** A mixed team of FAs and FDRPs facilitate the KIF group, a psycho-educational style group aimed at building parental insight into the damage post-separation conflict can have on children (see RANSW, 2019).

**Step 3:** The FDRP facilitates a 1.5-hour pre-FDR session with each individual parent. FDRP assesses ongoing suitability and readiness for mediation, as well as the potential relevance of CIP.

**Step 4:** Parents meet together at the FRC for the first time for their initial joint FDR session. A mixed-gender team of two FDRPs facilitates all joint sessions. A single joint session can be up to 3 hours in duration. All meetings up to the end of the first joint FDR session are free of charge, and after that are charged on a sliding income scale.

*Step 5*(Optional / Non-essential): Child Inclusive Practice (CIP) takes place only if FDRP refers the case to a Child Consultant, and if both parents provide written consent for the child to be seen. If CIP takes place, a Child Consultant facilitates an interview with each child in the family, with each interview approximately 1 hour in duration. Child consultation is charged to each parent on a sliding income scale.

*Step 6:* Child Consultant facilitates a feedback session with parents to communicate the child’s perspectives. The feedback session is usually attended by the Consultant, both parents, and one or both FDRPs. This session is compulsory if the Consultant has interviewed the child.

**Step 7:** FDRPs may facilitate further joint FDR sessions with the parents.

**Note that the FDRP can issue a Section 60I Certificate at any point in time, thereby terminating the FRC process (FDRP Regulations, 2008: Reg. 25; Family Law Act, 1975: S. 60I (1) VII).** As outlined in Chapter 2 (pp. 22-23), there are a number of S. 60I Certificate types, but essentially the Certificate enables one or both parents to apply to the Family Court for parenting orders.
Child inclusive policies at RANSW

At the time of data collection, the organisation had a small number of policies relating to child consultation. When contacted for information, the RANSW Senior Manager of Clinical Services indicated that the only policies in existence had been sourced from RA Canberra (D. Roberts, Pers. Comm., 15th Nov 2015). Three key documents were shared with me: i) a three-page excerpt from the RANSW FRC Operational Manual entitled ‘Step 7a: Child Inclusive Practice’ (RANSW 2010a; see Appendix A) describing the process of CIP assessment and employee roles in relation to CIP; ii) a seven-page attachment to the Operational Manual, entitled ‘Guidelines for Child Inclusive Practice’ (RANSW 2010b; see Appendix B); and iii) a three-page document entitled ‘Practice Standards and Training Requirements’ for child consultation at RANSW (RANSW, 2009; see Appendix C).

The introduction to the Guidelines for CIP stated that the FRC practice emphasis ‘is on offering an assessment, information and referral service that is clearly in the best interests of the child’ (RANSW, 2010b: 7a: 1; emphasis mine). RANSW required both parents to sign a ‘parental consent form’ before any sessions with children could occur (RANSW, 2010b: 7a: 1).

![Fig. 4: Standard child inclusive practice (CIP) process model at RANSW (adapted from RANSW, 2010b: 7a: 6)](image-url)
As outlined in the above section, CIP was an optional intervention that sat outside of the standard FRC process. There was no mention of seeking children’s consent to be interviewed in RANSW CIP policies. Where children were interviewed (Step 5 in the diagram directly above), they met with a Child Consultant for around one hour. The role of the Child Consultant was to meet with the child, and then to interpret and feed back what the child had said to their parents (Step 7), with the specific purpose of ‘shift(ing) parents into a parental alliance’ (RANSW, 2010a, 7a[1] 7.4). Children were not included in joint FDR sessions, nor were they formally given any feedback on the outcomes of mediation or related parenting plans.

RANSW followed McIntosh’s original CIP model quite closely in terms of the step-by-step process advised, although the core aim of CIP appeared to have a different emphasis. RANSW’s CIP guidelines described the key aim of the practice as the ‘transform(ation) of the relationship between high conflict parents for the benefit of their children’ (RANSW, 2010b: 7a [1] 7.4). This distinct focus on shifting the parents’ relationship – from negative to positive, or from ‘high’ to lower conflict – references the strong conflict minimisation narrative present within the organisation. In contrast, McIntosh’s CIP model has the core goal of forming a ‘secure emotional base’ for children following their parents’ separation (McIntosh, Long & Moloney, 2004: 88). While these aims appear quite similar, the RANSW model centres the parents’ relational transformation, as opposed to children’s needs for a secure base – some, but not all, aspects of which might be found in the reduction of conflict in their parents’ relationship.

RANSW’s CIP guidelines included a small section on case screening, which noted that CIP ‘is not appropriate in all cases’ (RANSW, 2010b: 7a [1]: 7.5). The guidelines state that CIP ‘will not be recommended’ if: there are ‘unresolved safety concerns’; if there is ‘parental opposition to hearing feedback from a child specialist’; if the children ‘have mental health issues or are in therapy’; and generally if the child is younger than five, although exceptions could be made (RANSW, 2010b: 7a [1]: 7.5). A sub-section also states some criteria that parents must satisfy for CIP to be appropriate:
Both parents need to demonstrate some ego maturity and genuine intent to better manage their dispute

Both need to demonstrate some appreciation of their children as having needs of their own

Both need to demonstrate some willingness, with support, to consider the children’s views and reconsider their own. (RANSW, 2010b: 7.5)

In summary, RANSW’s policies framed feedback to parents about the children’s session as the vital part of the child inclusive intervention. Organisational policies provided no explanation or purpose, apart from the possibility of transforming the parents’ relationship, to potentially include children in FDR. Arguably, the importance placed on feedback to parents could reflect RANSW’s legacy as a couples’ counselling service.

**Conclusion**

This brief synopsis of the RANSW FRC history and still-developing approaches to both FDR and CIP provides an important understanding of the client pathway, worker roles and the assessment decisions faced by the research participants. Influenced by its history as a counselling service for couples, RANSW’s FDR practices and CIP policies emphasised the forming of collaborative relationships between parents following separation. Individual RANSW FRCs varied in their client pathways and co-location of Child Consultants and RANSW Counselling staff. Minimally detailed policies regarding child inclusion in FDR existed at the time of data collection. Existing CIP policy emphasised a distinct focus on parents being both capable and willing to hear from their children as pre-conditions for child inclusive practice (CIP). The following chapter describes the research design, methodology and ethical considerations of the study.
Chapter Five: Research design and methodology

Introduction

This chapter outlines the design and methodology of the study. Firstly, the choice of a qualitative approach and constructivist grounded theory method are explained. The case study organisation, research questions, participant sample and recruitment procedures are described, followed by a detailed account of data collection processes. An in-depth account of data analysis, including an account of my conceptual framework, is provided. Finally, the ethical considerations and limitations of the study are considered.

Methodology

Qualitative inquiry

Given the aims of this research (i.e. to understand workers’ perceptions and approaches to child inclusive practices where parents are in high conflict) a qualitative approach was adopted as the most appropriate form of inquiry. While there have been several large-scale studies of the Australian Family Law system after the major legislative reforms in 2006 and 2012 (De Maio et al., 2013; Kaspiew et al., 2009; 2015a; 2015b; 2015c; Qu and Weston, 2010), these have been primarily mixed-method or quantitative in nature, and focused on parents’ experience of the post-separation service system more generally. Studies on CIP in the FRC setting are minimal, particularly qualitative inquiries exploring workers’ approaches and decision-making in practice.

The focus on worker understandings of their practice necessarily required a qualitative approach (Alston & Bowles, 2003: 10; Bryman, 2008: 385). The current study is phenomenological, in that it seeks to understand the ‘constructs’ workers use in everyday practice to make sense of their work (Ritchie & Lewis, 2003: 12). Facilitative questioning through the mode of semi-structured in-depth interviews was considered most appropriate given the exploratory nature of the research questions (Ritchie & Lewis, 2003: 32-33). Semi-structured interviews allowed participants to reflect on
both the subject of child inclusion, as well as their thoughts and opinions related to child inclusive practice.

This study has both an ‘evaluative component’ (investigation of both processes and outcomes in policy and practice; Ritchie & Lewis, 2003: 29) and ‘a generative aspect’ (interest in the production of new ideas; Ritchie & Lewis, 2003: 30-31).

**Constructivist grounded theory**

This study adopted a constructivist grounded theory approach, as developed and described by Charmaz (2008), in which reality is viewed as both subjective and socially constructed, while emphasising the co-construction of data by participants and researcher (Charmaz, 2008: 402). The overall aim of a grounded theory approach is to generate conceptual understandings of the phenomena being studied, which are rooted or ‘grounded’ in the specific research process and social context (Charmaz, 2008: 398; Charmaz, 2014: 10-11; Ritchie & Lewis, 2003: 12). However, the constructivist style does not view theory as something ‘emerging’ from the data in an observable sense; rather, it is the researcher who actively constructs, categorises and draws meaning from the data (Charmaz, 2008: 402).

Within a constructivist approach, the researcher’s positionality, prior knowledge and preconceptions, as well as the choices they make throughout the research process, all contribute to the analysis, and therefore must be scrutinised as part of the analytic process (Charmaz, 2008: 402). Researcher reflexivity is vital to constructivist grounded theory (Charmaz, 2008: 403). The practice of reflection and the development of reflexivity that is widely explored in the fields of social work and feminist research (as discussed below) are central to my ways of working and being.

A grounded theory approach fulfilled my aim to explore the ‘what’ and ‘how’ of child inclusive practices in the specific context of family dispute resolution by gaining rich, in-depth data. This theoretical framework also allowed me to privilege the voices of my participants, while simultaneously situating myself in the research process. My prior experiences as a student, clinical worker, and researcher at RANSW meant I approached this study with a fairly clear idea of the gaps that existed, both in literature and within the organisation’s FRC practices at that time. As discussed in Chapter 1, I
began this study with an ‘agenda’ of sorts: I wanted to discover why children were only directly included in mediation on so few occasions. However, over time as I learned more about the research process, as well as the complexities of practice as my participants described it, I shifted my approach. I recognised that I had to acknowledge and remain conscious of my original ‘agenda’ to ensure it did not unconsciously shape my analysis. I also recognised that I must elevate the accounts of my participants and be clear that I was actively constructing meaning from their accounts.

I found it difficult to balance my dual identities as practitioner/researcher and organisational insider-outsider throughout this research process. Finding a delicate balance between honouring the in-depth experiences that enabled me to pursue such a study in the first place, and the temptation to minimise or outright reject my prior experiences and assumptions, necessitated the development of critical reflexivity. I frame myself as standing both within and outside of this research, dwelling in the ‘space between’ (Aoki, 1996): a concept I consider below in discussion of the ethical considerations regarding insider-outsider positionality.

Research design

The study sample: RANSW case study organisation

The research site and recruitment setting for all 27 participants is the FDR service provider and counselling organisation, Relationships Australia New South Wales, where I worked in student, clinical and research-based roles over several years. The selection of a single organisation provided the most suitable setting to explore the practice complexities of CIP. While a comparative organisational analysis was considered earlier in the research process (the practices of RANSW and another large NSW-based NGO that managed FRCs were to be compared), it was decided that a single case organisation would allow a deeper exploration into existing practices while retaining contextual insight (Ritchie & Lewis, 2003: 50). The selection of a single case study entity also enabled analysis of the connections between legislation, organisational policy, and practice implementation, while minimising the variables that exist between different managing FRC organisations at a program level.
My longstanding relationship with RANSW enabled significant access to research participants, as there was an existing level of trust that facilitated participant willingness to be part of the study. My experience also provided me with detailed knowledge of clinical practice in the FRCs and enabled a rich engagement in the interview and data analysis stages (Rabe, 2003: 156). My later position as a Research Officer at RANSW for three years during my PhD allowed me to maintain the position of an organisational ‘insider-outsider’ (Dwyer & Buckle, 2009: 61): sharing organisational language and cultural understandings with the participants, while enabling a critically reflexive stance towards organisational practices.

**Research Questions**

Following a review of the literature and consideration of my existing practice knowledge, two key research questions were formulated:

1. How do workers in RANSW Family Relationship Centres decide when and how to include children’s perspectives in post-separation family dispute resolution?
2. What factors or circumstances influence worker decisions around whether and how to include children’s perspectives in the mediation process?

**Speaking with professionals: What about children’s voices?**

My beliefs and experiences, both professional and personal, directly influenced my choice to essentially problematise the practice of child inclusion. As I was asking questions of my participants regarding the circumstances where they would directly include children, I was conscious of the fact that I was not directly including children in my own research. This was a pragmatic decision made early in the research process. Due to doubts that I could secure ethical approval from my University and RANSW to interview children of separated parents directly, I chose to interview workers and situate the research from their perspectives.

**Sampling**

A non-probability, purposive sample of practitioners from a range of clinical roles across 5 RANSW FRCs was sought. Purposive sampling aimed to ensure a thorough view on the subject matter (child inclusion) while also ensuring some diversity to
explore child inclusion from a range of perspectives (Ritchie & Lewis, 2003: 79). Sampling continued until theoretical saturation was reached, and interviews provided a range of ‘case stories’ with different outcomes (Ritchie & Lewis, 2003: 81). The interview structure and ‘case story’ component of the interviews are discussed in the below section on data analysis.

Interviewing across multiple role groups was important given the research questions. Although Child Consultants were the only participants who worked directly with children in the FDR process (except for two Centre D workers who ran groups for children at their FRC), FDRPs and Family Advisors were important gatekeepers for CIP. Family Advisors could recommend child inclusion to mediators or parents, and FDRPs in turn would ultimately decide whether or not to pursue CIP with parents. Child Consultants would also assess as to whether they thought CIP would be appropriate. Exploration of the full range of possible influences on practitioner decision-making around child inclusion could therefore only be achieved by opening the study up to a range of organisational roles. A more inclusive sample also enabled greater understanding of the broader organisational culture around child inclusion.

Given the evaluative nature of the study and the broad aim of the research to generate ideas regarding ‘good practice’, diversity within the sample was important in order to a) maximise the chance of identifying the ‘full range of factors or features’ associated with child inclusive practices; and b) allow for ‘investigation of interdependency between variables’ (Ritchie & Lewis, 2003: 83). Deliberate sampling across FRC primary role groups (Family Advisors, Family Dispute Resolution Practitioners, Child Consultants and Managers) enabled comparative analysis between these groups, as well as providing multi-dimensional accounts to aid in theory development (Strauss & Corbin, 1998). Detailed accounts of each role group and their function in relation to child inclusion can be found in Chapter 4 (pp. 76-79).

**Recruitment procedure**

Small group presentations to RANSW FRC staff were undertaken in early 2013. Clearance from each FRC Manager was sought and given to present at the weekly team meeting. I delivered a brief 15-minute presentation within the weekly team
meeting that outlined the aims, research questions and methodology of the study. Information was provided to team members including the time required of participants, how data would be used, and information regarding confidentiality. Attendees were invited to register interest for an in-depth interview by writing their name and contact email on a piece of paper passed around the group at the end of each presentation. Potential participants were then contacted via email to set an interview time.

While participants from all six RANSW FRCs were invited to participate in the study, staff from only five of the Centres ended up as part of the final sample. This was primarily due to distance (the sixth Centre was a significant geographical distance from the other Centres) and the unanticipated high response rate from staff at other Centres.

The participants

The participants were 27 Family Relationship Centre (FRC) workers employed in various roles across 5 RANSW Centres. The largest primary employee group interviewed was FDRPs (n=14), followed closely by Family Advisors (n=11). One Manager and 1 RANSW Counsellor were also interviewed. Note that these figures relate to the primary employment role: while the sample included 4 Child Consultants, 3 of the Consultants held the primary role of FDRP and 1 was mainly employed as a RANSW Counsellor.

<table>
<thead>
<tr>
<th>Primary role</th>
<th>Number of participants (n = 27)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Dispute Resolution Practitioner</td>
<td>14</td>
</tr>
<tr>
<td>Family Advisor</td>
<td>11</td>
</tr>
<tr>
<td>Manager</td>
<td>1</td>
</tr>
<tr>
<td>RANSW Counsellor</td>
<td>1</td>
</tr>
</tbody>
</table>

*Table 2: Primary organisational role by number of participants*
The below table provides details of the name and primary/secondary role of each participant, as categorised by Centre location. All participant names are pseudonyms.

<table>
<thead>
<tr>
<th>Participant</th>
<th>Primary and secondary roles</th>
<th>Centre</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 &quot;James&quot;</td>
<td>FDRP</td>
<td>B (no Child Consultant on site)</td>
</tr>
<tr>
<td>2 &quot;Felicia&quot;</td>
<td>FA</td>
<td>B</td>
</tr>
<tr>
<td>3 &quot;Lisa&quot;</td>
<td>FDRP</td>
<td>B</td>
</tr>
<tr>
<td>4 &quot;Daniel&quot;</td>
<td>FDRP</td>
<td>C (co-located CC)</td>
</tr>
<tr>
<td>5 &quot;Josie&quot;</td>
<td>FA</td>
<td>C</td>
</tr>
<tr>
<td>6 &quot;Holly&quot;</td>
<td>FDRP and Child Consultant</td>
<td>C</td>
</tr>
<tr>
<td>7 &quot;Anna&quot;</td>
<td>FA</td>
<td>C</td>
</tr>
<tr>
<td>8 &quot;Rowan&quot;</td>
<td>FDRP</td>
<td>C</td>
</tr>
<tr>
<td>9 &quot;Joy&quot;</td>
<td>FDRP</td>
<td>C</td>
</tr>
<tr>
<td>10 &quot;Dee&quot;</td>
<td>Manager and FDRP</td>
<td>D (two co-located CCs, group for children)</td>
</tr>
<tr>
<td>11 &quot;Renata&quot;</td>
<td>FDRP and Child Consultant</td>
<td>D</td>
</tr>
<tr>
<td>12 &quot;Marnie&quot;</td>
<td>FDRP</td>
<td>D</td>
</tr>
<tr>
<td>13 &quot;Sarah&quot;</td>
<td>FA</td>
<td>D</td>
</tr>
<tr>
<td>14 &quot;Angelique&quot;</td>
<td>FA</td>
<td>D</td>
</tr>
<tr>
<td>15 &quot;Olivia&quot;</td>
<td>FDRP</td>
<td>D</td>
</tr>
<tr>
<td>16 &quot;Julianne&quot;</td>
<td>FA</td>
<td>D</td>
</tr>
<tr>
<td>17 &quot;Irene&quot;</td>
<td>FDRP</td>
<td>E (Co-located CC)</td>
</tr>
<tr>
<td>18 &quot;Jean&quot;</td>
<td>FA</td>
<td>E</td>
</tr>
<tr>
<td>19 &quot;Clarissa&quot;</td>
<td>FA</td>
<td>E</td>
</tr>
</tbody>
</table>
Table 3: Participants by primary/secondary role at RANSW, categorised by Centre

Of the 27 participants, 5 identified as male and 22 identified as female. All of the males interviewed were working as FDRPs. Seventeen of the 27 participants had some prior experience working directly with children, including all 4 Child Consultants (as per RANSW, 2009; see Appendix C).

While professional backgrounds in social science and counselling were common, especially amongst Family Advisors, FDRP backgrounds were more varied. FDRPs had diverse backgrounds in law, advertising, trade work, the arts and education, as well as in social sciences and counselling. This reflects the Graduate Diploma-level qualification and broad entry-level requirements of Undergraduate training required for FDRP registration (see Family Law (Family Dispute Resolution Practitioners) Regulations 2008: Regulation 5). Information pertaining to the professional backgrounds of specific participants is not shared here, given the high likelihood that this would identify participants.

On average, participants had been employed at RANSW for just over 5 years, with the longest period of employment being 8 years, and the shortest being 1 year. 8 of the
27 participants held senior roles within their respective teams at the time of their interview. The ‘senior’ title was given to a practitioner who was often the most experienced member of the team, and often (although not always) indicated a supervisory role amongst the Centre’s team members.

Every possible senior practitioner self-selected for participation in this study. Both the Senior FA and the Senior FDRP from Centres B, C and F participated. While there was no Senior FA on staff at Centre E at the time of data collection, the Senior FDRP participated. Similarly, there was no Senior FDRP at Centre D, but the Senior FA was a participant. While senior staff members were not particularly targeted for recruitment, it is notable that nearly one third of all participants in the study cohort had been recognised by RA as experienced practitioners.

Data collection

Interviews
Semi-structured, in-depth interviews were undertaken with 27 participants in late 2013. Individual interviews were viewed as an appropriate method for data collection, as interviews provided opportunities for detailed understandings of the topic area, as well as a deep focus on individual practices and decision-making (Ritchie & Lewis, 2003: 36-37). Interview guides were emailed to participants once the interview date had been set, and copies were also printed for participant reference in the face-to-face interviews. Giving participants the opportunity to review questions ahead of their interview allowed for the possibility of rich, detailed responses, and was particularly important given the requests for case examples. The duration of interviews ran between 50 minutes, and 1 hour and 45 minutes.

Interview questions were framed around existing policies, procedures, and ways in which children’s perspectives were currently being included in FDR. Participants were also asked about their beliefs regarding whether children’s perspectives should be included, and the purpose of inclusion when it was pursued. Broader questions around the work of the FRCs and its effectiveness for children and their families were also asked.
While core questions were posed consistently across all interviews, I played an active role in probing participants for more information and following spontaneous issues as raised by interviewees. This form of interview-based data collection is closer to what Rubin and Rubin (1995: 28) term ‘topical interviews’, which tend to have a narrow focus on a ‘particular event or process and are concerned with what happened and why’. This narrower focus was appropriate given the exploration of participant judgements and decision-making around child inclusive practices.

Two interview guides were developed that covered topics specific to role type: i) Practitioner interview guide (see Appendix D), and; ii) Manager interview guide (see Appendix E). The management-focused interview guide concentrated more on policy and procedural matters, while the practitioner-focused interview guide had more questions relating to clinical work. It was planned that practitioner/manager groups would be another point of comparison in terms of diverse perspectives on child inclusion. However, only one Centre manager volunteered to participate. As such, the themes from this single interview were incorporated into a general analysis of the data.

Given the focus on professional practice and decision-making, the use of case examples was one strategy employed to move beyond idealised descriptions and towards the actual decisions and behaviours of participants (Ritchie & Lewis, 2003: 128). Participants were asked to share examples of general cases that they had drawn particular learning from, as well as specific case examples across two primary categories:

a) A case where including the child was appropriate, and where this was done effectively

b) A case where the child was not included, and where the outcomes were effective

Questions regarding case examples were worded in such a way that interviewees across all roles could share cases that were either child-focused or child-inclusive. This was important, as I knew that not all participants would have had an experience of either working directly with children or being involved in a CIP feedback session. The
wording of these questions enabled participants to assign their own meaning to the term ‘inclusion’.

After around the first 6 interviews had been completed, I noticed that participants were predominately sharing negative case examples, i.e. cases where children had been included and things did not end well. Where participants had brought this up, I had further prompted and explored their examples. However, I added two more requests for case examples to my interview transcripts after these early interviews:

- c) A case where the child was included, and it did not go well / led to a negative outcome
- d) A case where the child was not included, and it did not go well / led to a negative outcome

Field notes were recorded after each interview to capture general thoughts about the dynamic of the interview itself, as well as to record ideas for later interviews and analysis (Ritchie & Lewis, 2003: 132-133). Field notes contributed to the iterative process of theory-generation and were also used as a tool for critical reflection. Interviews were audio-recorded and transcribed by a transcription professional, who signed an Oath of Confidentiality prior to gaining access to audio files. Funding for professional transcription was partly provided via a grant from the UNSW School of Social Sciences.

**RANSW policy document review**

Organisational policy documents on child inclusion, current at the time of data collection, were reviewed in addition to the interviews undertaken. In this context, policy review was both a form of triangulation to check the integrity of inferences from the interview data (Ritchie & Lewis, 2003: 43), as well as a strategy to deepen the understanding of child inclusive practices (Ritchie & Lewis, 2003: 275). Review of documentation was not undertaken to ‘validate’ interview data in a strict sense, but rather to add depth and breadth to the overall analysis and to provide a ‘fuller’ picture of organisational practices (Ritchie & Lewis, 2003: 44). Information regarding RANSW CIP policy documents can be found in Chapter 4 (pp. 81-83; see Appendices A-C).
Data analysis

Grounded theory analysis
Data analysis followed a constructivist grounded theory approach, as described in detail above. NVivo software was used to code key themes emerging from interview transcripts. Successive rounds of open coding were completed. Brief interview summaries were developed following the second coding round in an attempt to reduce the large amount of data to a manageable level (Ritchie & Lewis, 2003: 202). These summaries provided a synopsis of each interview, including key emerging themes and significant quotes, and were shared with my PhD Supervisors. However, I referred back to participant transcripts throughout the process of data analysis, to ensure that quotes were not separated from context and that analysis remained grounded in the data (Ritchie & Lewis, 2003: 204; 210).

Conceptual framework
Below, I discuss my primary conceptual lenses of critical reflexivity informed by the discipline of social work, and my feminist research approach. Review of these conceptual lenses is important in identifying my own epistemological assumptions as a researcher, as these approaches have shaped my interpretation and data analysis.

Critical reflection, reflexivity and social work
The discipline of social work, and particularly the central value it places on the practice of critical reflection, is central to my ontological and epistemological approaches. My primary professional identity is that of a social worker, and this necessarily shapes the way I approach my research. Social work is a diverse discipline that overall aims to enhance ‘the wellbeing of people within their social contexts’ (Barnes & Hugman, 2002: 277). My tertiary education and work experience both shape my understanding of social work as a profession, guided by three core values: respect for persons, social justice, and professional integrity (Australian Association of Social Workers, 2010: 12-13).

As a social worker engaged in research, I am not interested in the production of knowledge for its own sake, but for the transformative potential of that knowledge for human emancipation (Longhofer & Floersh, 2012: 512). My deontological
commitments to social justice, respect for persons and professional integrity intertwined in this research study. I sought to gain a better understanding of practice-based constructions regarding children’s access and inclusion in the family dispute resolution space, in order to inform ‘good’, ethical practice. As most of the participants did not share my professional background, I have endeavoured to be conscious of my disciplinary base and transparent about how it has influenced my approach.

The concept of ‘critical reflection’ that I use throughout this thesis is similar to the concept of ‘reflexivity’, as used in the context of professional social work practice. I adopt Fook and Askeland’s definition, which views critical reflection as a process by which our deepest assumptions are identified ‘with the primary purpose of bringing about some improvements in professional practice’ (2007: 521). The characteristics of the ‘critical’ nature of this reflection relates to critical social theory; i.e. attention to power relationships and situating one’s experiences in specific cultural, social and structural contexts (Fook & Askeland, 2007: 522). Reflexivity is the ‘circular process by which our thinking influences our action, which then influences the situation, which in turn affects how we interpret, think and respond to the situation’ (Harms & Connolly, 2010: 7-8). Reflexivity also relates to Schon’s (1983) idea that professionals can display ‘reflection-in-action’, i.e. the combination of reflection and action concurrently.

This thesis represents an exercise in reflexivity, as I attend throughout to the influence of my social context, personal history, emotion, reactions and actions (Gardner, 2014: 24). My aim has been to continually reflect on my position as researcher and how my personal experiences and professional training have shaped me and, in turn, my research, in what Bourdieu refers to as a ‘sociology/anthropology of social work’ (Longhoefer & Floersch, 2012: 514).

**Feminist research approach**

My epistemological approach is decidedly feminist in nature. I acknowledge there are several different ‘feminisms’ (Brown, Western & Pascal, 2013: 441) and take an intersectional approach that emphasises ‘the simultaneous production of race, class, and gender inequality’ (Mullings & Schulz, 2006: 5). I see women’s lived experiences
as legitimate sources of knowledge and prioritise attending to ‘the role (of) emotion’ in the narratives of my participants, and in my own narratives as a researcher (Brown, Western & Pascal, 2013: 441).

Feminists emphasise subjectivity as a key feature in practice and research, advocating for researcher reflexivity across every stage of the research process (Fook 1996: 196). Feminist perspectives ‘emphasise connected ways of knowing, the recognition of the personal and subjective, and the ways in which power relations influence practice’ (Fook 1996: 198). I view feminism at the heart of my critically reflexive approach to social work; a social work that elevates ‘subjective, intuitive and inductive approaches; and which ‘integrate(s) theorising, practice and research as part of a holistic experience’ (Fook, 1996: 197).

My feminist approach to research also informed my desire not to draw strong boundaries between my participants and myself; I preferred to adopt a relational view towards the shared work of practice reflection (Dwyer & Buckle, 2009: 59). The interviews for this study were also interactive and reflexive. I viewed these conversations as collaborative, with meaning and understandings co-constructed by myself and the participants (Ritchie & Lewis, 2003: 140).

I see this study as a continuation of the work of Australian feminist scholars who have highlighted children and young people in the field of Family Law: primarily Amanda Shea Hart (2003; 2009; 2010; 2013), Lesley Laing (2006; 2010; 2017) and Jane Wangmann (2008; 2010; 2011) among others. My research explores notions of power as exercised through language, attending to dominant discourses and debates regarding gender, parenting and conflict in the Australian Family Law context (Fook, 1996: 197). I construct these debates as occurring within a shifting social, political and legislative context, with the dominant discourses of ‘politicised pro-father contact’ (Kaspiew, 2007) and a ‘cooperative parent ideology’ (Shea Hart, 2009: 21) firmly embedded in the legacy of the 2006 reforms.

As explored in Chapter 6 (p. 109-110), the latter adoption of a feminist ethic of care lens to my interpretive analysis was in line with the emergent findings from this research. However, I acknowledge that I was likely drawn to care ethics through my
existing feminist beliefs and commitments. Commitments to critical reflexivity and ethical feminist practice are woven throughout the design and execution of this study, and ultimately inform my proposed situated framework for child inclusion and ‘good’ practice principles.

**Ethical considerations**

A range of ethical issues were pertinent to the ethical conduct of this study. The ethical considerations of insider-outsider positioning and the importance of reflexivity, given my multiple connections to the subject matter, organisation and research participants, are considered below. Issues of ethics approval, informed consent and voluntariness are also explored.

**Insider-outsider relationships**

The concept of the ‘insider-outsider’ researcher identity applies here in multiple forms. ‘Insider’ research relates to studies where the researcher is also a member of the group being studied (Kanuha, 2000). While I have ‘insider’ memberships as a child of divorced parents, former organisational employee, and clinical worker, I am also positioned outside of these groups. The ‘former’ status of my employment and position as an external researcher created tensions with my ‘insider’ identities. I take a dialectical approach, seeing myself as existing in the ‘space between’ insider and outsider researcher (see Aoki, 1996; Dwyer & Buckle, 2009; Fay, 1996). I see group membership as existing on a spectrum, rather than an ‘either/or’ dichotomy, and acknowledge there are both costs and benefits inherent to the ‘insider-outsider’ position (Dwyer & Buckle, 2009: 61). I explore my various insider-outsider identities in detail below.

**a) Organisational insider-outsider**

My status as an organisational insider (as a student, clinical employee and later as a researcher employed by RANSW) meant that I had longstanding relationships with several of my participants. In fact, I had existing professional relationships with all 27 participants, although the nature of each relationship varied. Insider status tends to give researchers greater access and acceptance amongst participants (Dwyer &
Buckle, 2009: 58), as well as rich engagement in interviews and analysis via shared understanding of language and context (see Asselin, 2003; Rabe, 2003: 156). Recognising the high risk of role confusion where the researcher holds dual roles to the participants (Dwyer & Buckle, 2009: 58), I was sure to reiterate in recruitment presentations, email communication and interviews that this project was separate to any of my paid work at RANSW.

Adler and Adler (1987: 73) refer to researchers who share complete membership with their participants as the ‘ultimate existential dual role’, noting the dangers of role and loyalty conflicts. There were certainly points at which my organisational insider position began to block the progression of my research. I felt flooded with information and was finding it difficult to give a full account of my individual experiences (Dwyer & Buckle, 2009: 58) as former student, current employee, and also PhD Candidate. Navigating how critical I could be of the organisation’s practices in reporting my findings was particularly challenging. I also struggled to switch between the evaluative-style reports that I was producing as a researcher for RANSW, which were focused on informing organisational decisions and practices, and the more conceptual demands of the PhD, which necessitated knowledge generation.

My PhD supervisors supported my process of critical reflection, and in part due to these insider role conflicts, I resigned from my position as Research Officer at RANSW at the mid-way point of my PhD candidacy. Having some distance from the organisation and my participants at that time, particularly given that I was analysing my data, enabled me to stand back and consider what was pertinent to my study as I had originally constructed it. A concurrent shift towards academically-oriented teaching and research work in the latter part of my candidacy I believe also helped me to achieve full immersion in my role as researcher.

b) Child of divorce - Adult of divorced parents

As mentioned in Chapter 1, I am a child of parents who had an acrimonious divorce. This has certainly shaped my pursuit of this research in multiple ways and positioned me to some extent as an ‘insider’ to a related participant group. The intimacy of this topic has been challenging. It has involved debate and deep reconsideration about
how I construct parent-child relationships, intimate partnerships, gender roles, conflict, and abuse. This research has been a personally transformative process: I am not the same person that I was at the outset of my thesis.

I experienced my parents’ separation as a traumatic event and a profound experience of loss. My parents separated when I was 7 years of age, long before the 2006 Family Law reforms. Our family went through a heated, stressful custody battle in the Family Court that went on for over a year. I do believe that access to some therapeutically-oriented support could have made a tangible difference in my young life. I was a young person who wanted assistance to navigate the minefield of emotions and conflicted loyalty that continued well after my parents’ separation. It is likely that this was the very reason I was so drawn to the CIP model when I first discovered it.

I refer again to my constructivist framework, which views reality as socially constructed, acknowledges different viewpoints, and assumes relativity (Charmaz, 2008: 409). I see knowledge as socially situated; therefore, a young person with separated parents in the same historical period, with similar social and cultural positioning to myself, could have constructed very different meanings. I do not assume all children are the same, share the same experiences, or want the same things. However, much of the research with children of divorce (as reviewed in Chapter 3, pp. 62-68) adheres with my own experience. The vast majority of children, particularly those whose parents are in a high level of conflict or where there has been domestic violence, want their voices to be heard in Family Law processes.

I have had to practice critical reflexivity throughout the research process to remain aware of my younger, wounded self. When I felt uncomfortable or challenged by an aspect of my research, I asked myself: who is speaking? The risk of generalising from my personal experiences of family separation has been tangible (Longhoefer & Floersch, 2012: 514). I have continually ruminated on the fact that my views and experiences could never be representative of all children’s experiences of separated parents. Consistent recording of field notes, the practice of personal journaling, and engagement in long-term psychotherapy were important personal reflexive practices. Regular group supervision with a community of fellow social workers and consistent
communication with my PhD supervisors were other key reflexive activities that helped keep me accountable to my responsibilities as a researcher, while also caring for myself.

I have found the theory of transactional analysis, originally developed by Eric Berne in the 1950s, a helpful tool to aid in my critical reflection (see Berne, 1961). This transactional framework has helped me to identify various parts of self as I construct my research. Amelia the child of divorce, Amelia the healing adult, Amelia the social worker, and Amelia the researcher: all have contributed to this work. These ‘selves’ are all me; all inform and enrich my analysis. To deny the presence of any of those identities, or to strip one of an opportunity to speak would be a disservice to my ‘selves’, and my commitment to professional integrity and ethical practice. Reflexivity has been vital to ensure that, while all these ‘selves’ have spoken, my final analysis is in the voice of a critically reflective researcher.

c) Practitioner – researcher: Constructing knowledge in theory and in practice

My dual professional roles of social work practitioner and researcher have interacted and influenced my construction of this project. This thesis has been an exploratory journey of the connections between theory and practice, not only within the research, but also within myself. When I embarked on my PhD, I viewed it as a continuation of my social work practice, particularly given I was leaving direct work to pursue research about practice. However, I struggled at several points to bridge the gap between my ‘practical’ knowledge and skills, and the demands of academic research and theory-building.

When I began my PhD, I conceptualised theory and practice as existing on separate plains. I saw theory as something ‘produced’ by academics, somewhat artificially. I conceptualised practice as something that existed in a separate domain, somehow taking on a quality that was more ‘real’ or ‘authentic’. Over time, as I moved between my data and the literature, I came to question my epistemological characterisation of a theory/practice dichotomy. I came to conceptualise the world in which social workers and related professionals are situated as ‘contextual, holistic, complex, unpredictable and changing… informed by multiple and marginal perspectives’ (Fook,
1996: 199). I began to see practice as something that is not easily theorised, and theory that emerges from practice as something with unique transformative and practical potential.

I began to consider the nature of practice-based wisdom, or theories that are inductively developed by workers during their practice (Floersch, 2004: 163; Fook, 2002: 84). I began to conceptualise the ‘tacit knowledge’ of professionals in the FDR space as potential practice wisdom that could, in turn, inform theory and have the potential to improve practice (Floersch, 2004: 169-170). Floersch sees this ‘practical wisdom’ as separate to the disciplinary knowledge from which it originates, calling for further exploration of the ways in which disciplinary knowledge and situated practice interact with one another, and with organisational power relationships (Floersch, 2000: 188-189). Fook argues for a critically reflective model of social work which ‘integrate(s) theorising, researching and practicing’ (Fook, 1996: xiii). This thesis is my attempt to integrate the theories and practices of child inclusion in the situated context of the RANSW FRCs.

Alongside my PhD research I have been engaged in long-term psychotherapy, which has been a supportive, healing process. Rather than dismiss emotion regarding my trauma, I have allowed my lived experiences to inform my analysis to a certain extent. This has been a complex process of integrating personal and professional learning and reflection, whilst also maintaining some distance between these parts of self to facilitate my wellbeing and healing. I feel my commitment to constant critical reflection, as well as principled commitments to authenticity and professional integrity, have enabled my personal experiences to enrich my research without leading me to conclusions that are not rooted in my data. Consciously existing in the ‘space between’ multiple insider-outsider identities (see Aoki, 1996; Dwyer & Buckle, 2009; Fay, 1996) has meant acknowledging the experiences of myself and others as multi-dimensional and complex, while also helping to guard against over-simplification of participant accounts.
**Ethics approvals**

Ethics approval was sought and granted by both the Human Research Ethics Advisory Panel B (Arts, Humanities and Law) at the University of New South Wales (Approval reference: 12169, see Appendix F), and the Human Research Ethics Committee of Relationships Australia New South Wales in April of 2013 (see Appendix G). Feedback to RANSW via a presentation at the end of my study, and organisational access to a copy of my thesis, were negotiated as expressions of reciprocity in exchange for the time and assistance given by research participants across the FRCs (Ritchie & Lewis, 2003: 64).

**Informed consent and voluntariness**

Ethical considerations resonate in qualitative studies in particular, given the unstructured and in-depth nature of this form of research (Ritchie & Lewis, 2003: 66). Participants’ status as professionals working in a social care setting meant that informed consent could be given. However, I was careful to assess and renegotiate consent at every stage of contact with the sample (Ritchie & Lewis, 2003: 67).

Prior to each interview I led a conversation with the interviewee, ensuring they understood that their participation was voluntary, that information would be de-identified, and that data may be used for publications and presentations arising from my PhD studies. Participants were informed that they had a right to withdraw from the research at any time and given a copy of the withdrawal form at their interview. All participants were emailed the Participant Information Statement and Consent Form (see Appendix H) prior to the interview date and were required to sign the consent form prior to the interview.

Given my existing professional relationships with much of the sample group, I was careful to emphasise the voluntary nature of participation. A gentle method of recruitment (a sign-up sheet passed around following a general presentation to all staff) was considered more appropriate than a more direct method, to guard against feelings of obligation.
Confidentiality

Given that this research was in the form of an organisational case study, confidentiality was an important ethical consideration. Interviews were undertaken at RANSW offices during work hours. As an employee, I was able to contact administrative staff and request for meeting rooms be booked. I was careful when liaising with administrative staff not to identify the staff members I would be meeting with. Care was taken to greet all staff upon arrival at each Centre, after which I would then head directly to the designated room I had booked for interviews.

Indirect attribution of comments was of concern, given that individual Centres had different procedures and services available at the time of data collection. This was managed by assigning each Centre, as well as each participant, a pseudonym (Centre A to E). In addition, minor details regarding participant roles were omitted to avoid identification (Ritchie & Lewis, 2003: 67-68).

Interview recordings and transcripts were carefully labelled with pseudonyms, and identifying information was stored separately from ‘cleaned’ transcripts in a password-protected document on my personal computer. Participants were asked to describe case examples without naming their clients, or by assigning pseudonyms, to protect client anonymity. Where the case examples had a particularly identifying feature (e.g. location of parent-child changeover, a particular phrase that the child or parent/s had used that had been recounted by the participant), these were omitted from the final thesis to protect clients’ privacy.

Study limitations

The main limitation of this study is that it reflects a snapshot in time. The length of time between data collection (late 2013) and final write up (2018) means there is a lack of generalisability beyond the specific project scope. There may have been many changes at RANSW in the 5 years since interviews were held, and as such any findings specific to the organisation might not apply. However, up-to-date review of the literature (Chapters 2 and 3) has shown that gaps in guidance and research around child participatory practices, both across the Australian Family Law sector and FRCs specifically, remain. My emergent ethical framework for child inclusion, informed by
participant accounts, has an ongoing relevance and contributes a unique perspective to the published literature.

One noted limitation of small qualitative studies is the generalisability in qualitative inquiry. Ritchie and Lewis pose a key question: ‘Are we accurately reflecting the phenomena under study as perceived by the study population?’ (Ritchie & Lewis, 2003: 274). Internal validity was managed by consistent checking and comparison of coding schema across different participant interviews, FRC sites and case examples (Ritchie & Lewis, 2003: 275). External validity was monitored through source triangulation (analysis of RANSW child inclusion policies) and theory triangulation (emerging literature was consistently reviewed throughout the life of the project, to ensure the data collected for this project could make sense in light of any new FRC-specific research) (Ritchie & Lewis, 2003: 276).

Participant selection bias was another limitation. Given the possibility that workers could feel obligated to participate in the research due to my prior professional relationships with several of the sample, an ‘opt in’ method of recruitment was utilised. However, this recruitment method may have led those with a set stance towards, or interest in, child inclusion to self-select into the study. While this remains a potential limitation, there did appear to be a wide range of approaches to child inclusion represented in the data.

**Conclusion**

This is the first piece of research to consider the framework of professional social care ethics and apply it to child inclusive practices in the Australian FRC context. In this chapter I have explored my commitments to critical reflexivity and feminist research approaches through a constructivist grounded theory analysis, which included careful consideration of the researcher’s multiple positionalities, the co-construction of meaning alongside participants, and the integration of social care ethics analysis following emergent participant accounts. The research design fulfils the overall aim of the study: to contribute to conversations around ‘good’ child inclusive practices.
The following chapter introduces the findings section, providing an outline of the section structure and a summary of key findings.
Section Four: Findings
Chapter Six: Introduction to the findings chapters

Introduction

...is it (child inclusive practice) worthwhile? Dunno. The child has gotta be prepared to and able to express themselves. The parents have gotta be able to hear it. And if those things don’t happen, then I’m not sure that it is worthwhile.

(Anna, Family Advisor and sceptic)

It’s just voicing what I do every day with a parent and I know I keep the children at the front of my mind, even if I don’t personally do the CIP work... to me the child’s always in the room.

(Felicia, Family Advisor and pragmatist)

I think that it’s indicative of the way that we do think about children in our society, that for children to be included, a bunch of adults have to give permission. The children that really need to be included never get a look-in.

(Holly, FDRP, Child Consultant and activist)

This chapter introduces the findings, providing an overview of the key insights of the thesis, as well as an outline of the section structure. As indicated by the above quotes, at the time of data collection child inclusion in the RANSW Family Relationship Centres and practitioner accounts of this practice space were highly complex. In the absence of clear and accessible organisational policies around child inclusion, participants expressed a range of very different views on, and conceptualisations of, children’s participation. Overall, participant accounts drew attention to the ethical nature of the issues they encountered in their everyday practice, and particularly in their decision-making about whether to include children via CIP. What emerged was a range of distinct ethical orientations to child inclusion adopted by practitioners across varied role groups, locations and professional backgrounds. These ethical orientations, along with practitioner assessments of parents’ conflict and parental reflective capacity within each individual case, had a strong influence on whether children would be included in or excluded from post-separation FDR.

The grounded theory approach yielded rich and highly varied accounts from participants, however, three key thematic areas emerged: the ‘hidden ethical voice’
of practitioners; ethical orientations to child inclusion; and the relationships between parental conflict, parental reflective capacity and children’s participation. These three areas afford critical insights towards addressing the ultimate aim of this research: to explore practitioner understandings of ‘good’ child inclusive practice in post-separation FDR. The themes of parent-focused assessment approaches and professional responsibilities towards children are considered within the broader theoretical frames of gendered violence, social justice and care ethics in the discussion chapter.

A secondary literature for analysis: Care ethics

The field of social care ethics, which as a general term refers to the consideration of ethical thought and behaviours of those who care professionally, was a later addition to my framework for analysis. Once I identified that there were a range of different ethical orientations amongst my participant cohort, I found it helpful to turn to the social care ethics literature to aid in my interpretive inquiry. In addition, I had also noticed that one group of my participants (whom I later termed ‘activists’) had placed emphasis on the dual principles of care and justice for children in mediation. As I explored the professional social care literature, a strong connection between activist accounts of ‘good’ child inclusive practice and the theory of feminist care ethics emerged.

The coding schema for ethical orientation categorisation (see Table 5, p. 143) was informed by Osmo and Landau’s study, which explored the ethical theories underpinning social workers’ decision-making (2006: 868). Osmo and Landau’s work was concerned with social workers’ ability to identify ethical principles that informed their actions, and whether their reasoning around case examples matched their chosen principles. Osmo and Landau’s study helped me begin to connect individual participant responses with broader ethical concepts, while the work of Banks (in particular her 2005 paper, see also: Banks, 2010; 2011; 2012; 2013) also helped me to adopt a thematic analysis of the ethical issues with child-related practices identified by my participants.
As I went back and forth between the social care literature and my participant transcripts, I began to recognise an alignment between the accounts of my activist participants and feminist ethics of care theory. Activist participants emphasised the meaning children made of their own inclusion, and the importance of participatory approaches that were respectful and genuinely caring. I noted that activists would commonly draw upon the principles of care as described by Tronto, a feminist care ethicist (1993: 127-136): attentiveness, responsibility, competence and responsiveness. The more I explored the care ethics literature, I recognised that the application of this theoretical lens to my findings could aid in the development of ‘good’ practice principles. In Chapter 10 I propose a situated ethical framework for child inclusion, informed by care ethics and the accounts of my participants.

**Chapter Seven: The ‘hidden ethical voice’**

The first findings chapter introduces the ‘hidden ethical voice’ (Ash, 2010; 2016) of participants, and outlines the various ways in which children’s voices could be included in the FDR process at the time of data collection. Although participants did not explicitly frame their decision-making processes around child inclusion as ‘ethical dilemmas’, several drew attention to a range of ethical issues they had with current organisational practices. Through successive rounds of in-depth coding and analysis I began to conceptualise participant accounts as examples of practice as ethics. These accounts encapsulated how workers understood, made sense of and even justified their practice decisions around child inclusion (Banks, 2016: 36). While participants clearly articulated their professional commitment to act in children’s ‘best interests’, and to ensure the parenting agreements reached in FDR reflected these, very different opinions emerged around how children’s interests could be best uncovered and utilised in mediation.

Participants referred to three methods via which the ‘child’s perspective’ could be introduced into FDR. First, a child focused approach was seen to introduce children’s perspectives into mediation in an ‘indirect’ manner, whereas CIP (the second form of inclusion discussed) was described as utilising the ‘direct’ voice of the child. Therapeutic group work with children was discussed as a third form of inclusion,
although this practice was limited to only one Centre at the time of data collection. Participants drew attention to a range of ethical issues they had encountered in regard to these child inclusive practices. Ethical issues included the limitations of these approaches, as well as constraints that emerged from organisational policies and examples of ‘bad’ or unethical practice. While some practitioners felt a child focused approach sufficiently discharged their duty to act in children’s ‘best interests’, others expressed a commitment to directly including children wherever possible while also acknowledging that CIP was the exception, rather than the rule, in the organisation at that time.

In addition to drawing out ethical issues with current child inclusive practices, participants spoke at length of the tensions they experienced, weighing up many complex factors in the exercise of their professional judgement. This everyday process of negotiating professional judgement and personal engagement, common across professions that provide some form of social care to others, is what Banks (2013: 589) terms ‘ethics work’. This ethics work featured prominently in discussions of CIP suitability assessment, aspects of which are explored in both Chapters 7 and 9.

In the absence of clear organisational criteria, participants developed their own decision-making frameworks to guide how children’s perspectives would be included in FDR. Chapter 7 explores the common factors most participants referred to when considering CIP suitability on a case-by-case basis: i) the child’s age; ii) ‘need’ within the family for a child consultation; iii) practicality of pursuing CIP due to its resource intensity; and iv) a prediction of CIP’s likely effectiveness. Efficacy was the most significant of these elements. This thesis represents the first time that research has explored CIP screening and assessment processes at detailed practitioner and case-based levels.

Participants consistently defined a ‘good’ or effective outcome following CIP as one in which parents ‘heard’ their children’s perspectives and altered their behaviour to be more mindful of their children’s interests and needs. To predict the likely outcome of CIP, participants referred to a complex process of assessment that involved measuring two distinct elements: a) parental conflict and b) parental reflective capacity (PRC).
The majority of participants discussed these elements, and the process that practitioners used to assess these at length. Given the significance of these elements, Chapter 9 is devoted exclusively to exploring participant accounts of ‘conflict’ and PRC. However, while most participants referred to some combination of the assessment elements explored in Chapters 7 and 9, it was not a summation of these factors, but rather the individual practitioner’s underlying ethical orientation towards both the concept of child inclusion in FDR and the CIP model itself which seemed to determine in which cases children would be included directly. Therefore, these underlying ethical orientations are discussed in Chapter 8, as they provide important context to the findings on conflict and parental reflective capacity (presented in Chapter 9).

Chapter Eight: Diverse ethical orientations to child inclusion

Three distinct ethical orientations to child inclusion (as explored in Chapter 8) emerged inductively following several rounds of open coding. I began to notice that although participants were not drawing on the explicit language of ‘ethics’, their descriptions of weighing harm, risk, wellbeing and the potential consequences of inclusion were inherently ethical in nature. What emerged was what Banks (2013: 589; 2016: 36) terms ‘ethics work’: everyday negotiation of professional judgement, and how caring professionals justify these judgements. Participants approached decision-making around child inclusive practices in very different ways. Noting this led to the development of participant ethical orientations based on narrative themes. Ultimately, all participants fit into one of three groups: activist, pragmatist or sceptic.

Chapter 8 presents findings on the ethical orientations of this practitioner cohort. Amongst the 27 participants, three practitioner groupings with distinct ethical orientations towards child inclusion emerged: a) activist (focus on children’s rights and an ethics of care); b) pragmatic (focus on harm, risk and non-maleficence, and; c) sceptic (preference for work with parents and ambivalence towards both the principle and practice of child inclusion). Each group held very different ideas and approaches to children, their parents and the practice of child inclusion in FDR. In turn, the ideas expressed within each participant group were traced to distinct ethical concepts and theories from the professional social care literature. These underlying ethical
orientations of each practitioner towards child inclusion appeared to be the most significant factor influencing their decision making around when and how to include children’s voices in the FDR process.

The practitioners were members of different role groups, Centre locations, genders, and professional backgrounds; although there were some trends in group membership (explored in Chapter 8). Each ethical orientation is briefly described below.

Sceptic participants (n = 4 / 27) expressed a marked ambivalence towards both the principle of child inclusion and the RANSW CIP model. Sceptics also articulated the belief that parents should be responsible for making post-separation decisions on behalf of their children. Sceptics (and their pragmatist colleagues alike) tended to believe that CIP was primarily for parents, with its primary purpose being to help improve parents’ reflective capacity. As such, they felt that direct inclusion of children was not always relevant or helpful. All four sceptics also held the organisational role of Family Advisor, with a less direct role in assessing and recommending for CIP than others in the participant cohort (see Chapter 4, pp. 76-79 for detailed role descriptions). However, this represented only one third of all Family Advisors who participated in the study (n = 11). Thus, not all Family Advisors shared the sceptical orientation towards child inclusion.

Pragmatists (n = 8 / 27) strongly emphasised parental readiness and parental openness to hearing their children’s perspectives, to the point that they would not recommend CIP if they felt parents had insufficient parental reflective capacity (PRC). When it came to assessing appropriateness of a case for CIP, pragmatists emphasised a weighing up of the potential risks (potential harm to children and, the possibly to one parent in the case, of abuse), as well as potential rewards of the intervention. Pragmatic participants were focused on predicting the outcomes of CIP as a means of assessing whether or not a case was suitable for child inclusion. The primary means through which they weighed risk and reward (and potential efficacy) was by assessing parents’ levels of conflict and reflective capacity. Thus, the pragmatic ethical
orientation was focused on predicting consequences, minimising or avoiding harm, and protecting children by maintaining a ‘high bar’ for parental entry to CIP.

Activists (n = 15 / 27) represented the majority of participants. Activists adopted a dual ethical emphasis on justice and care concerning children’s participation. This group framed ‘good’ child inclusive practice as one that showed children respect, valued their individuality and sought to engage them in conversations about their experiences directly. Some activists drew upon the language of children’s participatory rights. Activist narratives about ‘good’ practice incorporated an ethics of care approach, drawing upon Tronto’s (1993) four ethical dimensions of care: attentiveness, responsibility, competence, and responsiveness. Activists expressed a commitment to beneficence (actively doing good) for children, as opposed to pragmatic narratives, which were more focused on avoiding harm. Some activists directly critiqued the idea that CIP was ‘for’ parents and took a broader approach to the level of parental reflective capacity required for CIP. Activists were the most likely across the three ethical orientations to advocate for change or adaptation of current child-related practices towards a more ‘caring’ orientation.

These categories go deeper than a description of worker ‘values’ or ‘beliefs’ around children and child inclusion in adult-oriented processes. The term ‘ethical orientation’ is intended to encompass the lived reality of participants, and their everyday attempts to engage with, understand, act upon and justify their practice decisions in the ‘best interests’ of the children of separated parents. Here is illustrated practice as ethics, as Banks (2016: 36) describes. The ways practitioners think and speak about their practice matters, because it is these conceptualisations that directly inform their actions. This thesis is the first piece of scholarship to explore the diverse ethical orientations of FRC workers, as well as the first to consider social care ethics in ‘good’ child inclusive practices in the Australian post-separation context.

**Chapter Nine: Conflict and parental reflective capacity**

Participants presented an ethically fraught process of ‘weighing up’ levels of conflict and parental reflective capacity (PRC) to determine whether CIP was an appropriate intervention, and whether CIP had potential effectiveness. While pragmatists were the
main proponents of this focus on conflict and PRC, all 27 interviewees mentioned both of these concepts and discussed how they shaped their understanding of child inclusion. Chapter 9 presents findings related to participant constructions of conflict and ‘high’ conflict and (PRC). The chapter also explores an unexpected finding: the lack of discussion around domestic violence (DV) in the assessment process for children’s participation. Case stories are woven throughout the chapter to illuminate key themes that emerged from the data. The findings in this chapter represent the first known exploration of this distinct concept of PRC in the post-separation literature, how participants define and assess it, and its relationships with parental conflict and children’s participation.

The complexity of the assessment process and the diverse range of practitioner approaches to child inclusion are further highlighted in Chapter 9. While the vast majority of participants used the concepts of ‘conflict’ and ‘parental reflective capacity’ to help them assess whether individual cases might be suitable for CIP, it quickly emerged that there were no shared assessment tools or agreed-upon definitions of either concept. There was minimal evidence that participants considered where DV might feature in parents’ conflict behaviours, which was surprising given evidence that DV is very much the rule, not the exception, in FRC cases (Bagshaw et al., 2010; Cleak & Bickerdike, 2016; Family Law Council, 2016; Henry & Hamilton, 2011; Kaspiew et al., 2009; 2015; Moloney et al., 2013; Standing Committee, 2017). Participants consistently articulated the purpose of the FRC process to facilitate a shift away from parents’ conflict and onto a focus on children. High conflict was seen to ‘block’ parents’ capacity to focus on their children’s experiences and needs. As such, most participants constructed high levels of parental conflict and a focus on children as binary concepts.

Case stories suggest that the vast majority of cases involved high levels of parental conflict, combined with low levels of PRC (for either one or both parents). Ultimately this meant that high conflict between parents, and the lack of PRC that was often coupled with this, led participants to assess most cases as unsuitable for CIP, due to the high likelihood that parents would not ‘hear’ their children’s perspectives and that the intervention would result in a negative outcome for children. In Chapter 10 I
critique this parent-centric, efficacy-focused assessment framework, and propose an ethical framework of care and justice as an alternative model for ‘good’ child inclusive practice.

Conclusion

This chapter has outlined key themes in the three findings chapters that follow, drawing attention to the unique contributions of this study. In the absence of higher-level directives regarding CIP suitability and assessment, the participants developed their own assessment processes to determine when and how children would be included in FDR, guided by their underlying ethical orientation towards child inclusion. Participants described the process of weighing up decisions regarding child inclusion as ethically complex. While participants referred to common elements to determine CIP suitability, they each assigned different levels of importance to these elements and had different definitions and conceptualisations of efficacy, conflict, reflective capacity and ‘good’ child inclusive practice. This thesis draws attention to the hidden ethical analysis of child inclusion in post-separation FDR, focusing on an ethics of care and social justice at the forefront of practitioner decision-making.

The next chapter explores the methods of child inclusion available at the time of data collection and the ethical awareness of participants regarding these practices.
Chapter Seven: The child’s perspective in family dispute resolution

Introduction

This chapter presents a diverse range of participant constructions of child inclusion. The first part describes the two primary practice models utilised to include children’s perspectives: a) child focused practice; and b) child inclusive practice (CIP). Group work was discussed as a supplementary way for children to participate in FDR. The second part presents the key factors participants said influenced their decision making around CIP suitability: i) the child’s age; ii) particular ‘needs’ for child inclusion within the case; iii) feasibility, i.e. whether parents could reasonably facilitate their children’s participation in FDR; and iv) likely effectiveness. The third and final section of the chapter explores practitioners’ ‘hidden ethical voice’, presenting the many ethical issues with existing child participatory practices that they shared.

Section One: The practice of child inclusion – ‘indirect’ and ‘direct’ voices

Participants were asked about how children’s perspectives were included within the FRCs. These three methods of ‘child inclusion’ are explored below: a) child focused practice; b) child inclusive practice (CIP); and c) group work with children. Participants referred to inclusion in different ways. A child focused approach introduced children’s perspectives into mediation in an ‘indirect’ manner, whereas CIP utilised the ‘direct’ voice of the child. Participants discussed group work with children as an additional way to draw upon children’s ‘direct’ voices, although this practice was limited to only one Centre at the time of data collection. This section explores the direct and indirect methods of children’s participation, as well as different constructs of ‘inclusion’ in the RANSW FRC practice context.

a) The child focused approach: Indirect voices

The ‘child focused approach’ has long been considered minimum best practice in the FRC context (McIntosh, Long & Moloney, 2004: 88). The child focused approach was a distinct model within the training and practices of the RANSW FRCs, and participants
considered it to be operating in every case with CIP seen as an additional intervention. The wide implementation of this approach was in line with research released around the time of data collection, which showed that child focused practice was the most commonly utilised model (compared with child inclusive practices) within the FRCs (Hannan, 2013: 270). Participants characterised themselves as keeping the child ‘in mind’ in all their interactions with parents, although children were not consulted directly in this model.

**Key characteristics of the child focused approach**

Participants described the key characteristics of the child focused approach:

- The child was not physically present – i.e. did not attend the Family Relationship Centre.
- Viewed as ‘minimum best practice’ in the FRC setting.
- Seen as applicable in all cases.
- Parents and practitioners constructed the ‘likely perspectives’ of children through conversations with one another.
- Viewed as a minimally intrusive model for work (i.e. as children were not involved, there was less time per case and fewer costs to parents).

**‘Actual voices’ vs. ‘keeping children in mind’**

*If you are going to get child focused agreements, which is the point of the exercise, you need to somehow introduce the child’s voice into the room.*

(Adrian, FDRP)

There was a general agreement that children’s ‘voices’ were needed for mediation (and the resulting parenting agreements), to be in children’s ‘best interests’ genuinely. However, participants defined ‘voice’ in different ways. Some workers said that keeping the child at the forefront of their mind during the mediation process could sufficiently facilitate a child focus. Several participants referenced the idea that the child could be ‘in the room’ without ever being physically present. Julieanne, a Family Advisor, said it was her intention with every case to ‘hear’ from children. In her role, Julieanne worked solely with parents, yet she referred to the concepts of children’s ‘voices’ and the importance of ‘hearing’ those voices:
I can’t think of a case where a child’s voice hasn’t been heard. If it’s happened then it’s been an oversight. That is always my goal. (Julieanne, Family Advisor)

Felicia, also a Family Advisor, referred to the child’s presence as a constant:

It’s just voicing what I do every day with a parent and I know I keep the children at the front of my mind, even if I don’t personally do the CIP work... to me the child’s always in the room. (Felicia, Family Advisor)

Julieanne and Felicia’s construction of ‘voice’ was in stark contrast to Rowan’s consideration that CIP was the only way to ‘actually get (children’s voices) into the mediation’:

We have child focused mediation which is what all family dispute resolution is about and then we’ve got child inclusive mediation which is when we have a child consult, and then the children’s voices actually get into the mediation. Whereas, with child focused mediation we are hoping that the parents can represent what the children are thinking. (Rowan, FDRP)

Felicia and Julieanne made no distinction between children’s ‘actual’ voices and what could be achieved within a child focused approach. Similarly to Felicia and Julieanne, for some participants, children were made present by thinking about them. Thus, the commitment to a child focus was achieved. To others, ‘hearing’ a child’s voice within a child focused approach was not something that happened automatically but was rather a process of construction informed by various sources.

**Listening and constructing: Forming the child’s perspective**

Obviously the child’s not here in the room so it’s almost like talking about the child as if they’re sort of somewhere else. So there’s that sort of layer... we wanna talk about what it feels like or what it could feel like from the child’s perspective. (Allira, FDRP)

What we’re bringing in is the parents’ perception of how things are going. Is that (the child’s) voice? I don’t know. But it’s about as close as we can get without doing something like child inclusive practice. (Irene, FDRP)
A small number of participants spoke of actively constructing children’s ‘voices’, as opposed to simply ‘hearing’ or ‘listening out’ through the narratives of parents. Julieanne, a Family Advisor, described gaining information from parents about their children and combining this with her knowledge about ‘children and developmental stages’. Julieanne described this process as like ‘developing a picture’ of each child and their needs, while also insisting that she ‘heard the child’s voice’ in every case.

Participants described how they formed an understanding of children’s perspectives within the child focused approach. Through conversations with parents, consideration of the child’s age and developmental stage, and the practice experience or practice wisdom of the worker, participants actively constructed the perspectives of children. Clarissa, a Family Advisor, represented herself as a ‘conduit’ through which children’s voices were translated. Clarissa cited her clinical experience and empathic skills as a tool for deducing children’s ‘voices’:

> I don’t find that my conversations make me experience something that I call ‘hearing the voice of the child’. What I do is, after seeing many similar cases and understanding what would probably be happening for children given what their parents say they say or do, I think I’ve got a pretty good idea of what the voice of the child would be... And (I use) my own empathy to put myself in a position of someone who was experiencing that with my parents or family. So I guess I use myself as the conduit. (Clarissa, Family Advisor)

While Clarissa was quite conscious of the process of constructing children’s voices, she did not view this relatively impersonal construction as problematic. Clarissa’s narrative here touches on the idea of practice-based wisdom: the ability of practitioners to draw upon knowledge formed through their experience to construct the likely voice of the child.

Many participants described their understanding of how children were experiencing separation through their own knowledge of child development. The child’s age was directly connected with the ways in which they could ‘be heard’ by adults, with children described as becoming more ‘adult-like’ in their communication as they grew older. Some participants, like Sarah, characterised children as capable of ‘speaking’
about their experience through their behaviours. Sarah, a Family Advisor, stated that children at different developmental stages have varied but equally valid ways of communicating with adults:

*So what are you listening for? For a six-month-old baby, they can’t verbalise clearly so you’re listening to their needs and to their routine, their cries, and their communications. So you’re listening in a really broad way. If you were listening to a 15-year-old, you’re really listening on that sort of verbal, more adult-to-adult communication (level).* (Sarah, Family Advisor)

While Family Advisors discussed their general conversations with parents as the site of children’s indirect voices ‘being heard’, Family Dispute Resolution Practitioners tended to speak in more concrete terms about the strategies they used to introduce children’s voices into FDR. Adrian discussed the ‘children’s needs’ exercise mentioned by several FDRPs, which they facilitated at the beginning of the first joint session with parents:

*(We) do a child’s needs exercise... just using the child’s name constantly, photographs, putting photos of the children up on the board... Asking them to reflect on what their own children would say if they were asked various questions.* (Adrian, FDRP)

Some participants framed the indirect nature of the child focused approach as a helpful intervention in the overall FDR process. Through the child focused model, both parents were ‘heard’ without the practitioner elevating one parent’s story over the other. In one sense, the surmised voice of the child and an idea about their potential developmental needs enabled the practitioner to stand on ‘higher ground’: essentially to sit above the competing perspectives of parents. A few participants spoke about how using the idea of children’s views or needs, as opposed to input from actual children, gave the practitioner power when working with parents. While Stan framed the practitioner as yielding power in the child focused approach, Adrian framed the practitioner as relatively powerless in the voluntary mediation setting:

*...we use the power of children in how we work with the parents and that’s by placing ourselves on the side of the children so we don’t have to be on the sides*
of parents. [...] this is power we take by assuming stuff about the children. (Stan, FDRP)

...in effect, our only power is to encourage people to be child-focused... (Adrian, FDRP)

The power of the indirect voices of children appeared to lie in the flexibility of what could be ascribed to them. Practitioners yielded an interpretative power over children’s perspectives, which many participants said they used to try and lead parents away from conflict and towards a focus on their children’s needs. However, only some participants were conscious of their role in constructing children’s perspectives, some (but not all) of whom noted the ethical tensions of this construction process. Other participants were satisfied that parents could accurately represent their children’s perspectives in mediation, and that their duty to children’s ‘best interests’ was satisfied by keeping children in mind.

b) Child inclusive practice (CIP): ‘More direct’ voices

Well that’s really the only way they can be included, to have a third person that’s part of our organisation come in and interview the children, to get their perspective of what’s going on in their family. (Felicia, Family Advisor)

Actually bringing the children in is obviously the best way (to hear) children’s perspectives... and for the children themselves to feel valued, to feel like they’re included... That’s the most powerful way to bring children’s perceptions in I think. (Holly, FDRP and Child Consultant)

Some participants referred to CIP as ‘literal’ inclusion of children’s voices, implying that this was the most authentic or legitimate way to include children in FDR. Like Holly, some participants attached less legitimacy to the child focused approach, implying that it was not as powerful nor as inclusive of children as CIP could be. There was a general agreement amongst participants that CIP was the ‘best’ way to include children’s perspectives in FDR. However, some participants pointed out that CIP was not a straightforward process of simply listening to children and reporting what was said to parents. CIP involved a complex process of Child Consultants ‘translating’ children’s perspectives in a way that parents could better ‘hear’ what was being said.
Key features of the CIP approach

Participants described the key features of child inclusive practice (CIP):

- The child met with a Child Consultant (either a specially trained FRC worker, or a therapist either from RANSW or an external organisation).
- The Child Consultant delivered feedback from their session with the child to parents, with FDRPs present.
- Feedback to parents was ‘thematic’ and constructed to convey the child’s ‘needs’, as opposed to their wishes.
- Written permission from both parents was required for the child to meet with a Child Consultant.
- Viewed as applicable only in certain cases, with criteria for CIP unclear.
- Viewed as resource-intensive.

FDRPs were primary the gatekeepers for CIP: they were the workers responsible for identifying potential cases for CIP, via completion of a referral to a Child Consultant. As described in earlier chapters, children were never directly included in an FDR session with their parents. The CIP model includes children’s perspectives by having them meet with a Child Consultant, who then translates that session into feedback delivered in such a way that parents can hear, understand and be motivated to continue with FDR while bearing their children’s perspectives in mind. The emphasis on parents ‘being able to hear’ their children’s voices continued into participant discussions of CIP.

Case numbers: CIP

While there was no official system for reporting CIP case numbers, FDRPs consistently stated that CIP was pursued in a very small number of their own cases:

*I’m reluctant to say less than 10 but somewhere between 10 and 20 per cent (of cases) I suppose. But I haven’t had a CIP case for months and months, and months.* (James, FDRP)

*I do a relatively low number of Child Inclusive Practice sessions... So probably my guess would be 18, 20 per cent maybe, if that. And, yeah, probably less. More like 15.* (Adrian, FDRP)
In line with the estimations from FDRPs, Child Consultants also reported that a very small percentage of their time was devoted to child inclusive work. Holly estimated that ‘less than one-eighth’ of her time was spent on child consultancy due to a combination of dual roles and each CIP case ‘taking up an enormous amount of time.’ Eve reported that she had initially been ‘bombarded’ with CIP cases, but that referrals from FDRPs had ‘ petered off’ significantly over time. Renata echoed Holly’s statements, noting that the process of tailoring feedback for parents in particular took a very long time to do well.

CIP and translation: Construction of the child’s perspective

...The aim is to have the children’s, how can I put it? It’s, not their wishes but I guess their needs... a good Child Consultant won’t come into a session with what the children want: they’ll come in with their interpretation of what the children need. (Holly, FDRP and Child Consultant)

Construction of children’s perspectives was also a theme within the CIP approach, although in a different form to that of the child focused method. In CIP, a Child Consultant would meet with the child directly to ascertain their ‘needs’ (Holly) or their ‘views’:

It’s (legislative amendments) not about the child’s wishes; it’s about the child’s view. It needs to be entertained and the court will do that through an ICL (Independent Children’s Lawyer) or family consultation. And we do it through CIP. (James, FDRP)

‘Translation’ or re-conceptualisation of the child’s voice was undertaken so that parents could more readily understand it, and continue in FDR more informed by their children’s perspectives:

The voice of the child is only meaningful when the parents move on to make agreements: that stays in the room. (The FDRP) needs to hold that child’s voice and comments all the way. (Jenni, FDRP and Child Consultant)

Jenni’s words touch on an essential feature of how child inclusion was conceptualised in practice. While CIP did involve speaking directly with children, their voices were
essentially translated through the Child Consultant, who acted as an intermediary between child and parents. For Jenni, as for the majority of participants, the measurement of a child’s voice being meaningfully heard in CIP was whether that voice was later incorporated into parenting agreements. If parents did not show they had ‘heard’ their children’s voices, CIP was not considered by most participants to be a successful or useful practice. Participants discussed at length the process of adapting children’s voices so that parents could ‘hear’ them, with Consultants essentially crafting thematic representations of the child’s voice:

*It’s not even a direct representation of the child a lot of the time. [...] it’s sort of taking their story but conceptualising it in an adult world I guess; in an adult way. (Eve, Child Consultant)*

*...what we do get to witness is the feedback to parents; and for that working with children isn’t essential. It’s working with people and being able to tell a convincing story that’s important, and how good people are at doing that varies. (Adrian, FDRP)*

Essentially, practitioners constructed and interpreted even the ‘direct’ voice of the child as it was heard in CIP. The Child Consultant acted as both translator and storyteller. In one sense, this placed a high expectation on the Child Consultant to be well versed in how parents could best ‘hear’ accounts from their children. Some participants framed the careful construction of the child’s perspective as a way of protecting the child from the possible reactions of their parents, while still entertaining their views:

*So it’s not that we take the child’s words and say to mum and dad, ‘Well this is what the child said’. We do a number of assessment processes to get a sense of ‘well what are the things that are emerging from this and what might be the overarching strategy around that?’ And I think this is useful because (otherwise) children could feel potentially quite exposed. (Eve, Child Consultant)*

In Eve’s account, constructing a thematic representation for parents based on what the child communicated in their session with the Child Consultant helped prevent
children from being ‘exposed’. The fear that inclusion via the CIP approach could further harm children – either by parents coaching children prior to their meeting with the Child Consultant, or a parent retaliating against the child if they were displeased with what the child communicated – was a very strong theme in the interviews. Practitioners’ fear that children may be unduly traumatised by their direct involvement in Family Law processes has also been a strong theme in recent empirical studies (Beckhouse, 2016; Kaspiew et al., 2014). The substantial desire of the practitioner to protect the child was evident in many participant accounts: in this case, participants were cautious to protect children from the potential consequences of their inclusion. This desire to protect children from further harm strongly informed participant decisions about whether or not to recommend CIP and seemed to relate to the low number of CIP referrals.

**c) Group work with children**

At the time of data collection, only one group for the children of parents in the FDR process was running at a single FRC: the ‘My Changing Family and Me’ group at Centre D. This short-term therapeutic group was available for children whose parents were in the process of FDR. Several participants from other Centres said they had tried and been unsuccessful at running groups for children, in part due to the organisation’s policies that parents must also be involved in the group process, and that both parents must give their full consent for children to participate at all:

...we can’t even have a group for children without the parents having to come in at the end and that’s perfectly fine when you’ve got parents that can come in in a constructive way... [...] But what about the children whose parents won’t, you know? (Holly, FDRP and Child Consultant)

We’ve tried to (run groups for children) in the past and, of course, the difficulty is that one parent doesn’t consent. That stops the whole process. (Eve, Child Consultant)

Two of the facilitators of the ‘My Changing Family and Me’ group were interviewed, Angelique and Marnie. This group had been running for three years at Centre D prior to data collection for this project. The group ran once a term for six weeks, with
children coming to the group for two hours, one afternoon a week. There was a requirement that parents had to attend their own group process at the same time as their child was attending the children’s group, although parents were asked to alternate weeks (so each parent would attend for three of the six weeks). Angelique spoke about how the group had evolved over time to give more feedback to parents in a process similar to that of CIP:

So three years and it’s evolved hugely in three years... In the children’s group, we’ve moved from giving just a letter of feedback (to parents): we do face-to-face joint feedback now to the parents on our observations of the kids... There’s just more and more messages getting through from the children’s voices to the parents. (Angelique, Family Advisor and Group Facilitator)

For Marnie, a group facilitator who also worked as an FDRP, her relationship building with the children throughout the group greatly assisted her as she went on to work with their parents:

I found working with those kids in that group and then coming into mediation and working with a family as a mediator had a profound difference. And I felt that the outcomes reached were sustainable because we’d been working together as a family unit, and I knew a bit about their children. (Marnie, FDRP and Group Facilitator)

Many participants spoke about their desire to establish more groups for children within the FRCs. Groups were often mentioned as an important and very much needed service that would enable children to be more genuinely included:

Finding some kind of therapeutic anything (for children) in Sydney is ridiculously difficult [...] We’re trying to get a group going here because we’ve been aware that there are some children that belong to our families that really, really need to have a group process to help them and their parents kind of do better. (Jenni, FDRP and Child Consultant)

I’d love to see groups being run for children and I would like to see more child inclusive practice. [...] just bring in more for the children. (Josie, Family Advisor)
The opportunity to run groups for children in the FRC context was highly coveted by practitioners based in other Centres. Groups were seen as an alternative way of including children in FDR, and in some ways were positioned as ‘for’ children in a way that CIP was not. The primary goal of the existing Centre D group appeared to be the provision of a supportive, therapeutic group for children experiencing their parents’ separation, however there was still an organisational mandate to involve parents in a parallel group process and to provide them with feedback on their children’s involvement. In contrast, the primary goal of CIP appeared to be translating children’s voices to ‘shift’ parents out of their conflict, and towards a focus on a particular construction of their children’s views and needs. For many participants, the provision of groups for children was a move towards better, more inclusive practices for children in the FRC service setting.

Section Two: Decision making around child inclusion

We (FDRPs) could be seen as the gate-keepers too in a way... Like we have to determine is CIP required, effective, needed and, and is it reasonable to conduct CIP? So there’s all those factors that we’ve gotta consider. And we are the persons who are making those decisions. (Allira, FDRP)

This section responds to my first research question: How do workers in Family Relationship Centres decide whether to include children’s perspectives in post-separation family dispute resolution? In the absence of clear organisational policy on child inclusion and an environment where a high level of discretion was afforded to each individual Centre (see Henry & Hamilton, 2011: 110), workers had clearly developed their own decision-making frameworks to guide CIP assessment and screening. However, participants did not consistently apply a uniform assessment framework. When participants discussed their own decision-making process regarding ‘suitability’ or ‘assessment’ for CIP, four elements were consistently mentioned: i) the child’s age; ii) particular need for CIP; iii) practical feasibility; and iv) likely effectiveness. These elements are explored below.
i) Age of the child

Participants considered the child’s age when assessing whether CIP might be appropriate. Felicia (FA) referred to age as ‘paramount’ to screening for CIP. Generally, participants said children would need to be ‘at least five or six’ years of age (Daniel, FDRP), and ‘generally no younger than five (or) older than 18’ (James, FDRP) for CIP to be an option. Participants said there was ‘not much (they) could do’ with children younger than five (Angelique, FA). The older that the children were, the more advisable it was that they be included in the FDR process:

...especially when there’s teenagers involved, why muck around coming into mediation when we know that any outcome’s gonna be based on what those kids want? So let’s just cut to the chase here. (Marnie, FDRP)

While participants said that children over the age of five could theoretically be included in CIP, most case stories that involved age as a type of requirement for inclusion involved children aged twelve to thirteen or older. There was the idea that once children reached this age, they may abscond from unwanted parenting arrangements, and therefore that it was more important or pressing to consult them in the process of forming agreements. On the other end, Clarissa (FA) said if the children were younger than 5 years old ‘(wouldn’t) even bother to talk about’ CIP with parents. The links between children’s age and capacity to participate in CIP/FDR reflect the significant influence of psychological developmental theories across the social welfare sector. While other ideologies construct children’s agency and capacity differently, ideas around traditional child development seemed predominant within this participant cohort.

Some participants referred to age as the element most closely representing a ‘requirement’ for child inclusion. However, this was in quite loose terms. While inviting a teenager into CIP was seen as ‘good’ practice, Adrian (FDRP) said there would be no formal censure or intervention from management if CIP was not pursued.

A few participants mentioned that, on rare occasions, Child Consultants had seen children outside of the 5-18 years age range.
It was unsurprising to find that FRC practitioners considered the elements of children’s age and capacity in determining suitability for participation. Article 12 of the UNCROC (1989) emphasises that the child’s right to express their views in matters that affect them operates where the child is ‘capable of forming his or her own views’, and that those views must be given ‘due weight in accordance with the age and the maturity of the child’. The age range described by participants as being suitable for CIP is similar to accounts of other FRC-based research (Bell, 2013; Hannan, 2013; Petridis & Hannan, 2011; Williams, 2016). The reality is that for children to gain access to their participatory rights in FDR, adults must ‘bestow’ these rights upon them (see Bell, 2002; Pike, Campbell & Hannan, 2006; Stoecklin, 2012).

**ii) Need**

Some participants discussed that there may be a ‘need’ within a case, either for children or for parents, that could provide reason for CIP. Some ‘needs’ cited by participants included: a) children’s behavioural issues; b) parents genuinely at a loss as to how their children might be experiencing the post-separation family; c) each parent having a very different perception about their child’s experiences or preferences; and, d) where there had been a long gap in contact between the child and one of their parents. However, the other assessment elements (child’s age, feasibility and efficacy) had to be satisfied for a case with a particular ‘need’ to reach the child consultation stage. Importantly, these ‘needs’ or case-level indicators for CIP have not been well documented in existing literature.

There were also contra-indicators for CIP. James (FDRP) said that if children had always known their parents to be separated and ‘both parents report that the child is okay with (the separation) it might not be necessary to hear the child’s voice.’ James said CIP was:

...not always relevant, in the sense that you’re trying to keep the kids away from the conflict. So to ask them to come in really puts it front and centre when a kid might be engaged in avoiding that or coping with it. (James, FDRP)

Similarly, Dee (Manager and FDRP) and Irene (FDRP) said that the issues up for discussion in mediation were not always relevant to children, to the point that
consultation was required. They cited examples of parents discussing how they might manage new partners, or their child’s schooling arrangements. Ultimately, the dual elements of high parental conflict and low parental reflective capacity were seen as the strongest contra-indicators for CIP; these are explored in detail in Chapter 9.

Interestingly, parental accusations of child abuse or domestic violence did not appear to fall under this category of ‘need’ for most participants. Historical or current experiences of violence or abuse did not appear to create a potential ethical obligation to hear from children in the FDR setting, although this may have in part been due to the broader RANSW CIP model (parental permission requirement, and the requirement that feedback from child consultation must be given to parents, typically in a joint mediation session). While several participants said they considered children’s safety and the risks of their inclusion, this generally was not framed within references to domestic violence. If the child was already in therapy, or had been through other Family Law processes, it was less likely they would be invited into FDR due to concerns around systems abuse. The theme of domestic violence and its relationships with parental conflict and reflective capacity are explored in Chapter 9.

Participants did not consider that all children whose parents were attending the FRC had a universal ‘need’ for professional support or intervention. The separation itself, even if there was a dispute that warranted attendance at the FRC, did not compel most participants to argue that every child should be consulted, in every case. This was often linked with an acknowledgement that the organisation did not possess anywhere near the resources that would be required to consult all children. The approach of the majority of participants here was in stark contrast to the very strong desire of children to have their perspectives considered in Family Law processes, documented in many empirical studies (see Bagshaw et al., 2010; Campbell, 2008; Carson et al., 2018; Cashmore, 2011; Graham & Fitzgerald, 2010; 2011a; 2011b; Parkinson & Cashmore, 2008).

**iii) Feasibility/practicality**

This element related primarily to the resource intensity of CIP. Participants considered whether pursuing CIP would be feasible, i.e. if parents would be able to commit to the
extra sessions for them and their children, including any payment of extra fees. Participants discussed the resource-intensity of the CIP model as a barrier to including children:

...this all takes time. FDRPs probably feel that, if the case isn’t particularly difficult, that they mightn’t need to go there, that they’ll just work out their arrangements. (Jenni, FDRP and Child Consultant)

Well cost (is a barrier) ... like a lot of face-to-face interviews. [...] (There is a) refusal or reluctance on the part of the parents to pay the money but, ‘cause, because RA charges a substantial amount of money to involve them and, although in theory that’s not an obstacle to participation, it is an obstacle. (Adrian, FDRP)

The resource-intensity of CIP, and the fact that this constrains its uptake in the FRC setting, is a common theme in existing literature (Bagshaw, Quinn & Schmidt, 2006: 27; Bell et al., 2013: 139; Moloney & Fisher, 2003: 13; Smyth & Moloney, 2003: 181; Williams, 2016: 37). Participants, particularly Child Consultants, said CIP commanded much more of their time and effort than ‘standard’ cases, and they managed this by seeking some assurance from parents that they would follow through to meet their concurrent effort and investment.

iv) Likely effectiveness

I mean my criteria for doing mediation or even doing CIP is, ‘Are we gonna do any good? Maybe, maybe not. It’s probably worth a go. Are we gonna do any harm out of this? Yeah, we might. Okay, well I won’t have mediation, I won’t have CIP.’ (Rowan, FDRP)

A prediction of CIP’s efficacy in each individual case was the most common assessment practice. This involved weighing the potential risks against the benefits of child inclusion for children and their parents, which primarily involved consideration of the levels of parental conflict and parental reflective capacity (see Chapter 9 for a thorough analysis of these key concepts). Participants highlighted the difficulties they experienced in predicting whether CIP could result in a better outcome for families,
particularly in cases where parents were engaged in a high level of conflict with one another:

*We’re introducing or we’re talking about CIP with more complex, entrenched conflict, and does it help? Does it make it better? Bringing two people in the same room again can ignite certain history things and sometimes it hasn’t been easy.* (Allira, FDRP)

Efficacy was generally framed in terms of whether parents would be able to ‘hear’ their children and incorporate feedback from the Child Consultant into parenting agreements. The emphasis on adequate parental reflective capacity and parental motivation to improve the situation for their children reflected the pre-requisites for CIP as described in McIntosh’s original model (see McIntosh, Long & Wells, 2009). Participants discussed some of the risks of child inclusion: children being disappointed and feeling ‘unheard’ if their parents did not consider their perspectives; the risk that children may be manipulated into making certain comments in their session with the Child Consultant; and the risk that parents may ‘punish’ children for what they say in the consultation session:

*Obviously, it’s not suitable for every family because you need to know that there’s a capacity for self-reflection, that you’re not actually putting the children in any further risk by introducing, you know, CIP, and that it’s going to be really engaged with in a positive way by the family, as a unit, to help them come to that important decision. It’s not as one party’s now gonna have more ammunition for the other.* (Marnie, FDRP)

Emphasis on efficacy, risk assessment and harm minimisation in assessing for CIP were strong themes that ran across most interviews (these themes are explored in more detail in Chapters 9 and 10). One reason for this focus on efficacy and outcome prediction may have been due to a lack of empirical knowledge. Recent research has concluded that it is still too early to know whether CIP improves the experience or outcomes of mediation (Bell et al., 2013: 139; see also: Ballard et al., 2013; Rudd et al., 2015b). Lack of empirical reliability, combined with an established lack of organisational criteria for CIP, appears to have created an environment in which
considerations of need, feasibility, age and efficacy represented the exercise of practice wisdom, and the development of a broad ‘theory-in-action’ (Schon, 1983). Practitioners needed something to guide their decision-making around child inclusion, so they developed these measures. However, as explored in Chapters 8 and 9, these measures were not clearly defined nor consistently applied across cases. Practitioner decision making was informed by a range of ethical orientations towards child inclusion, which they in turn drew upon to justify and make sense of a range of practices.

Section three: Ethical issues in practice

While participants did not explicitly draw upon the language of ‘ethics’, there were several commonly cited issues with existing practices that were broadly considered to be ‘inclusive’ of children. Some of these issues were standard practices within RANSW at the time of data collection (e.g. parental permission requirement; implementation of the child focused approach as minimum ‘best practice’ across all cases), while others were more explicitly framed as ‘bad practice’ (e.g. using CIP as an impasse breaker; ‘pre-loading’ feedback regardless of what children said in their session with the Child Consultant; absence of organisational criteria for CIP). A minority of participants expressed discomfort with practices that seemed perfectly acceptable to other participants (e.g. child focused approach; reliance on parental reflective capacity as a prerequisite for child inclusion). The table below (adapted from Banks, 2005: 745) is a technical summary of the ethical issues discussed by participants. The third column reflects a thematic analysis of these issues, as generally participants did not overtly identify situations in ethical terms. I draw upon concepts from professional social care ethics in an attempt to encapsulate the ‘heart’ of the issues identified by participants.
<table>
<thead>
<tr>
<th>General issue with CIP identified by participants</th>
<th>Elaboration of issue and why/how it might be difficult</th>
<th>Ethical issue/s (generally not stated by participant)</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Parental permission requirement</em></td>
<td>Organisational requirement that both parents must provide written consent prior to their child’s direct involvement in FDR. One parent may refuse consent. Particularly problematic in cases of domestic violence, or where a parent may be trying to protect themselves from what a child may disclose.</td>
<td>Denial of children’s agency; child safety.</td>
</tr>
<tr>
<td><em>Parental reflective capacity as a prerequisite for CIP</em></td>
<td>Children were generally excluded from FDR if their parents were considered ‘not reflective enough’. No clear way of assessing ‘sufficient’ parental reflective capacity. Dispenses with potential benefits to the child of being included. Can encourage a construction of CIP as ‘for’ parents, not children.</td>
<td>Denial of children’s agency.</td>
</tr>
<tr>
<td><em>‘Pre-loading’ feedback</em></td>
<td>Reports of Child Consultants ‘pre-loading’ feedback to parents with common messages e.g. ‘your child does not like your conflict’, regardless of what the child said. Concerns that feedback should be as personalised as possible and a true reflection of what the child has shared.</td>
<td>Professional integrity; denial of children’s agency.</td>
</tr>
<tr>
<td>General issue with CIP identified by participants</td>
<td>Elaboration of issue and why/how it might be difficult</td>
<td>Ethical issue/s (generally not stated by participant)</td>
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<tr>
<td>--------------------------------------------------</td>
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<tr>
<td><strong>Use of CIP as an ‘impasse-breaker’</strong></td>
<td>Claims that some workers only pursued child inclusion as a ‘last resort’ when mediation was not working. Children only included as an ‘after thought’ rather than their perspectives being valued and sought from the beginning of the process; constructs CIP as primarily ‘for’ parents.</td>
<td>Professional integrity; objectification of children.</td>
</tr>
<tr>
<td><strong>Child focused approach</strong></td>
<td>The child focused approach (‘keeping children in mind’) was considered a minimum requirement for ‘good practice.’ Some participants were satisfied with the child focused approach and felt it best to work solely with parents. Other participants felt uncomfortable with claims that professionals and parents could determine children’s ‘best interests’ without actually involving children in any way.</td>
<td>Paternalism/adultism; denial of children’s agency.</td>
</tr>
<tr>
<td><strong>Lack of organisational criteria for CIP</strong></td>
<td>The organisation’s position about when CIP should be implemented was unclear. Uncertainty about when children ‘should’ be included led to frustration and confusion for participants; concerns of risk; not wanting to cause children harm; wanting to direct organisational</td>
<td>Non-maleficence; professional integrity.</td>
</tr>
<tr>
<td>General issue with CIP identified by participants</td>
<td>Elaboration of issue and why/how it might be difficult</td>
<td>Ethical issue/s (generally not stated by participant)</td>
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<tr>
<td>Lack of criteria/screening for CIP in cases of domestic violence (DV)</td>
<td>No consensus about whether child inclusion was appropriate in cases of DV, nor how practice might be adapted to best facilitate inclusion in these cases. Case examples where negative outcomes were linked with historical and/or ongoing DV; concerns that the most vulnerable children (i.e. victims of parental violence or abuse) were the least likely to be seen in FDR, particularly given other practice-based requirements for CIP (e.g. parental permission requirement; sufficient parental reflective capacity).</td>
<td>Child and parent safety; non-maleficence; social justice.</td>
</tr>
<tr>
<td>Lack of information on CIP efficacy, including a lack of follow-up with children</td>
<td>Little empirical or practice-based evidence that CIP was effective or helpful for children and parents. Lack of confidence in and/or commitment to CIP, which could result in professional ambivalence; confusion around the purpose and intended outcomes of CIP; lack of any organisational/structured follow-up with children</td>
<td>Professional integrity.</td>
</tr>
</tbody>
</table>

Table 4: Key ethical issues in child inclusive practice at RANSW: adapted from Banks (2005: 745)

These underlying ethical issues are explored in further detail in Chapter 8 and the discussion chapter (Chapter 10).
Ethical issues with child-related practices

At the heart of most participants’ ethical concerns was a lack of respect and care for children. Children were excluded from participation if one or both parents declined permission or were assessed as insufficiently reflective, although, interestingly, very few participants used the language of child ‘exclusion’ but rather ‘non-inclusion’. There was a palpable lack of organisational policy and procedure regarding child inclusion, or at least policy that was clear and accessible to practitioners, and this in itself was conceived as an ethical concern:

*There’s some, there’s some little grey area that’s not there yet I think ‘cause you try and go from pre-DR to mediation, and you have a conversation, and you bring in the CIP person, and on really strong cases it hasn’t been good or it hasn’t been easy... So there’s a lot more work to be done even though it’s been happening for six years, seven years.* (Allira, FDRP)

Denial of children’s agency, i.e. their right to access a service independent to their parents, was the most common ethical issue referred to. The reliance on parental permission for children to be seen meant ‘*that a significant number of children (were) excluded from getting any service because their parents (were) not on board*’ (Holly, FDRP and Child Consultant). Holly’s comments reflect the persistent gap between the principle of a child focus, and the complexities of its operation in the FRC practice context:

*I think everyone thinks that they’re child-focused but often what that means is that they say to parents, ‘You should do blah, blah and blah because that would be better for the children’. It’s not really... hearing from children. It’s not really checking out what it is that would make children’s lives better. It’s I guess our opinion based on research.* (Holly, FDRP and Child Consultant)

The fundamental assumption of the child focused approach was that most parents were capable of forming child focused agreements without hearing directly from their children. However, the accounts of other participants contradicted this assumption by claiming that, essentially, parents may not be capable of providing accurate representations of their children’s voices:
With child-focused mediation, we are hoping that the parents can represent what their children are thinking. They’re probably not going to get it or probably one is and the other isn’t. But, if both got it they wouldn’t be here so we know somebody hasn’t got it right. (Rowan, FDRP)

Issues regarding professional integrity and competence were also common. This thesis draws upon the concept of professional integrity as it is considered in social work; a core value which encapsulates ‘honesty, transparency, reliability, empathy, reflective self-awareness, discernment, competence and commitment’ (Australian Association of Social Workers, 2010: 3.3). Participants expressed concerns about using CIP to break parental impasse, also discussing the ‘conflict narrative’. These were both examples of CIP misuse and unethical treatment of children:

...instead of getting a child consultant at the beginning, mediators will wait ‘til the case, ‘til it starts to go wrong and think, ‘Oh what can we do?’ And that can be one thing that mediators do rather than thinking, ‘We’d really like to know what’s happening for a child here’, they’re thinking, ‘How can I save the mediation?’ (Holly, FDRP and CC)

...My understanding is what they wanna get out of that scenario (child consultancy) is that the children don’t like them fighting so they’ve gotta stop it... but I think there’s more to it than that, in a qualitative sense and looking at that child as an individual... I just think there’s more they could do. But, depending on who the child consultants are and their experience... (Daniel, FDRP)

Participants said that the quality of Child Consultants within the organisation varied widely. Daniel (FDRP) referred to those who were employed as Child Consultants as ‘like chalk and cheese’. Adrian and Jenni, both experienced FDRPs who had trained and mentored other workers, referred to a kind of ‘mis-match’ between the skills required to implement CIP and the background and training of mediators:

Where you’ve been trained and how you’ve been trained to mediate is quite significant. So, if you’ve been, you know, if you’ve done a course which is general problem-solving mediation, you’re coming into a field that is talking
language that you, as a mediator, you’re going, ‘I don’t know what all this fluffy stuff is about.’ (Jenni, FDRP and Child Consultant)

There was a sense amongst many participants that while CIP was the most direct way of introducing children’s perspectives into FDR, it was far from a perfect model. Stan’s statements reflected the frustrations reported by several participants:

So, if we think about our model... I still think it’s not addressing the stuff for children at all. I think it’s leaving them out. It gives them a bit of a voice but [...] if we can’t plug them into support mechanisms, then what happens is we’re leaving them short. I do not follow the philosophy that simply a short session of focusing on the children is likely to change longer-term behaviour of parents.
(Stan, FDRP)

CIP either did not, or did not always, achieve the ideas that most participants had about what would make inclusion meaningful for children. ‘Extra’ forms of inclusion, such as group work with children and follow-up post-CIP sessions, were seen to add meaning and value for children in the FRC process. A few participants referred to the research literature and the lack of evidence around whether CIP made a substantive difference for children or their parents, in the FDR process or beyond. Jenni spoke about how this gap in knowledge was not being filled while such low numbers of children were directly involved in FRC processes:

...we’re not hearing them and we’re not accessing them in the numbers that we need to, ’cause we’re only really accessing children’s voices in very small numbers in quite difficult cases and we really need a much bigger pool of information, and then we would maybe do better. (Jenni, FDRP and Child Consultant)

Conclusion

The findings presented in this chapter reveal the diversity of participant approaches to child inclusion. Children’s perspectives could be introduced into the process of FDR via three methods: i) child focused practice; ii) child inclusive practice (CIP); or iii) via group work with children. While some participants thought CIP had great merit, others
were ambivalent towards it and strongly favoured a child focused approach. Both child focused and CIP approaches involved some level of construction or translation of children’s perspectives by practitioners, to enable parents to best ‘hear’ children’s perspectives. Participants referred to a range of different ethical considerations across all forms of child participatory practice. While some felt ‘keeping children in mind’ and not directly consulting them was a sufficient way of involving children, others pointed out ethical issues with this approach. Certain organisational policies (e.g. parental permission requirements, and parental involvement in concurrent groups for children) were framed as limiting the opportunities for meaningful child inclusion.

In the absence of clear organisational criteria, participants had developed their own processes of CIP assessment. Participants generally considered the child’s age, any particular ‘need’ for CIP and the feasibility of the more resource-intensive model before recommending it to parents. When determining how children’s voices might be included in the FRC process, most participants considered how parents could best ‘hear’ their children, and relied on their own prediction of the likely ‘effectiveness’ (defined as parents ‘hearing’ their children) of CIP. This meant child inclusion was almost totally dependent on practitioner assessment of parents’ reflective capacity, as well as parental willingness to grant permission for CIP. The next chapter provides a more in-depth analysis of the ethical discourses underlying participant constructions of children, and child inclusion.
Chapter Eight: Diverse ethical orientations – practitioner approaches to child inclusion

Introduction

This chapter explores participant beliefs around children and child inclusion and analyses the discourses and ethical ideas that influenced their practice. Here, participant accounts are conceptualised as ‘practice as ethics’ (Banks, 2016: 36). Participants’ responses encapsulated how workers understand, make sense of, and even justify their practice decisions. This chapter addresses both key research questions, but particularly Question 2: What factors influence worker decisions around whether and how to include children’s voices? The practitioners’ underlying ethical orientations influenced their preferred methods for CIP screening, and captured their justifications for practice decisions.

Different ethical principles and theories underpinned participant accounts of their practice around child inclusion, which led to explorations of the professional social care ethics literature. Three distinct participant groups emerged: i) Activist: focus on children’s rights and an ethics of care; ii) Pragmatic: focus on harm, risk and non-maleficence, and; iii) Sceptic: preference for work with parents and ambivalence towards the principle of child inclusion. These three different ethical approaches to child inclusion were found across different roles, Centres, genders and professional backgrounds; although there were some recurring patterns. There was an internal logic in the way each group approached child inclusion. Participants drew upon very different ethical discourses and ideas to conceptualise and ethically justify their practice decisions.

Ethical orientations towards child inclusion

Each group centralised different ideas and beliefs about children, their parents, and the nature of relationships between workers and their clients. Participant categorisations were developed following several rounds of open coding, and each successive coding cycle led to development of the distinct participant ‘types’ based on
narrative themes and consultation with the professional social care ethics literature. The coding schema was informed by Osmo and Landau’s study of ethical theories in decision making by social workers (2006: 868). The table below outlines each of these approaches to child inclusion in FDR, including the criteria for coding:

<table>
<thead>
<tr>
<th>Categorisation</th>
<th>Coding criteria</th>
<th>Key ethical ideas expressed amongst this group</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Activist</strong> n = 15</td>
<td>・ Language and ideas around children’s rights to inclusion, autonomy; and ・ Language and ideas around ethics of care: attentiveness, responsibility, competence, responsiveness; and ・ Parental reflective capacity was not the primary determinant for CIP suitability.</td>
<td>・ Dual emphasis on care ethics and justice/rights. ・ Importance of ‘additional’ inclusive acts, e.g. invitations for children to CIP sessions, follow up sessions, more groups available for children. ・ Broader definition for inclusion amongst all three groups. ・ Questioned notion that CIP is primarily ‘for’ parents.</td>
</tr>
<tr>
<td><strong>Pragmatist</strong> n = 8</td>
<td>・ Language and ideas around utility, consequences, risk, maximising ‘good’ and minimising ‘harm’; and ・ Parental reflective capacity was the primary determinant for CIP suitability.</td>
<td>・ Non-maleficence (do no harm) mentality. ・ Weighing of risk and reward (consequentialist/utilitarian approach). ・ Emphasis on the potential harm of inclusion. ・ Narrow criteria for inclusion. ・ Consequences of child exclusion were not considered.</td>
</tr>
<tr>
<td><strong>Sceptic</strong> n = 4</td>
<td>・ Language and ideas around preference for working with parents; and ・ Ambivalence towards child inclusion.</td>
<td>・ Belief that parents should be able to make decisions on behalf of their children. ・ Scepticism about the efficacy of CIP.</td>
</tr>
</tbody>
</table>

Table 5: Participant categorisations of ethical approach to child inclusion

The number of participants characterised as activist, pragmatist and sceptic are represented in the table below, first by total number of participants and then by role group. Appendices I, J and K group each ethical orientation by Centre, organisational role and prior experience working with children.
While a few practitioners utilised language that overlapped with other categorisations (e.g. several activists also discussed potential harm, risk and rewards associated with CIP), the coding schema detailed in Table 5 above held its integrity across the participant cohort. The following sections outline the activist, pragmatic and sceptic approaches to child inclusion.

i) The activist approach: children’s rights and an ethics of care

Activists (n=15) emphasised principles of both care and justice in their approach to child inclusion. They spoke about child inclusion as an expression of respect for children as beings with agency and autonomy, with some also discussing children’s participatory rights. Activists emphasised the importance of inclusion as a process of caring for children. They characterised the need for invitations, follow up sessions, and groups for children as participatory methods that should be further prioritised at RANSW. This commitment to the holistic care and wellbeing of children aligned with the ethical principle of beneficence, defined as ‘the active promotion of good, kindness and empathy’ (Landau and Osmo, 2003: 43).

Activists articulated a sense of duty towards children’s broader welfare outside of the strict CIP model. They incorporated an ethics of care approach, with their narratives addressing Tronto’s (1993) four ethical dimensions of care: attentiveness, responsibility, competence, and responsiveness. Activists expressed a commitment to the beneficence of children (actively doing good), as opposed to pragmatist narratives that were more focused on avoiding harm. The idea for the term ‘activist’ emerged
from this group’s critique of existing child inclusion processes, and their advocacy for a more meaningfully child inclusive service.

Activists had the broadest criteria for CIP and were the most likely across the three groups to advocate for the change or adaptation of current child-related practices, towards a more ‘caring’ orientation. A small number of activists stated that parental violence and or abuse should not automatically preclude CIP, whereas pragmatists tended to be very wary of undertaking CIP where there was abuse.

As indicated in Table 5 (p. 143), a participant was categorised as activist when they drew upon:

- Language and ideas around children’s rights to inclusion, autonomy; and
- Language and ideas around ethics of care: attentiveness, responsibility, competence, responsiveness; and
- Parental reflective capacity was not considered the primary determinant for CIP.

Participants were not necessarily categorised as activist if they solely called for wider use of CIP, as each interview transcript needed to meet all three of the defined criteria for this category. However, only 5 activists said that general suitability for mediation meant that CIP should also be suitable, which was the broadest view amongst participants regarding CIP suitability. 8 activists (and 2 pragmatists) called on RANSW to develop formal CIP suitability and screening criteria.

**Key characteristics**

Two core themes defined the activist approach to child inclusion: a) attention to children’s rights and autonomy, and; b) a focus on the meaningful care and supportive functions of child inclusive practices (an ethics of care approach). Activist critiques of the RANSW CIP model, which also had a dual emphasis on rights and care of children, are analysed below using an ethics of care framework. Tronto’s (1993) four ethical dimensions of care are addressed in section b): attentiveness, responsibility, competence, and responsiveness.
a) Emphasis on children’s rights and autonomy

Across the entire cohort of 27 participants, only 10 referred to language specifically around ‘children’s rights’, and 9 of these 10 participants were activists. Activists referred to ‘children’s rights’ in different ways. Only Jenni and Holly, both of whom had dual roles as FDRPs and Child Consultants, said that children had ‘a right to a voice’ (Holly) in the process of FDR. These two participants considered that involving children directly in FDR was an important fulfilment of children’s legal right to participation in matters that affect them, and expressed concern that these rights went unfulfilled due to a focus on parents’ potential behaviours:

*We often exclude children, effectively, by assessing their parents and saying, ‘no. If we hear from the children, these parents might do something that’s unsafe’. [...] So they’re supposed to have a right to a voice in administrative legal matters that impact them. We take away that right if we don’t think their parents can use it responsibly. So there’s something not right about that, isn’t there?* (Holly, FDRP, Child Consultant and activist)

Holly’s quote highlights a key point of distinction between activists and pragmatists: activists questioned the emphasis on parental reflective capacity as the key determinant of whether CIP would go ahead, whereas pragmatists saw parental reflective capacity as essential to CIP. Activists emphasised children’s independent right to inclusion, and while this group still considered the ‘risks’ of child inclusion (i.e. parents punishing the child or blaming the other parent for something expressed in the Child Consultant’s feedback) they placed greater emphasis on the *positive functions* of inclusion for children, as opposed to the potential rewards for parents:

*I think it’s really important to include children’s voices. I think a lot of the research historically shows us that kids say, ‘No one ever asks me. Everyone made decisions around me.’ ... I think to empower children at any age to have a voice and the respect of being heard is really important.* (Marnie, FDRP and activist)

Of the 10 who used the term in the activist cohort, participants rarely discussed their definition of ‘children’s rights’. Only Rowan drew upon legislation when defining
children’s rights. He described children as having ‘a right to a meaningful relationship with both parents’ and ‘a right to be safe’; both of these ‘rights’ are listed as the primary considerations for determining a child’s best interests in the Family Law Act (S. 60CC (2)).

Some activists reported that they referred to children as ‘rights-bearers’ in their conversations with parents. This way of speaking about children reflected a respect for children’s autonomy, as well as an emphasis on parents’ responsibilities to act in ways that were considerate of their children’s rights and needs. However, as reflected in Holly’s comments above, the general approach within the organisation was that children’s right to be included only existed if practitioners conferred with that right; which in turn was dependent on an assessment that parents could use their children’s voices responsibly. As such, most activists observed that, in its current form, the organisation’s model for child inclusion gave children only limited access to exercise their rights.

The goal of a transformative shift within the parental relationship was viewed as important by activists, and was positioned in contrast with the more ‘traditional’ facilitation-based style of mediation. Activists tended to express a strong sense of responsibility towards children, in terms of children feeling and seeing tangible, positive changes in their family life. Allira, an FDRP, was one of the many activists who emphasised the importance of taking a ‘transformative approach’ to mediation:

*So it’s really important that, if we actually can get someone to reflect or if there’s any shifting, it occurs quickly because all the way through the process down to the mediation, if we didn’t talk about that, we’re doing pure negotiation style – we may as well be a lawyer.* (Allira, FDRP and activist)

A few activists noted that children’s ‘rights’ were referred to generally within a child focused approach, but were rarely enacted for individual children within the process of FDR. Jenni, an FDRP and Child Consultant, was one of only three participants (all of whom were activists) who referred specifically to the United Nations Convention on the Rights of the Child (UNCRC) in relation to children’s right to participate in the FDR process. Only Jenni and Dee referred to the idea that children hold fundamental
human rights, with participation in legal matters one of these core rights. Jenni’s frustration with the organisation’s apparent lack of commitment to hearing from children was palpable:

*I find it incredible that we, in this country, are signatory to the International Rights of the Child and we don’t bloody well do what we sign up to do. And I find that so frustrating. Whenever I raise that children have a legal right for this in terms of international law, at clinical forums, people look at me and... there’s a lot of head-nodding, as ‘Oh yes, well we should, we should’. It doesn’t happen...* (Jenni, FDRP/Child Consultant and activist)

Like Jenni, several activists tended to position themselves as organisational ‘outsiders’ due to their approach to child inclusion. They tended to express chagrin at the absence of an organisational commitment to children’s rights and dismay at the disconnection between what organisational members said they ‘should’ do and what actually occurred in practice.

**b) Ethics of care approach**

The activist approach to child inclusion was strongly aligned with the feminist ethics of care; an ethics of care that ‘underlines the commitment to “take to heart” and to be involved emotionally in situations of vulnerability’ (Pasini, 2016: 382). Activists expressed concern for children’s welfare both within and outside the FRC process and referred to CIP as an opportunity for an exchange of care and support. Inherent to an ethic of care is the notion that care itself can support self-determination, although on the condition that the views and perceptions of care receivers are respected (Sevenhuijsen, 2003: 184). Activist narratives regarding rights and autonomy were intertwined with a posture of ethical caring. Activists valued the individuality of children’s experiences and expressed the importance of engaging directly with children to try and understand their ‘reality within intimate contexts’ (Houston, 2012: 657), i.e. their lived experience of their parents’ relationship and broader life post-separation.

Activist narratives explored many of the features of an ethics of care. Tronto (1993) identifies the four dimensions of an ethics of care, and Sevenhuijsen (2003: 184)
elaborates on these as: attentiveness (‘caring about’); responsibility (‘taking care of’); competence (‘caregiving’ activities); and responsiveness (‘care receiving’). While not every activist spoke to all these themes, at least one of these dimensions was referred to in each activist interview. Interestingly, reflections on an ethically caring way of including children often aligned with critiques of organisational practices; hence the discussion below combines these two elements.

The first dimension of an ethics of care, attentiveness, acknowledges the need for care as well as the ‘ability and willingness to put ourselves in a situation where we understand the needs and perspectives of others’ (Sevenhuijsen, 2003: 184). Josie discussed CIP as an opportunity for children to share their experience, and referral to more therapeutic services as a potentially caring act that could flow from CIP:

*I think it’s a good opportunity for kids. And, if there is something going on for them, to be able to give referrals to families (or) use that information to help support the family...* (Josie, FA and activist)

Several activists challenged RANSW’s policy that for children to be engaged in any kind of ongoing service (e.g. group work, counselling), both parents needed to be involved. Holly normalised children’s ‘experience of dependency and interdependency’ (Houston, 2012: 657) in relationship with their parents, who expressed that this dependency should not preclude children’s access to services:

*Relationships Australia doesn’t see children for counselling unless the parents are involved. I know there are very good reasons for that and I believe as much as anyone in (RANSW) viewing things in a systemic way. However, it also means that a significant number of children are excluded from getting any service because their parents are not on board. I think that’s a decision (RANSW) has taken that sometimes could be seen as not in children’s best interests.* (Holly, FDRP, Child Consultant and activist)

Activists were the only participants to highlight that the children at greatest risk of violence or abuse were also the ones most in need of care and inclusion. Holly said that the children most in need of inclusion were effectively excluded from participating in situations where parents were assessed as having low reflective
capacity, as well as in situations of domestic violence, or where there were child protection concerns:

_The children that really need to be included never get a look-in… For children who are fortunate enough to have parents that want to include them it’s a good process. For children who aren’t fortunate enough those children just carry on with their lives the way they are and we don’t have any impact._ (Holly, FDRP/Child Consultant and activist)

**Responsibility**, the second dimension of an ethics of care approach, is based on ‘the willingness and capacity to take responsibility that something is done to provide for the need in question’ (Sevenhuijsen, 2003: 184). Activists had a well-developed sense of responsibility and duty towards children, and often said the operation of this duty constrained their ability to pursue ‘good’ practice. Marnie referred to the juxtaposition that the FRC buildings were originally designed to be ‘child-friendly’, and yet no consistent services were provided to children:

_Do we really wanna work with children? Well let’s actually do it. Let’s stop talking about it… We are not family-oriented, really. We have the little kiddie area out there but it’s not really aimed at being hands-on, at their level, fully present with children. So we just touch the surfaces I think._ (Marnie, FDRP and activist)

Marnie’s statement ‘we just touch the surfaces’ was a poignant reflection on the limitations of FRC services for children. Jenni, an FDRP and Child Consultant, referred to other FRCs around Australia that undertake CIP as an integrated part of the FDR process and questioned why this was not yet the case at RANSW:

_I don’t understand why we don’t do (CIP) as an integrated ‘this isn’t an option’. … I think it’s disappointing and I think it’s an opportunity lost because, even if there’s not necessarily a huge shift on the part of parents, I haven’t had even one kid yet that has been upset… they value the opportunity for somebody to listen to what’s been happening for them._ (Jenni, FDRP, Child Consultant and activist)
This statement from Jenni reflected the activist approach, which centralised CIP as a practice both with children and for children. While most activists still considered parents’ reflective capacity and willingness to be part of the process as important aspects of the CIP assessment process, the potential gains to the child from their participation were emphasised over the potential benefits to parents.

The third dimension of ethical care, competence, consists of ‘carrying out actual caring activities to ensure that the caring needs are met’ (Sevenhuijsen, 2003: 184). Within this dimension is the assumption of both resources and competence to provide care in the given situation (Sevenhuijsen, 2003: 184). Activists were the most critical of the organisation’s approach to child inclusion and tended to have the most detailed ethical critiques of current practices, which included concerns about professional skill and competence (see Chapter 7, pp. 134-140). Thirteen of the 15 activists spoke about the need for organisational-level changes to increase inclusiveness and access for children. Overall, 8 activists (and 2 pragmatists) expressed concerns about RA’s CIP model and called for formal criteria around CIP to be developed.

Activists from Centre D expressed a high level of confidence in the skill of their two on-site Child Consultants, with several Centre D activists sharing that they considered that CIP could potentially be appropriate in every case. However, even within this particularly well-resourced Centre, activists such as Marnie noted limitations in their capacity to provide CIP:

...with our limited funding and our limited training, we do a good job. At (this Centre) in particular I think we’re very good with CIP because we actually have a couple of them (Child Consultants) here on site which makes logistically things really easy to organise... (Marnie, FDRP and activist)

Renata, an FDRP and Child Consultant also from Centre D, also touched on the theme of competent caring and the resources required to deliver an effective service for parents as well as children:

(You need) time for reading, time for supervision, time for preparation, time for processing. The briefing, debriefing. And time to actually write up your feedback. That is so important and that takes longer than you think. And I think
we need to continue to look at those things. (Renata, FDRP, Child Consultant and activist)

The fourth dimension of an ethics of care, *responsiveness*, was a strong theme across activist interviews. Responsiveness refers to the interaction between the care-giver and care recipient: a successful process of caring is one where there is space to attend to the person receiving care to determine whether they ‘respond well’ to the care given (Sevenhuijsen, 2003: 184). The way activists spoke about inclusion emphasised relational connectedness and ‘meaningful care’ of the child in the FRC process. Activists expressed concern that existing structures did not create the space for a relationship of care to form between the Child Consultant and the child.

The limited number of sessions available to children in the CIP process was a significant theme. Participants felt that the single child session in the RANSW model limited their ability to be responsive towards children. Of the 9 participants across the entire cohort who said that more follow up for children and families was required to improve inclusive processes, 7 were activists. Stan, an FDRP, was one activist who spoke about the lack of follow-up for children following a single session with the Child Consultant. Stan also spoke about his philosophical disagreement with the short-term nature of the FRC service:

*The difficulty of course is that there’s no follow-up and so sometimes I have to wonder [...] if we can’t plug them into support mechanisms, then what happens is we’re leaving them short. I do not follow the philosophy that simply a short session of focusing on the children is likely to change longer-term behaviour of parents. And most research suggests that that’s not the case.* (Stan, FDRP and activist)

Some activists were attempting to open up space for responsiveness within existing processes. The primary areas of need identified were follow-up sessions for children following CIP, as well as the availability of more supportive groups for children. Jean, an FA, said her Centre (E) had been trying to establish a group for children for some time:
I think the children should be brought in as par for the course... I think the groups should be strongly encouraged... I would like to (see) links to support groups for children whether it be children’s counselling or some (other) groups, because not all children are gonna need really intensive stuff; some of them just need to be somewhere just to share and unload. (Jean, FA and activist)

Jean’s focus on accessibility for children in a broader sense was another theme across the activist group. Activists were more likely to advocate for increased services for all children, whereas pragmatists tended to have a narrower view, i.e. that child inclusion should be limited to cases where there was a specific need.

Activists discussed the importance of practitioner motivation for undertaking CIP. They were critical of CIP being used in a way that they perceived did not have children’s best interests at heart:

I think that the reason most mediators have a child (consult), well, there’s a couple of reasons but sometimes it’s because a case gets stuck... I call it a ‘hospital pass’... that can be one thing that mediators do rather than thinking, ‘We’d really like to know what happening for a child here,’ they’re thinking, ‘How can I save the mediation?’ (Holly, FDRP/Child Consultant and activist)

Activists, such as Stan, were also careful to make the distinction between CIP as a process with support for children at its core, versus CIP for the sake of encouraging parents to ‘shift’ into less conflictual behaviours:

Once upon a time it (CIP) was a panacea. And I think we need to move away from that and we need to ask the question: how can we support the children, right? Not: how can we fool the parents? (Stan, FDRP and activist)

In summary, activist narratives intertwined ideas about children’s rights with commitments to an ethically caring approach. Activists attended to the motives and purpose behind the use of CIP and argued for adaptation of the model to include children in more meaningful ways. ‘Inclusion’ was characterised by this group as a moral act and an opportunity for exchange of care between worker and child.
ii) The pragmatic approach: weighing risk and doing no harm

Eight participants were categorised as pragmatists. In contrast with the activists’ emphasis on beneficence (actively doing good), pragmatists tended to adopt a principle of non-maleficence (doing no harm). To assess the potential for harm, pragmatists primarily relied on their own assessment of parental reflective capacity or PRC (parents’ ability to focus on their child’s experiences and needs; see Chapter 9 pp. 180-187 for detailed exploration of this concept), with all pragmatists saying this was the primary factor that would determine whether CIP should take place. As such, pragmatist narratives regarding CIP assessment reflected more an outcome-focused approach, which tended towards ethical utilitarianism.

Beneficence and non-maleficence are common principles drawn upon by social welfare professionals in their everyday decision making (see Banks, 2012: 57; Beauchamp & Childress, 2009: 387). The practice of weighing the potential good with the potential harm that may follow an intervention is derived from utilitarian thinking. Utilitarianism is the best-known form of consequentialist ethics, so named due to its focus on weighing up the consequences of acts to determine the best or most moral outcome (see Banks, 2012: 50; Gray & Webb, 2010: 12). Consequentialist approaches are often compared with deontological or duty-based approaches, which in the context of the caring professions are more concerned with following professional guidelines, laws or rules (McAuliffe & Chenoweth, 2008: 45). It is perhaps unsurprising that, given the absence of clear frameworks to guide CIP practice, pragmatists were much more likely to draw upon principles of harm prevention or minimisation than to reference their duties under organisational policy, professional ethical codes or the law.

Utilitarianism considers ‘moral action (as) action that maximises pleasure or satisfaction and minimises negative experience’ (Houston, 2012: 654; see also McAuliffe, 2014: 41). Pragmatists considered the options available (i.e. a child focused or child inclusive approach), along with the information about parents and children in each case and tended to select the option they thought would cause the least harm to both parents and children. Links between pragmatic participants’ suitability
assessment for CIP and underlying consequentialist ethical ideas are further explored below.

As indicated in Table 5 (p. 143), participants were coded as pragmatist where:

- They shared ideas or used language around utility, consequences, risk, harm, maximising ‘good’ and minimising ‘harm’; and
- Believed parental reflective capacity was the highest principle for consideration for CIP.

**Key characteristics**

The key emerging themes from the pragmatist group were a) a focus on parents in CIP, both in terms of suitability assessment and feedback process; and b) a consequentialist approach to CIP assessment (balancing potential risks and rewards to children and their parents).

**a) A focus on parents in CIP**

For pragmatists, parental reflective capacity (PRC) in an individual case was the ultimate determinant of whether CIP could be effective, and thus suitable. In practice, this meant the individual worker assessed each parent’s willingness and ability to hear from their child within the FDR process. Pragmatists also assessed parents’ ability to act on the feedback delivered as part of the CIP process. Generally, the target for change was a decrease in conflict behaviours within the parental relationship. While pragmatists considered the level of conflict between parents an additional and important factor in assessing the likelihood for change, reflective capacity was viewed as primary. For instance, Felicia and Irene’s comments represent the pragmatic stance towards assessment of reflective capacity and the importance of parental commitment to change:

*But I guess it, it really boils down to the openness of the parents and their ability to be able to take on board the feedback that the child consultant will provide to them...* Felicia, FA and Pragmatist

*...the parents have to have a commitment that they are going to listen to what’s being said and do whatever they can to address it. And, if they don’t*
have that capacity to listen and to address, and work together collaboratively as parents, then why disappoint the kids? (Irene, FDRP and pragmatist)

James, an FDRP and pragmatist, was the most difficult participant to categorise as either activist, pragmatist or sceptic. In his interview, James moved between statements that it was good to include children in the FRCs, and descriptions of his actual practice, which seemed to contradict his declarations of support for child inclusion. James said that between 10 and 20 per cent of his cases involved CIP. At times, James spoke passionately about why it was important to hear children’s perspectives in FDR:

They’re (children) the product of the relationship so they’re the ones who are most vitally engaged. The only reason that people are here, ‘cause they’ve got the kids… so it makes a lot of sense to hear what they’re saying. (James, FDRP and pragmatist)

At other times James used language that reflected quite an ambivalent stance towards the principle of child inclusion:

You know, kids are powerless so why, if you could give them a power that they didn’t ordinarily have, I don’t know there’s justice in that for them… Why give them a power? With power comes responsibility… They’re kids. It means to be powerless, to just go along… (James, FDRP and pragmatist)

Ultimately, James said he considered parents were his primary clients, and that when children were included via CIP, it should be for the parents’ benefit, with both parents’ full agreement and consent. James also held the view that parents and practitioners could agree that children’s views were not relevant in FDR. James was a strong proponent of the view that CIP should only be undertaken when parents ‘needed’ to hear their child’s perspective, and only then if they were also ‘ready’ and open to hearing:

...you only do CIP if there is a need in the parents... my perspective is: CIP is for you mum. It’s for you dad. A chance for you to find out what’s going on for your child. (James, FDRP and Pragmatist)
While pragmatists acknowledged that child consultation could have a supportive function for children, any benefits to children as a result of CIP tended to be characterised as secondary to the core goal of improving parental insight. Adrian, an FDRP and pragmatist, took a slightly different approach to CIP assessment. Adrian described the potential of CIP as a ‘fact-finding’ exercise that could be of benefit, even if parents did not demonstrate a commitment to change:

And so there can be that element to a child consult as well, this sort of fact-finding almost type thing and sussing out... sometimes a child consult is an end in itself too... like you know you’re not gonna get these people to agree about anything ’cause they just hate each other too much, but you hope that, just by hearing the effect it’s having on the kid (CIP) might help moderate their behaviour a bit. (Adrian, FDRP and pragmatist)

For pragmatists, the primary goal of CIP was to utilise the child’s perspective as a method of inducing change within parents. If a pragmatist assessed that parental change was unlikely, they tended to characterise child inclusion as having little value. It is likely that the philosophical roots of RANSW as a family counselling service influenced this emphasis on ‘closing the feedback loop’ and only engaging children when their parents were also involved and consenting (see discussion in Chapter 4, pp. 81-83). While all pragmatists professed a commitment to elevating children’s perspectives in the FDR process, this was always tempered within considerations of parental reflective capacity.

b) Balancing risk and reward: A consequentialist approach to CIP

Pragmatists weighed the potential risks and rewards of child inclusion when assessing for CIP suitability. This comparison of anticipated outcomes, along with the preference for minimising risk of harm, reflected an underlying consequentialist/utilitarian ethical approach to child inclusive practice. All 8 pragmatists raised the idea that children could be disappointed and potentially even traumatised by their parents’ inaction following CIP feedback (as did several activists). A ‘good’ outcome tended to be defined by this group in terms of increased parental reflective capacity, and reduction of parental conflict in a form that was tangible to the child. Pragmatists sought
assurance that a case could result in a good outcome by applying a very high threshold for the PRC required, before they would recommend a case for CIP. This distinct focus on predicting outcomes seemed to co-occur with a cautious approach to case referral, as discussed by Olivia:

So it (CIP) really is an assessment process that you have to be much more cautious about, as I say, to what it was in the beginning. It was much more gung-ho, to give it a go. Like what harm could I cause? Well you can cause more complications... if it’s over the parent’s head, it’s over the parent’s head. You don’t wanna bring the child in, get that relationship going, talk about what you’re gonna do and the impact of it, and then it be, oh well, another failure...

(Olivia, FDRP and pragmatist)

The risk that parents may not hear or act on feedback from the Child Consultant weighed heavily on the minds of pragmatists, as Lisa discussed:

...So my fear is, at the end of it all, little Emily who’s nine/ten and doesn’t understand adult thinking or adult talk is going to go, ‘You see, I’m not important... enough to them to stop this (parental conflict). Their stuff is more important than me.’ And so they’ll still be living and seeing this but now they will have another layer to their story. And I think, I’m very nervous about that.

(Lisa, FDRP and pragmatist)

Felicia highlighted some of the other risks of CIP commonly mentioned by pragmatists:

...if it’s very conflicted parents and there’s the possibility of the information being used against the other parent, then I think it may not be a good thing to do. It could just open up a lot of extra cans of worms that might detract from them being able to make the decisions about their children. They could use it potentially against each other, which I think is problematic.

(Felicia, FA and pragmatist)

Felicia’s comments emphasised the primacy of parental conflict in determining the appropriate level of child inclusion. The potential for feedback from children to be used against one parent was a common theme. Even more common was the fear that
feedback from the Child Consultant could be used against the children themselves, either through pre-feedback parental coaching of the child, or post-feedback punishment from an abusive parent:

...I still think it comes back to the parents to be able to accept that (feedback from the Child Consultant) and not take that out on the child. (Shona, FA and pragmatist)

Pragmatic narratives and ideas centred on the risks of inclusion. Notably, not one participant amongst the pragmatist group considered the potential risks of excluding children from the FRC process. Pragmatists emphasised the utilitarian notion of the ‘happiness sum’: the idea that a logical, rational process of deduction could calculate the best outcome (see Houston, 2012: 654). The pragmatic focus on outcomes and assessment of risk drew strongly on utilitarian principles of individual and public ‘welfare’ (see Banks, 2012: 52-53). As Gray notes, a utilitarian ethos frames ethical reasoning as resolvable by a process of reasoned calculation and ‘logical deliberation’ (2010: 128). For these participants, a ‘good’ outcome in FDR clearly equated with the least harm done to children and parents. By excluding children from cases where parental conflict was too high and reflective capacity too low to negate reasonable risk to children or parents, pragmatists upheld the ultimate principle: do no harm.

Pragmatists were more likely than their activist colleagues to consider current RANSW CIP case numbers appropriate. Adrian shared his thoughts on another non-government organisation’s model of CIP, an organisation that at the time of data collection was considered a ‘practice leader’ amongst the FRC’s (Anglicare Western Australia’s ‘safety assessment’ model, as described in Hannan, 2013). The below excerpt from Adrian’s interview reflects on some of the ethical issues that could arise from a more broadly inclusive model of CIP:

I really think a very comprehensive assessment should be made prior to even considering CIP. The WA Anglicare response is, ‘well we do CIP in 100 per cent of cases but we don’t do child consultant feedback in 100 per cent of cases. So, if we form the view that this guy is an arsehole, this mum doesn’t have a shred of reflective capacity, then we just don’t feed back’. But I think, by doing that,
you break an implicit promise that you made to a child by involving them that their views will be taken into account. (Adrian, FDRP and pragmatist)

Although RANSW and Anglicare’s CIP models were quite different, Adrian’s reference to the ‘implicit promise’ made to children by inviting them into the FRC process was interesting from an ethical viewpoint. This narrative added another layer to the pragmatist preoccupation with completing the CIP ‘feedback loop’ to parents, as it implied an ethical duty to convey children’s perspectives to their parents, despite potential risks. In this sense, a high threshold for PRC was ethically justifiable in order to uphold an implicit promise to children. Taking a narrower view of CIP suitability also supported pragmatic commitments to minimise risk and to ‘do no harm’, as Lisa explored below:

I think CIP can work and I think it can work well... But for me there has to be the right ingredients and I can’t take a chance on playing with children’s emotions... there’s some line of thought where you go, ‘well, you know, let’s just get mum and dad in the room together’, and we give them this information, and this information might be the catalyst that could change them. And I’m saying that’s on a whim. And the child is too important to do something on a whim that may or may not change the parents’ thinking. (Lisa, FDRP and pragmatist)

Pragmatists seemed to have adapted to the limitations of the RANSW CIP model by adopting stricter criteria for child inclusive practice, and only pursuing CIP in a limited number of cases where this strict criterion was met. This strategy contrasted with the activist approach, which favoured a broader and more accessible approach to CIP.

Two pragmatists called specifically for RANSW to form clear criteria around CIP. Pragmatists and activists alike expressed confusion regarding the conditions and circumstances when CIP might be most appropriate. Lisa expressed an ethical concern about children’s safety, touching on the provisions around follow-up and the possibility of multiple consultation sessions for children:

What benefit are we looking at (from CIP)? I don’t know. And you’re saying is it a benefit to the parents? Is it a benefit to the child? Is it a benefit to seeds
being planted? I don’t know. Are those all, are those all good criteria to have? And if they are, then how do we make sure that the child is still safe and okay in, in that before and afterwards? (Lisa, FDRP and pragmatist)

In summary, pragmatists had a narrower view and a higher threshold (i.e. expectations around parental behaviour and reflective capacity) that needed to be met for a case to be suitable for CIP. Overall pragmatists were more focused than the other two groups on the risks of inclusion and were committed to predicting and choosing the approach that would cause the least potential harm. However, due to the broader conflict minimisation narrative, this often meant that simply including children via CIP created the possibility that they would be ‘affected’ by their parents’ conflict, particularly where parental reflective capacity was low (see Chapter 9 for a detailed exploration of conflict, reflective capacity and CIP). This pragmatic assessment of potential harm and good meant there were very few cases in which child inclusion was viewed as relevant or appropriate.

iii) The sceptic approach: Preference for work with parents

Four of the 27 participants were coded as sceptic. These participants adopted an ambivalent and somewhat sceptical stance not only towards the model of CIP, but also towards the principle of child inclusion in FDR. All four sceptics expressed a philosophical preference for working with parents. Sceptics relied on the ‘flow-on’ effect of work with parents to fulfil their commitment to children’s ‘best interests’, which was essentially a summation of the child focused approach. The philosophical ambivalence to child inclusion was unique amongst the entire participant cohort.

As indicated in Table 5 (p. 143), participants were coded as sceptic where they used:

- Language and ideas around preference for work with parents; and
- Language and ideas around ambivalence towards CIP.

**Key characteristics**

Key emerging themes in the sceptic cohort were a) preference for work with parents; and b) ambivalent approach to CIP. All 4 sceptics were also employed as Family Advisors (FAs). There were representatives from the FA role group across activist,
pragmatist and sceptic groups, indicating that not all FAs adopted the same approach to child inclusion. However, perhaps the conditions of the FA role (i.e. direct work was done only with parents in the FRC process, with little to no engagement with CIP except on the rare occasion they observed a child consultation (see Chapter 4 for a detailed description of the FA role, pp. 76-77), provided an environment where ambivalence towards child inclusion was more likely to emerge.

It is important to note that scepticism towards child inclusion is not unusual in this practice context. There is longstanding evidence that some practitioners believe including children in FDR might undermine the role and rights of parents (Cashmore & Parkinson, 2009; Department of Family and Community Affairs 1998: 22; Graham & Fitzgerald, 2010; Williams, 2016). The findings in this thesis confirm the presence of practitioner ambivalence towards CIP at the time of data collection, while also considering the underlying ethical narratives and implications of a sceptical approach (see discussion in Chapter 10, pp. 196-199).

a) Preference for work with parents

All 4 sceptics expressed either a clear preference for work with parents, or a belief that parents should make the decisions about post-separation matters on their children’s behalf:

*I really like this work... it’s very satisfying that it’s about the children, but working with the parents. I mean, you can be effective.* (Ally, sceptic)

*I think of the primary client as the parents... they’re the ones that will make a difference for their kids.* (Anna, sceptic)

*...Children need parents to be able to make decisions about them.* Clarissa, sceptic

*...I feel pretty strongly that the children should have parents that work these things out, you know, and make those decisions. And CIP is really to enhance that when they’re capable of doing that.* (Gina, sceptic)

Sceptics also used language around ‘influencing’ or empowering parents to focus on their children, with the belief that this would have a positive flow-on effect in the lives
of children. Sceptics referred to the child focused approach as a useful method for increasing parents’ reflective capacity:

So I feel as though I need to make a change within (parents) so that they can then flow on to impact the children in that way ‘cause I don’t often even see the kids. (Anna, sceptic)

Clarissa communicated strong beliefs in parental autonomy and self-determination, which could be considered a practical approach in light of the highly voluntary nature of FDR:

We must remain aware that these are families who are living their own lives. We can’t tell them how to live, think or feel. And so we really only can support them in trying to make their best decision. ‘Cause had they not come here, they’d have made a decision and gone off and lived their lives anyway, you know? (Clarissa, sceptic)

Overall, the preference to work solely with parents, and the belief that parental disputes were better resolved without children’s direct input, meant there was little to no space for child inclusion in the practices of sceptic participants. Several scholars argue that the construction of ‘best interests’ should rely upon empirical knowledge about the interests and developmental needs of children post-separation (Bagshaw, Quinn & Smyth, 2006: 43; Kelly, 1997; 2005). This thesis aligns with the evidence that some FRC practitioners prefer to draw upon their practice wisdom and skill in working with parents, rather than exploring the options for child inclusion (see Bell, 2015; Williams, 2016).

b) Ambivalent approach to CIP

Sceptics adopted an ambivalent approach not only to RANSW’s model of child inclusive practice, but also towards the higher order principle of child inclusion in the FRC process. A lack of confidence in the skills of some colleagues, and awareness of the mismatch between the resource intensity of CIP and the organisation’s capability to expand services, were common points of contention. Concerns that children may feel ‘blamed’ by more frequent inclusion were also discussed. Sceptics questioned the
possibility of CIP cases increasing, or expansion of the existing model to include more follow-up and support for children:

(If the number of children going through CIP increased) I’d be worried about the children becoming the ones that have to solve the problems, you know. The parents need to be the ones looking after the children’s needs and, you know, working with the kids more. It could mean that it’s easy for parents to go, ‘Yeah, work with my kids and make it better for them.’ And does that let them off the hook? Are they not gonna be taking responsibility there? (Ally, sceptic)

It’s (CIP) just more of a general interview to find out how the kid’s going. ‘Cause I think that could open a big can of worms that’s not really anything we’re set up for. (Clarissa, sceptic)

Gina discussed concerns around practitioner competence, noting that RANSW Child Consultants, without exception, had a separate primary organisational role:

I just don’t have that much faith in clinical expertise that there wouldn’t be many times when that’s (CIP) perhaps not serving the child in the best way, you know. Even through there’s so many wonderful professional people around... I know (with) RA it’s always been an issue with finding people that can do (child consultation) as well as their other work... I just wonder. (Gina, sceptic)

Similarly, Anna also discussed professional incompetence as one source of her ambivalence towards child inclusion, sharing an example of a CIP feedback session she had observed:

...there was some concern about whether a report should be made to DOCS or not and, I don’t know, to me it wasn’t as helpful for the parents as it could have been. I thought it was gonna be better. I had this ideal that it was gonna be a wonderful, enlightening experience for the parents and I think they were just traumatised by the whole thing, basically. (Anna, sceptic)

Sceptics strongly emphasised the lack of empirical research on CIP at the time, as supported in the literature (Ballard et al., 2013; Bell et al., 2013; Henry & Hamilton, 2012; Rudd et al., 2015b). Ambivalence towards CIP amongst sceptics is perhaps
understandable when this lack of empirical knowledge is considered. It seemed that workers were reluctant to advocate for a model that they felt philosophically distant from and were unconvinced of its efficacy. Distance from the practice of direct child inclusion was a reality for FAs, who had no direct contact with children unless they specifically organised to observe a CIP session. As such, FAs only had rare opportunities to gauge whether CIP was even helpful for parents or children:

... if it’s (CIP) a good thing and I presume it is because it exists in so many places, I think that it probably needs to be sold internally more, because I only know from the experiences that I’ve accessed in a purposeful way. (Gina, sceptic)

(Organisational practice lead) keeps on saying he doesn’t know why there’s not child consultation for everyone. Well there’s practical issues or there’s not but, you know, is it worthwhile? Dunno. The child has gotta be prepared and able to express themselves. The parents have gotta be able to hear it. And if those things don’t happen, then I’m not sure that it is worthwhile. (Anna, sceptic)

Gina reflected on the lack of longer-term client follow-up and shared an example of a CIP case where she had observed a feedback session. This case appeared to have a positive outcome immediately following CIP, but Gina noted that arrangements went ‘pear-shaped’ around a year later:

...has it changed the big picture for them? ... I don’t know that we do longer-term, you know, reflections on that sort of thing [...] At the time, it was a lovely performance and it worked for everyone. But after a year, no, it didn’t. [...] I don’t know what benefit that is to the children. It was a benefit in reaching an agreement but a long-term change, it wasn’t in that situation. I guess I don’t know enough examples of that to say. (Gina, sceptic)

Overall, sceptics reported a lack of access to CIP processes, lack of empirical information about the benefits and potential outcomes of CIP, and concerns about the competence of Child Consultants. These factors, combined with their child-focused organisational roles and philosophical preference for working with parents, contributed to an overall ambivalent or sceptical ethical orientation towards child inclusion.
Conclusion

This chapter outlined three distinct ethical orientations towards child inclusion. Participants were categorised into one of three groups based on analysis of the ethical ideas and language that informed their practices around children. The largest group, activists, espoused a dual focus on children’s rights and an ethic of care. Activists adopted the broadest criteria for CIP and were the most likely to advocate adaptation of current child-related practices towards a more ‘ethically caring’ orientation. The second largest group, pragmatists, focused on potential harm and weighing up the risks and rewards of child inclusion, while centralising parental reflective capacity as the key determinant of CIP. Pragmatist narratives reflected a consequentialist approach, with persistent attempts to foresee and avoid future harm to children and parents at the core of their conceptualisations of ‘good’ child inclusive practice (see McAuliffe & Chenoweth, 2008: 45). The third and smallest group, sceptics, adopted an ambivalent stance not only towards the RANSW CIP model, but also more generally towards the principle of child inclusion in FDR.

Informed by these distinct practitioner approaches to child inclusion, the following and final findings chapter outlines the ‘theory-in-action’ of child inclusive practices in operation at the time of data collection. Given the identified lack of organisational policy for CIP suitability and the lack of empirical knowledge, Chapter 9 analyses participants’ narratives and own criteria for child inclusion, with a focus on parental conflict and parental reflective capacity as key assessment criteria.
Chapter Nine: Conflict and parental reflective capacity

Introduction

For me the voice of the child is helping the child to become visible again. But it’s impossible to do that whilst Mum and Dad are so heightened in the presence of each other. (Eve, Child Consultant, Counsellor and activist)

This final findings chapter analyses case-level factors for child inclusion that informed participant decision-making. Two key concepts were almost always considered together when screening for CIP: i) parental conflict, and ii) the reflective capacity of parents (i.e. parents’ ability to attend to their children’s needs and ‘hear’ their children’s perspectives). Participants described a process of ‘weighing up’ levels of conflict and parental reflective capacity (PRC) to determine whether CIP was an appropriate intervention. Participants across all three ethical orientations discussed in the previous chapter framed this process as ethically fraught and highly complex.

The chapter begins with an overview of the relationship between parental conflict and parental reflective capacity (PRC) as described by participants. Analysis of the dominant organisational discourses underlying the CIP assessment process (parental alliance and conflict minimisation) is presented. An exploration of parental conflict follows, focussing on how participants defined and assessed the concept, and how considerations of domestic violence factored into this process. Findings on PRC, a concept similar to parental reflective functioning but thus far unexplored in the literature, are presented. The chapter concludes with a reflection on the ethical issues within this highly parent-focused assessment framework, drawing out implications for children and their inclusion, and in particular the implications for child victims of domestic violence.

Relationship between conflict and PRC

Participants consistently articulated the purpose of the FRC process to facilitate a shift away from parents’ conflict and onto a focus on children, as binary concepts.
Practitioners spoke about how conflict between parents could block parents from focusing on their children’s interests:

> Now we’ve had one little girl in a really bad way and she’s gone, ‘I just want you to look at each other and talk to each other’. Both parents go: ‘can’t do it’. And people are sort of saying, ‘yes, but it’s in the best interests of the child’. There’s all this emotional energy in mum and dad that are just blocking them. They’re too scared to talk to each other because they can’t handle their hurt. (Lisa, FDRP and pragmatist)

Across the participant cohort, parents that were engaged in high level of conflict were perceived as having lower reflective capacity, i.e. a diminished ability to focus on their children’s experiences and needs post-separation. A directional relationship of sorts was referred to throughout participant accounts: where parental conflict was high, it was seen to result in lower reflective capacity in parents (see diagram directly below).

As parental conflict increases...

parental reflective capacity is seen to decrease

*Fig. 5: Directional relationship between parental conflict and reflective capacity, as described by participants*

Participants across all three ethical orientations (sceptic, pragmatic and activist) identified a directional, binary relationship between conflict and PRC. For pragmatists, a reasonable level of reflective capacity ultimately determined whether they would recommend CIP. However, as outlined by the findings below, there was a lack of agreement regarding not only the measurement of conflict and PRC, but also at what level of conflict and PRC children could be appropriately included via CIP.
Underlying narratives: ‘Parental alliance’ and ‘conflict minimisation’

In many interviews, participants spoke at length about the concepts of conflict and parental reflective capacity (PRC) as key factors in determining whether CIP could be effective and therefore if child inclusion was appropriate. While the nuances of the parent-centric assessment process and participant definitions of conflict and PRC are drawn out later in the chapter, it is important first to understand the broader frameworks that influenced participant conceptualisations of CIP assessment. Two underlying narratives were woven throughout participant accounts: i) strengthening the parental alliance; and, ii) conflict minimisation. The underlying narratives of alliance-building and conflict minimisation did not fully account for the high incidence of conflict in the FRC client cohort, nor the ethical consequences of child exclusion.

i) Parental alliance

The significance of assessing conflict and PRC appeared ultimately to serve the core aim of CIP at RANSW, or at least the aim that was recorded in the brief policy document that existed at the time: to ‘shift parents into a parental alliance’ (RANSW, 2010a: 7a [1] 7.4; see Appendix A). James described the parental alliance in terms of ‘the kid’s experience of the parenting (relationship)’. If participants assessed there was little to no potential that parents could a) shift out of their conflict behaviours, or b) increase their parental reflective capacity following CIP thereby strengthening their parental alliance, several (especially pragmatists) believed CIP was inappropriate.

... if I’m feeling the parents (have got a) really well-formed story about how the child’s going and they may not be open to hearing a different perspective, perhaps it wouldn’t be beneficial for the child to be interviewed. It’s getting their parental alliance working better... (Felicia, Family Advisor (FA) and pragmatist)

The concept of the parental alliance was closely related to each parent’s reflective capacity (PRC), or their ability to be in tune with their children’s experiences and needs. Without some degree of PRC, the majority of participants felt that an alliance was not possible and that it was better to focus on a traditional agreement-focused pathway through FDR, which did not include CIP. Lisa contrasted an ‘alliance-focus’
with an ‘agreement-focus’ in one of her cases, characterising CIP as inappropriate where parents were in a very high level of conflict with each other:

_There’s conflict. We’re not doing this wishy (washy) parental alliance thing. We can talk a little bit about it. Everybody can plant a seed. But that’s not where your focus is. These people… need solicitors to get on. Why would you put a CIP in there?_ (Lisa, FDRP and pragmatist)

Jenni discussed the difference between mediating for arrangements, versus mediating to strengthen the parental alliance. Jenni said that due to the professional backgrounds of some FDRPs (many of whom did not come from social science or welfare-based fields), many were ill-equipped to work with and develop a parental alliance, and preferred a focus on forming parenting agreements:

..._there are practitioners here that are not comfortable with anything other than the facilitative negotiation model. That’s where their strength lies, and it’s not that they don’t ever use CIP but I think they use it in the wrong context, looking for impasse-breaking, not facilitating parental alliance._ (Jenni, FDRP, Child Consultant and activist)

Five of the total 8 pragmatists came from professional backgrounds outside of the social sciences/human services sector, which may have meant they were less familiar or less comfortable with more therapeutic mediation models. Thus, a preference for facilitative, agreement-focused FDR may have influenced the pragmatic emphasis on a high level of PRC for CIP screening. Working with low reflective capacity would command a higher level of practitioner confidence and skill, especially where children were engaged via CIP.

Some participants, primarily activists, stated that an ‘alliance’ between parents was not always appropriate or realistic, especially in cases where domestic violence (DV) was an issue. In this research, Holly (FDRP, Child Consultant and activist) referred to the notion that the parental alliance could be strengthened through CIP, as an ‘ideal’ that may not be possible to reach in all cases. Holly said that improving the parents’ relationship with one another was only a valid goal if this in turn ‘improved their parenting capacity’. Stan (FDRP and activist) said that, given the short nature of the
intervention, any improved alliance tended to be temporary and that ‘historically it doesn’t work over time’.

Eve (Child Consultant, counsellor and activist) referred to some cases she had worked on as Child Consultant, where there had been historical incidents of DV. Eve had focused on strengthening the parental alliance by encouraging ‘more communication’, but this had ‘backfired’, leaving Eve to question the concept of an alliance:

...that’s also another thing I’ve really grappled with: what the hell does parental alliance actually mean? You know, there’s really not a lot out there in the literature [...] So now, I can see that parental alliance can mean many different things. It’s a totally abstract concept. And for some parents an alliance can mean not having anything to do with each other. (Eve, Child Consultant and Counsellor, activist)

Participants highlighted an awareness of parental autonomy in their discussions on parental alliance. Activists, pragmatists and sceptics alike acknowledged that the voluntary nature of FDR, combined with organisation-specific policies (in particular, the parental permission policy and the emphasis on joint CIP feedback sessions; see Chapter 4, pp. 81-83; also Appendix A & Appendix B) meant their power as practitioners was primarily persuasive. While practitioners could encourage parents to focus on their children’s perspectives, minimise their conflict, and permit their children to engage in CIP, they could not force parents to do anything. As such, working exclusively with parents to try and strengthen their relationship both respected their autonomy, and avoided the additional complexities and safety concerns that came with CIP.

Overall, there was a strong focus across the participant cohort on using FDR to strengthen the parental alliance. However, there was disagreement about the role of children’s participation in achieving this goal, and some acknowledgement that not all workers were confident with a more therapeutically-oriented and alliance-focused approach. Some activists questioned the elevation of the parental alliance narrative, pointing out the ethical issues with this approach, particularly in DV cases.
ii) Conflict minimisation

It is important to note the prominent discourse of conflict minimisation and its links with CIP assessment frameworks. Participants emphasised that ‘ongoing conflict’ (Felicia) between parents can be harmful for children, and that communicating this to parents was a core focus of the FRC’s work:

... there’s a bit of an educative component to our process, that the conflict’s harmful for the child, that the separation itself may not be so harmful but the ongoing conflict, the entrenched conflict that often happens is very, very harmful, and it’s important to communicate with the other parent about the child. (Felicia, FA and pragmatist)

Our message here is constantly, it’s not the separation: it’s the conflict that hurts kids. (Rowan, FDRP and activist)

Rowan’s comments encapsulate the attitude of most participants: that reduction in parental conflict would inevitably lead to better outcomes for children. The recurring desire to ‘shift parents into a parental alliance’ (RANSW, 2010a: 7a [1] 7.4; see Appendix A) evident across many participant accounts, afforded some insight into why some reportedly used CIP as an ‘impasse-breaker’ (Jenni). If the practitioner viewed a stronger parental alliance as the core goal of FDR, it followed that any intervention that could reduce conflict was in children’s best interests:

If you can change the relationship between the parents from one of conflict to one of cooperation, it will flow, the children will be better off... the idea of getting the conflict out of the relationship between the two of them for me, that’s the primary thing. (Rowan, FDRP and activist)

Emphasis on parental conflict as harmful to children was a very strong theme, to the point that some participants framed minimising children’s exposure to parental conflict as a primary goal of the FRC process. Expressions of conflict minimisation extended from child-focused attempts by Family Advisors and FDRPs to prompt parental reflection on the effects of their conflict on their children, to the Kids In Focus psycho-educational group for parents, right through to the CIP process. As explored in
the section directly below, if participants thought CIP might increase parental conflict or further expose children to that conflict, child inclusion was deemed too risky.

Few participants explicitly acknowledged that parents were *already* engaged in a potentially high level of conflict in the *vast majority* of cases at the CIP assessment stage. Recent estimates indicate that between 60-80% of FRC cases involved some form of domestic violence (Standing Committee, 2017: 4.29). This meant children were highly likely to have been exposed to their parents’ conflict, and potentially to violence and abuse, prior to and/or during the FRC intervention. As explored later in this Chapter, it was uncommon for participants to distinguish between ‘high conflict’ and domestically violent behaviours.

**Parental conflict**

*a) Definitions*

Participants defined conflict in different ways, essentially drawing upon the term to describe the quality of the parental relationship. Participants acknowledged that conflict could be in the form of ‘*hostility*’ (Marnie) or a ‘*lack of communication*’ (Eve), not only in the form of acrimony or ‘*animosity*’ (Stan). The parental relationship might be ‘*civil*’ (James) or even ‘*polite*’ (Rowan), but this did not mean the relationship was devoid of conflict, nor that CIP would necessarily be effective:

> Often, because the relationship between mum and dad is so hostile, the child is never seen. Like you might be talking in a room for three hours about this family but actually that child is not often in the room; it’s all about Mum and Dad. (Marnie, FDRP and activist)

*b) ‘Levels’ and ‘types’ of conflict*

Participants weighed up ‘levels’ of parental conflict to determine CIP suitability. Attempts to find a level of conflict *between* ‘amicability’ (conflict considered ‘too low’ to warrant CIP) and ‘entrenchment’ (conflict considered ‘too high’ to warrant CIP) were woven throughout participant narratives. As explored in Chapter 2 (pp. 42-46), there is agreement in existing literature that CIP ‘either does no harm or offers significant benefits’ in cases of low parental conflict (Henry & Hamilton, 2012: 599).
However, these participants acknowledged that a ‘low conflict’ case was rare. Thus, practitioners were engaged in an ethically difficult process of distinguishing between not only ‘high’ and ‘too high’ levels of conflict, but also the types of conflict that may make the difference between a good and a bad outcome following CIP. There was lack of agreement about the appropriate level or type of conflict for CIP suitability.

This section explores ‘high’ and ‘low’ levels of conflict and the relationship of each with CIP, before considering domestic violence and its effects on child participation.

i) ‘Low’ conflict and CIP

Several participants noted that cases with a low level of parental conflict were unusual in the FRC setting. Eve shared about a CIP case that involved an 11-year-old daughter who had lived with her mother for her entire life. The child had not seen her father since she was around 6 months of age, but Dad had come back into the picture and had a small amount of contact with the child just prior to mediation. Eve noted that there ‘wasn’t much acrimony’ between the parents, which she noted was atypical of most cases she had seen: ‘there was a lot of distance, but they weren’t at each other’s throats’. Eve framed this as an appropriate case for CIP:

There was hurt but it wasn’t toxic, whereas the other cases that I’ve done, high degree of acrimony. Can’t even bear to speak to each other on the phone or look at each other. (Eve, Child Consultant, Counsellor and activist)

Allira talked about the high level of case complexity in assessing for CIP, noting that parents at the lower end of the conflict scale ‘don’t need CIP’. The idea that low conflict meant CIP was not needed was a common theme amongst the majority of participants:

... the parents who are amicable, who can work things out, don’t need the CIP. We’re talking about CIP with more complex, entrenched conflict, and does it help? Does it make it better? Bringing two people in the same room again can ignite certain history and sometimes it hasn’t been easy. So it’s tricky. (Allira, FDRP and activist)
In contrast to the opinion that low conflict cases have no need for CIP, Lisa insisted that communication between parents and a total child focus were in fact required for CIP to be effective. Lisa’s approach to CIP was typical of the pragmatist group, who had a high threshold for PRC:

... child consultancy only really works for a very minor few for me because it’s like a point where, if they’re not communicating, doing CIP or being totally child focused, they can’t get there... If you don’t address their personal heat or energy between the two... CIP I don’t think is gonna work. (Lisa, FDRP and pragmatist)

Thus, participants gave very different accounts of the merits of CIP in ‘low’ conflict cases. While some said low conflict was an ideal environment for CIP, others said minimal conflict meant CIP would not be useful. This was notable given concurrent concerns expressed by the same participants at other points in their interviews that high conflict also meant CIP was inappropriate, as discussed in the below section on types of high conflict.

ii) ‘High conflict’ and CIP

Although participants did not explicitly acknowledge that there were ‘types’ of high conflict, a meta-narrative emerged regarding different kinds of conflict, which in turn posed different kinds of risk where CIP was pursued. Participants assessed for cases where CIP: a) would not further escalate the conflict; and, b) would not create an opportunity for one parent to ‘use’ the feedback against the other parent or the child/ren. The potential for a parent to use feedback destructively was strong contra-indicator for CIP for most participants:

... if it’s very conflicted parents and that there’s the possibility of the information being used against the other parent, then I think it may not be a good thing to do. (Felicia, Family Advisor and pragmatist)

Several participants characterised ‘high’ conflict as that which was ‘ongoing, entrenched’ (Felicia) or ‘protracted’ (Stan). Discussions of entrenched conflict were linked to concepts of ‘immovability’ (Marnie), ‘stuckness’ (Eve) and long-established relationship patterns, as Adrian described:
If you’re been in an entrenched cycle of negative intimacy for a decade... and you manage to have this amazing epiphany in a mediation room, a week later you just sort of tend to fall back into the old patterns of the relationship. (Adrian, FDRP and pragmatist)

Joy described cases where CIP would be ‘automatically ruled out‘ as those where parents could not be in the same space to mediate:

... where the parents aren’t able to sit in the same room and, in the first place, to be able to, to work through things. Then they’re automatically ruled out and you wouldn’t consider it where the conflict is so high. (Joy, FDRP and pragmatist)

Participants wanted to feel confident that parents would respectfully hear from their children via the Child Consultant and would not lash out against the child or the other parent following CIP. This was one reason why PRC was so important to participants: high PRC, in one or both parents, was seen to buffer or mitigate the effects of high conflict. High PRC helped reassure participants that CIP would not further harm children. The cases that had led to poor outcomes for children were often linked with two factors: low PRC, and DV. These factors will now be discussed.

iii) What about domestic violence?

An unexpected finding was that there was minimal discussion (that was unprompted) around the presence of DV when assessing suitability for CIP, as well as minimal reflection on both the constraints and opportunities for child inclusion in DV cases. Discussion of DV primarily emerged in participants’ case stories: most often, these were the cases where CIP had resulted in negative outcomes for the families involved. The key issues participants noted in ‘high conflict’ cases, namely: power imbalance, power and control, difficulties with communication and ongoing or entrenched conflict, were rarely considered as potential signs of abuse or violence that could be occurring within the family.

Only three participants acknowledged the high rates of DV within the client cohort. Rowan (FDRP and activist) said ‘it’s a reasonably high (number of cases) that there is
domestic violence’. Anna (FA and sceptic) noted that ‘probably about 80 percent of the families we see there’s significant domestic violence’. Angelique (FA and activist) noted that the level of DV is ‘still quite high’ amongst FRC clients. These accounts were in line with extensive evidence from the literature that DV is, in fact, the rule, not the exception, in FRC cases (Bagshaw et al., 2010; Cleak & Bickerdike, 2016; Family Law Council, 2016; Henry & Hamilton, 2011; Kaspiew et al., 2009; 2015; Moloney et al., 2013; Standing Committee, 2017). Given the recorded prevalence of DV, it was notable that most participants did not refer to it within conversations about conflict and CIP assessment.

Some participant accounts appeared to blur the concepts of DV and high conflict. Irene, an FDRP and pragmatist, discussed a case where CIP feedback had gone well, but due to ongoing relationship issues, the practitioners had issued a S. 60I certificate to allow the parents to attend Family Court. Irene’s description of the case involved an acknowledgement that the father had been ‘previously abusive’. Irene said the parents ‘still had such a high degree’ of conflict and that Mum had expressed a sense of dread about ‘being dragged through this mediation process’. Irene said ‘Dad was becoming quite abusive again: he heard it (the feedback) but he wasn’t able to hang onto it’. Although DV was never explicitly labelled, Irene referenced a high degree of conflict that had continued over a long period, as well as the father’s previously abusive behaviours, and the mother’s reluctance to attempt mediation.

Participants gave several examples of cases similar to Irene’s that had gone on to CIP despite ‘historical’ domestic violence, where in the end, the perpetrator parent had been unable to ‘hear’ the feedback from their children and, therefore, CIP had resulted in a poor outcome. Participants often took responsibility for the poor outcome following CIP, citing their own mis-assessment of PRC rather than seeing the perpetrator-parent’s low PRC as potential evidence of ongoing abuse. The participants’ strong sense of responsibility might indicate a lack of participant awareness in understanding and assessing DV.

While the participants who volunteered their considerations of DV described the CIP assessment process as ethically challenging, most other participants did not conceptualise DV as anything other than physical violence. This aligns with Burnett-
Smith’s (2012: 36) point that a ‘middle range’ of relationships characterised by DV are those most likely to present in the FRCs, i.e. cases where less overt forms of violence, such as abusive behaviours which characterise coercive controlling relationships, are occurring. Some participants appeared to use ‘high conflict’ as a catch-all term to describe difficult or complex cases, which clearly also involved historical abuse or violence. Participants referred to ‘real violence’ (Olivia) and ‘real power issues’ (Daniel) as a way of categorising cases that may not be suitable for CIP:

*I wanna know if there’s domestic violence and real power issues, and that kind of concerning thing where the parent may not be able to kind of hear... It’s a hard thing to assess.* (Daniel, FDRP and activist)

Olivia referred to ‘real violence’ as a mark of case complexity, implying that FRCs are not well equipped to manage more complex cases:

*So the more complex the case... and there are things like, you know, child informative practice or they’re needing to go to a group, or there’s real violence... it doesn’t matter how they come through the FRC, you’re just not gonna get it.* (Olivia, FDRP and pragmatist)

There were two clear approaches to child inclusion where DV was present: a) CIP was unsuitable; or b) CIP *may* be suitable, but careful assessment and a more flexible parental feedback model were recommended. These approaches seemed to be adopted independently of participants’ ethical orientations towards child inclusion, although pragmatists tended towards approach a), and activists towards approach b).

Most participants did not see DV as a reason (or ‘need’ in participants’ criteria; see Chapter 7, pp. 130-131) for children to be included via CIP. Rowan (FDRP and activist) insisted that CIP would be inappropriate where one parent felt they had to protect themselves: ‘if parents are in such high conflict (that) one parent is protecting themselves and their children from the other parent, then that’s (CIP) not gonna be appropriate’. Rowan referred to RANSW’s ‘parental permission’ policy, stating that the parent who had perpetrated DV could effectively opt out of CIP:
... (there is) the fear of a parent that a child is going to say something that they don’t want them to say in a CIP session. (Rowan, FDRP and activist)

Eve said that CIP had the potential to ‘reinforce (the) idea of the parental alliance, which could be unhelpful where one parent felt afraid of the other parent’, and where ‘power and control issues’ were present:

*I think where there is power and control issues and where one parent still feels quite afraid in the here and now of the other parent, even after a period of separation... then, no, I don’t see that (CIP) is a helpful process, ‘cause sometimes it can almost reinforce that (idea) of parental alliance...* (Eve, Child Consultant and Counsellor, activist)

Other participants felt that the presence of DV should not automatically disqualify a case from CIP. Angelique said her thinking around DV, appropriateness of mediation, and suitability for CIP had changed over time:

*Initially, when the Centres opened, DV was an exclusion whereas now, no. [...] I think over time the system and even my personal way of thinking is to not just rule it out straight away. Slow it down, you know. Put some different supports and referrals in place. Hopefully get some change in the Dad and see where you go from there. I definitely wouldn’t just exclude CIP.* (Angelique, FA and activist)

Eve believed excluding all DV cases from mediation and/or CIP was unrealistic, given the high rates of domestic violence within the client cohort:

*... it’s difficult because there’s often this idea around violence and very blanket statements around ‘we don’t do mediation with anyone who’s violent’. ‘We don’t do CIP with anyone who’s violent’. But out here, if we did that, we wouldn’t be seeing anybody.* (Eve, Child Consultant and Counsellor, activist)

Eve said, ‘there might be different configurations of CIP’ and that joint feedback sessions with both parents may not always be helpful, particularly where one or both parents have ‘heightened anxiety’ around FDR and/or CIP processes. Dee, Sarah and Angelique, all practitioners from Centre D, discussed the importance of a flexible CIP
model. Dee used language around ‘intense high conflict’ or ‘power and control issues’ as reasons why CIP may be inappropriate. She, along with most of her Centre D colleagues, suggested CIP could go ahead in these cases, but with more guarded feedback given to parents:

*If we’re picking up on mental health issues or really strong power and control issues between the couple, and intense high conflict... Look, you can still see the children but then the Consultant has to be really guarded about the feedback they give.* (Dee, Manager and FDRP, activist)

Overall, the findings around ‘high conflict’ and domestic violence confirm much of what is known in the literature: many participants, as Family Law professionals, did not appear responsive to indicators of DV within their cases (Cleak & Bickerdike, 2016; Fotheringham, Dunbar & Hensley, 2013; Shaffer & Bala, 2004; Shea Hart, 2010). There was some conflation of the concepts of ‘high conflict’ and DV in practice (Anderson et al., 2010; Lynch & Sheehan, 2013; Shea Hart, 2006; 2010), and participants confirmed that the presence of ‘low’ conflict amongst the FRC client group was rare (Dalton, Carbon & Oleson, 2006; Kaspiew et al., 2009). Participants did not give any account of consistent screening methods for DV when it came to CIP (Dobinson & Gray, 2016; Henry & Hamilton, 2011), nor was there an agreement regarding the appropriateness of child inclusion in DV cases.

Accounts of the relationships between conflict, domestic violence and PRC in the CIP assessment process represent new knowledge in the FRC practice landscape. Chapter 10 analyses the parent and conflict-centric assessment process, primarily adopted by pragmatists, to draw out the implications for child inclusion in RANSW FRC practices.

**Parental reflective capacity (PRC)**

PRC is a specific term that at the time of writing had not been referenced in the literature, in the same form as described by participants. As such, the section below is exploratory in nature and based on the data from this research alone. This section explores participant descriptions of PRC and its relationship with CIP assessment.
a) Defining PRC

PRC was the most significant recurring theme discussed in connection with CIP assessment. Nineteen of the 27 participants referred specifically to the term ‘parental reflective capacity’ in interviews, although they referred either to ‘capacity’ or ‘reflective capacity’. PRC referred to a quality, and an ability to focus on children’s needs and interests, which parents were seen to possess to varying degrees. Participants used terms such as ‘open mindedness’ (Allira) and ‘self-reflection’ (Renata) to describe aspects of PRC, although the concept was not limited to these traits: there was a distinct focus on parents’ attitude or approach towards their children.

Several participants framed PRC as synonymous with a focus on children’s ‘best interests’ (Felicia), which included an awareness that children’s needs and experiences may have changed following the separation:

> It’s a parent’s ability to reflect, and have the best interests of the child, and goodwill to be able to look at the child… it’s about children’s rights and not parents’ rights. (Felicia, FA and pragmatist)

In part, parents could be unable to focus on children’s experiences due to the painful experiences of separation and related conflict:

> Often that separation is so conflicted and painful for some parents, they can’t dissociate their pain and the children’s needs. (Joy, FDRP and pragmatist)

> Sometimes you get parents who just can’t go there, that are just so caught up in (their) own stuff and you ask about the child, and they’ll end up talking about themselves again. (Josie, FA and activist)

> I think that the expectation of some of the parents is that the children will look after them. It’s not a good dynamic. (Olivia, FDRP and pragmatist)

Participant narratives indicated that PRC occurred on a ‘continuum’ (Renata), and that it was strongly related to several case-specific factors:

> I am of the belief that it’s a bit of a time lining thing. It depends how the separation/divorce happened, what sort of mental, psychological, emotional
state the parents are in... And so it depends on a continuum of where they might be... it depends where you get them in a receptive mood, and that’s where the recommendation for CIP is about: what capacity do the parents have? (Renata, FDRP, Child Consultant and activist)

Renata’s comments conveyed parental readiness as one important aspect of PRC. Participants discussed the possibility that PRC could increase across the FRC intervention. Irene reflected on a case where the parents had ‘move(d) along themselves psychologically’ and were able to really focus on their children’s experiences, while at the same time noting that ‘sometimes parents don’t change’:

...it’s not like, if you’re not thinking about your children now, doesn’t mean you can’t think about them in the future. (Irene, FDRP and pragmatist)

For some participants, increasing PRC was an important aim of CIP. Where the goal of CIP was couched as an improvement in the capacity to be attuned to their child’s emotional state (which was one aspect of fostering a stronger parental alliance), it followed that CIP should only be pursued where parents were capable of becoming more attuned. There was a dual focus on decreasing conflict and increasing PRC – and some participants considered CIP an important method for achieving both aims:

The reason we want parents to get on better is because that improves their capacity to be parents... to be attuned with their children. (Holly, FDRP, CC and activist)

b) Assessing PRC

The exact level of PRC required was a key ethical dilemma and a source of debate. Participants said they used every conversation and meeting with parents to determine their reflective capacity, and therefore their ability to engage with CIP in a positive way. Parental willingness to engage with CIP was one way to assess PRC. James said he was concerned when parents showed resistance to CIP, which he reported happened ‘quite often’:

You can pick up on their fear about what might happen. They say, ‘Oh I’ve taken the kid to counselling’, that’s handing over to someone else whereas this is sort
of, (CIP) is handing it back to you. So I think that always makes me worried when they, they don’t wanna have CIP. (James, FDRP and pragmatist)

Low PRC would not necessarily preclude mediation, but it could mean CIP was inappropriate. Determining the appropriate level of PRC for CIP suitability was framed as a difficult and vexing task. Generally, practitioners fell into one of two groups: i) those who acknowledged low PRC was likely and were willing to work with this in CIP; and ii) practitioners who felt a higher level of PRC was a prerequisite for CIP.

i) Low PRC and child inclusion

Participants shared several examples where PRC had either been too low or mis-assessed prior to CIP, resulting in less successful and potentially harmful outcomes for children. Many only found out after CIP that parents did not have enough reflective capacity to both hear and act on the Child Consultant’s feedback:

... sometimes it’s just a surprise – everyone’s made a call that yes, these parents have the capacity – and then you find, in the course of doing it, that they don’t. (Dee, Manager, FDRP and activist)

Marnie shared an example where she acted as an FDRP, experiencing ‘almost a sense of failure’ because the child engaged in CIP and ‘nothing changed’ – the parents were issued S. 60I Certificates for Family Court. Marnie expressed concern that perhaps the outcome would have damaged the child’s sense of trust in adults and in services like the FRC. Marnie reflected on her skill in assessing CIP, and the difficulty with ‘hoping for the best’ when it came to assessing PRC:

Maybe I should have assessed it differently. Did I not see the capacity for Mum and Dad to change, or did I believe so much in the hope that this would work, that the enthusiasm would carry everyone over? (Marnie, FDRP and activist)

Most participants seemed to assume that if a parent ‘really heard’ what the child had expressed that they would change their behaviour or the parenting agreement accordingly. It was perhaps ironic that, ultimately, PRC could not be fully known until after CIP had proceeded. This dichotomy was a significant practice complexity, and
reflected the ethically difficult nature of CIP assessment, as well as the lack of tools and techniques for accurately measuring PRC.

Where a parent presented as highly positional (i.e. unwilling to negotiate or move from a fixed position), this was viewed as a likely indicator of low PRC. Stan (FDRP and activist) and Joy (FDRP and pragmatist) each shared separate CIP examples where the father in both cases was quite positional, wanting 50/50 care of the children. In Joy’s case, she said the feedback was that the children were finding it difficult to ‘move between parents who were so highly conflicted’. Joy said Dad ‘didn’t get the message because his capacity was so limited that he couldn’t take it on board’. Joy said she did not think the children were ‘well served’ by what happened, and that she and the other workers in the case all had a role in ‘inflicting more pain on the children by not understanding where Dad was coming from and how limited his capacities were’. Joy said since this case she has ‘always erred on the side of caution’ to ensure she really ‘check(s) out the capacity of both parents’.

Holly specifically associated low PRC with DV, specifically discussing ‘controlling’ and ‘abusive’ behaviours. She also made the point that low PRC was present for many, if not most, FRC clients. In some cases, CIP may not have the scope to bolster the parental alliance, but to Holly, CIP could still assist one or both parents to understand their children’s needs better:

\[\text{We regularly have parents whose relationship is such that it might have been abusive; it might have been controlling; one parent just may not have the capacity to do any more than look after themselves. They don’t have the capacity to support the other parent. We do see people like that and I do think it’s worthwhile doing CIP, if we can, because there is scope to help a parent understand more about what a child needs from them.} \]

(Holly, FDRP and Child Consultant, activist)

In line with Holly’s comments about CIP’s potential to help one or both parents grow their reflective capacity, and considering the fears many colleagues expressed around low PRC, Adrian argued that cases where parents had low PRC should actually be prioritised for CIP:
The majority of people who you want to do CIP are people who are not hearing their child’s voice. And that’s why you want them to do it. (Adrian, FDRP and pragmatist)

Interestingly, there was very little commentary on each parent’s reflective capacity: the focus was almost always on a joint assessment of both parents’ PRC. However, there were a few case examples where participants (Sarah, Jenni and Angelique) said they focused their work primarily towards supporting the mother, due to the fathers’ extremely limited reflective capacity.

In an interesting trend, the majority of cases shared by participants where CIP had not been very successful involved fathers with low levels of PRC. It is possible that the practitioners in these cases saw the mother as the ‘protective’ or non-violent parent, although Julieanne (FA and activist) was the only participant who drew upon the term ‘protective parent’ during an interview. The near total absence of how DV might affect both the perpetrator and the victim’s capacities to be attuned with their children’s needs was notable, particularly given the high incidence of DV amongst the client cohort.

Thus, for most participants, going ahead with CIP where parents had low PRC was seen as risky at best, and dangerous at worst.

ii) High PRC and child inclusion

Several participants said that where PRC was high, CIP was more effective in strengthening the parental alliance and helping to reduce parental conflict, in turn leading to better outcomes for children. Some participants said that parents needed to display a higher level of PRC as a prerequisite for CIP. Joy (FDRP and pragmatist), Gina (FA and sceptic), Daniel (FDRP and activist), and Renata (FDRP, CC and activist) all commented on how higher PRC could be a condition for CIP:

Good practice is where parental capacity is high so they can take on board things that they hear and can act in a child-focused, positive way. And so that automatically restricts who you can provide this service to. (Joy, FDRP and pragmatist)
However, a dilemma arose because participant accounts indicated that high PRC was atypical within the client group:

_The clienteles of the FRCs we know are the people that, for whatever reason, can’t work out these things between themselves and so for a lot of them, whether it’s temporarily around the issues of loss and grief or much more entrenched personality issues, might not always be able to be the ones that can really look after their children well in these circumstances._ (Dee, Manager, FDRP and activist)

As explored in the low-PRC case stories above, a case might be considered suitable for CIP where there was high parental conflict, provided the reflective capacity of parents was sufficiently high. Joy discussed a case where the parents had been separated for around six months and were ‘highly conflicted... they couldn’t talk to each other’. In a mediation session prior to the child consult, Joy said the FDRPs ‘actually scripted changeover’:

‘Dad will approach the door, knock on the door with a smile on his face. Mum will walk to the door and answer it, open it with a smile on the face, make eye contact and make a comment about the weather.’ It was that detailed. And it was that basic. And we talked about how the child needed that. (Joy, FDRP and pragmatist)

Joy sat in on the interview with the child, reporting that he came in and said to the Consultant: ‘“Mum and Dad: they’re actually talking! They didn’t for a long time and now they are.’ And he was so chuffed by that’. Joy said she’d called at a six-monthly follow-up point, and both parents reported the child was back in his extra-curricular activities and ‘in a totally different spot’. Joy said the parents in this case ‘had high capacity’ and ‘were both quite child-focused’. Although it is notable that in this case, it was the parents’ actions prior to CIP even occurring that seemed to demonstrate their reflective capacity. Despite some good outcomes following CIP where parents did have high reflective capacity, several case stories demonstrated how difficult it could be for practitioners to assess PRC accurately.
In summary, PRC was seen to be the primary predictor of CIP success. Generally, low PRC was seen to lead to poorer outcomes following child inclusion. However, participants gave many examples of how difficult PRC was to assess and cited no consistently used methods for its assessment. There was disagreement regarding the requisite ‘level’ of PRC for screening into CIP.

While some participants, primarily pragmatists and sceptics, insisted on a high level of PRC before they would consider CIP, others (mainly activists) reflected on the reasons that might underlie low reflective capacity, such as DV or mental health issues, and tended to favour a more flexible model of feedback. Activists argued for a differentiated model that would elevate children’s safety by removing both the parental permission and joint feedback requirements for CIP, thereby relying on practitioner skill to work with parents with low PRC.

**Summary: Ethical issues with conflict and PRC**

This chapter explored the definitions of ‘high’ conflict and parental reflective capacity, the relationships between these key phenomena, and how they informed participants’ CIP assessment processes. Overall, a high level of complexity and confusion emerged from participant accounts. While conflict and PRC were framed as key indicators of the success or failure of CIP, there was little to no evidence of shared understandings, methods of assessment, or agreement on the appropriate ‘levels’ of each that would safely facilitate children’s participation. PRC and conflict were sometimes framed in binary terms, while at other times they were referred to as independent variables that could co-occur in each case.

There was little acknowledgement that, given cases with ‘low’ levels of conflict were very rare in the FRC context, an emphasis on conflict minimisation and its use in CIP may have been superfluous. Overwhelming evidence from existing literature indicates that children are *already* experiencing conflict when their parents attend the FRC, with a very high proportion experiencing DV. The particulars of the RANSW CIP model – namely, parental permission and joint feedback requirements for CIP – along with an emphasis on building a parental alliance and conflict minimisation – appeared to mean
that children whose parents were in the highest states of conflict were the least likely to be included in the FDR process.

Despite extensive evidence of high DV rates in the FRCs, there was very minimal unprompted discussion from participants about how DV influenced decision-making around child participation. The absence of a clearly differentiated approach to CIP in DV cases meant that the most reliable path to ‘doing no harm’ was excluding (known or likely) child DV victims entirely, and the conflict minimisation narrative only served to justify this approach. In the following chapter, I explain the implications of this parent-centric, efficacy-focused approach to CIP assessment and present an alternative framework informed by feminist ethics of care and justice.
Section Five: Discussion and Conclusion
Chapter Ten: Discussion – A situated ethical framework for child inclusion in post-separation family dispute resolution

Introduction

This study aims to contribute to ongoing discussions about ‘good’ child inclusive practices in post-separation family dispute resolution (FDR). This chapter presents an analysis of my key findings within a framework of professional social care ethics, proposing a new framework for child inclusion centred on ethical care. The chapter begins with an overview of professional social care ethics and its application to the work of the FRCs, followed by an analysis of the participant ethical orientations presented in Chapter 8 (sceptic, pragmatist and activist). I critique the parent-centric and efficacy-focused model of CIP assessment, as presented in Chapters 7 and 9, favoured primarily by pragmatist and sceptic participants. I also analyse participants’ minimal consideration of domestic violence and its implications for child and parent victims of abuse in post-separation FDR.

By analysing activist participant accounts, reflecting on existing literature regarding children’s participation in the Family Law setting, and applying a feminist ethics of care lens, I propose an ethical framework for child inclusion situated in the FRC practice context. I argue that the central ethical mandate for the FRCs should shift from a focus on children’s ‘best interests’, to a focus on care. My ethical framework proposes a dialectical relationship between care and justice, which may be adopted by FDR professionals and organisations committed to child inclusive work.

A note on ‘good’ practice and ethical orientations

Generally, ‘good’ practice is judged in reference to agreed-upon professional standards, such as codes of ethics or practice standards at an organisational or policy level (see Banks, 2010; Hugman, 2005). However, as this study has shown, clear directives concerning the practice of, and assessment for, child inclusion at the broader Family Law, FRC operations and RANSW organisational levels were manifestly absent at the time of data collection. Chapters 2 and 3 reviewed the current literature,
illuminating that not much has changed since the time of data collection in late 2013: significant gaps in policy and practice frameworks for child participation are still evident across the Family Law sector. While a small number of innovative child inclusive practice models have emerged for use in FDR specifically (Hannan, 2013; Williams, 2016; Yasenik & Graham, 2016), these have not been consistently evaluated, nor is there evidence in the literature that these models have influenced policies and processes across the national network of FRCs.

As my findings show, the exercise of professional discretion in assessing CIP suitability was high. As explored in Chapter 8, three distinct ethical orientations towards child inclusion were present amongst the 27 participants: sceptic, pragmatist and activist. Sceptics (n=4) conceptualised child inclusion in the broadest sense, considering a child focused approach as inclusive, despite the fact children were not consulted. To these participants, keeping children ‘in mind’ and working solely with parents was enough to achieve ‘good’ practice. Pragmatists (n=8) considered child inclusion as ‘good’ only where parents were able to hear and act on feedback from their child. As such, pragmatists had a strict threshold for parents’ reflective capacity (PRC) before they would pursue CIP, to try and ensure inclusion would not cause children further harm. Activists (n=15) placed a dual emphasis on children’s participatory rights, and the need to care for children. Activists considered ‘good’ child inclusive practice as that which meaningfully included children and was attentive and responsive to their individual needs through the FRC process.

FRC professionals are a group that, while disparate in professional training and experiences, are united by receipt of public funding and a shared commitment to children’s ‘best interests’ (Family Law Act, 1975: S. 63DA). Yet, professional responsibilities towards children have not been well articulated. ‘Best interests’ operated as a largely abstract principle for these workers, who conceptualised their duties to this objective in very different ways. My findings show that the practice wisdom of the individual worker, directed by a range of ethical orientations, has filled a gap created by unclear and hastily implemented policy. However, it is important not to assume that all practice was or is ‘wise’ (see Breckenridge & Hamer, 2014: 9).
My research questions inquired about the influences on RANSW FRC workers’ decisions around when and how to include children in their practice. Participants’ ethical orientation towards child inclusion emerged as the most significant influence on worker decision-making. These ethical orientations, in turn, may have been influenced by organisational role, professional background, other Centre- and team-specific facilitators, and constraints on CIP. As outlined in Chapter 6 (pp. 109-110), the emergent data led me to a secondary analysis of the professional social care ethics literature. As I traced the key ethical ideas and frameworks underlying participant narratives, I was able to generate three categories of ethical orientation and analyse the practice implications of each approach. My proposed ethical framework for child inclusion and related practice principles were constructed from the accounts of ‘good’, ethical practice by activist participants that strongly reflected a feminist ethics of care approach. My framework offers a reflective tool for CIP assessment and decision-making and conceptualises ‘good’ child inclusive practice as that which is caring, just, and ultimately meaningfully inclusive of children.

**Ethics of care**

The ethics of care is a well-established moral theory that first grew from feminist scholarship in the 1970s. Feminist scholars posited an ethics of care as an alternative to the traditional ‘normative’ approaches to morality and ‘good’ citizenship that they believed were masculine-centric, with a focus on rationality, autonomy and independence (see Gilligan, 1977; Held, 1990; 1995; Sevenhuijsen, 1998; 2003; Tronto, 1995; 1998). In contrast, an ethics of care sees interdependence and relationality as core to how humans pursue a ‘good life’ (Sevenhuijsen, 2003: 183-184). Fisher & Tronto (1990: 194) define care in this context as ‘a species activity that includes everything that we do to maintain continue and repair our “world” (including our bodies, selves and environment) so that we can live in it as well as possible.’ Care ethics encapsulated the accounts of my activist participants, and their vision for caring, respectful and ultimately meaningfully inclusive child processes.

All of us require care throughout our lives, and in turn we will care for others in various ways (Sevenhuijsen, 2003: 183-184), hence care is constructed as the primary
principle, or value, from which all other values flow (Hugman, 2005: 84-85). Care is viewed both as a moral orientation or attitude, and as a practice (Sevenhuijsen, 2003: 194). The core question at the centre of care ethics is how we manage dependence, and the responsibilities that flow from our relationships with those we care for and about (Sevenhuijsen, 1998: 109-110). The question of dependence is particularly pertinent to parent-child relationships, and in the context of FRC work, also relates to how workers engage with and understand their relationships with children. Although children are considered subjects of rights on a broader policy level, as the findings of this study show, they remain actors with fairly limited agency who are reliant on both their parents and FRC professionals to participate in FDR (see Stoecklin, 2012: 446).

An ethics of care invites a situated or ‘embodied’ approach to moral considerations. Instead of a focus on universal principles and abstract moral questions, care ethics insists we consider actual relationships and what these may require within specific, bounded contexts (Held, 1990: 330; Hugman, 2005: 70-71). In this vein, Banks (2011: 16-17) urges us to attend to the ethical dimensions of everyday life and professional caring practices, and not to limit our moral awareness to considerations of very difficult decisions or classic ethical ‘dilemmas’. This embodied approach encapsulates the core contribution of this study: a situated ethical analysis of child inclusive practices, embedded in the FDR context.

Several scholars have applied the ethics of care to the so-called ‘caring professions’ i.e. those professions that exist due to a commitment to the care or wellbeing of people. Examples of caring professions include nursing, medicine, childcare, youth work and my own profession of social work (see Banks, 2010; 2011; Banks & Gallagher, 2009; Hugman, 2005; 2014; Jecker & Self, 1991; Orme, 1998; 2002; Self, Jecker & Baldwin, 2003; Sevenhuijsen, 2003). Professional examinations of care tend to draw upon the core values or principles of care as developed by Tronto (1993: 127-136): attentiveness, responsibility, competence and responsiveness. These principles apply across different stages or phases of care, although these phases are non-linear, integrated and can often re-occur across the process of caring (Hugman, 2014: 178).

One of the most persistent themes in scholarship on professional social care ethics is the relationship between the principles of care and justice. While it is beyond the
scope of this thesis to give a full account of this debate, there is a general accord that both justice and care are vital in public service organisations and must be considered in relation to one another (Gray, 2010; Held, 1995; Houston, 2012; Hugman, 2005; Orme, 2002; Sevenhuijsen, 1998). Attendance to rights and ‘fairness’ is seen to have a moderating effect on the ‘extremes’ of care (i.e. differential treatment, paternalism, ‘over-caring’ that may lead to unfairness; see Gray, 2010; Gray and Lovat, 2007). As Gray argues, ‘care must be connected to justice or it would become a random practice’ (2010: 1805). Justice is a particularly important consideration in FDR, which sits firmly within the broader legal system. Children’s participatory rights also fall within the realm of justice-based considerations. Given the high level of individual worker discretion in the assessment and practice of CIP, and the likelihood of disparate processes and client outcomes, I argue that considerations of justice are of particular relevance to the analysis that follows.

**Applying an ethics of care to the work of the FRCs**

Applying theoretical ideas from the ethics of care to FRC practices is not a straightforward task. FDR is not strictly a ‘caring profession’ as it has been traditionally defined (see Hugman, 2005: 75-76). As mentioned in Chapter 1, the Family Dispute Resolution Practitioner is a relatively new and emergent occupation – a hybridised form of law and welfare that was purpose-built to resolve post-separation disputes. As such, the practices and ethical requirements of FDR continue to develop. National Mediator Accreditation Standards (NMAS, 2015: 8.1-8.8) describe ‘ethical conduct’ only briefly, with a focus on ‘competence’ (8.1) and encouraging parties to ‘consider the interests of any vulnerable stakeholders’ (8.4). FDRPs in the FRC setting are guided primarily by organisational codes of conduct (NMAS, 2015: 8.3), as are workers across other FRC roles.

Based on the findings of this study, I suggest that care ethics is highly compatible with existing FRC operational guidelines, FDRP accreditation standards and existing research on children’s participation in Family Law processes. The duality of legal and welfare-related concerns at the core of the FRC worker role places these professionals in a position where they are already weighing issues of justice and care in their...
everyday work. The framework presented in this chapter concretises the multi-faceted concerns of care and justice in this specific practice space, providing much-needed direction for the continued development of child inclusive practices in post-separation family dispute resolution.

**Ethical orientations and practice implications**

My findings showed that participants viewed their ethical duties and responsibilities to children in very different ways. In turn, what was considered to be ‘good’ child inclusive practice differed across participant groups, depending on their ethical orientation towards child inclusion. While the distinctions between these ethical orientations (activist, pragmatist and sceptic) were explored in Chapter 8, here I analyse the underlying ethical frameworks and approaches of my participants, and the implications of each approach for CIP assessment and practice.

<table>
<thead>
<tr>
<th>Participant group</th>
<th>‘Good’ practice defined as:</th>
<th>Child inclusion appropriate:</th>
<th>Key ethical concepts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sceptic</td>
<td>Keeping children ‘in mind’</td>
<td>Child focused approach is sufficient: ‘caring about’ (Jecker &amp; Self, 1991)</td>
<td>Parental autonomy</td>
</tr>
<tr>
<td></td>
<td>Capacity building with adults, to help them care for children</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pragmatist</td>
<td>Parents ‘hearing’ children and changing their behaviours in response</td>
<td>Only where outcomes are likely to lead to increased utility (not likely to cause further harm, and likely to increase family wellbeing): ‘caring about’ and/or ‘caring for’</td>
<td>Non-maleficence</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Parental autonomy</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Utilitarianism</td>
</tr>
<tr>
<td>Activist</td>
<td>Acts of care: support for children that was respectful and meaningful to children</td>
<td>In most cases: ‘Caring about’ and ‘caring for’ (Jecker &amp; Self, 1991)</td>
<td>Ethics of care</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Justice (respect for persons)</td>
</tr>
</tbody>
</table>

*Table 7: Participant approaches to care, child inclusion and related ethical concepts; adapted from Banks (2005: 744-745)*
First, I focus on the ethical approach adopted, including each group’s interpretation of ‘good’ practice and concurrent responsibilities towards children; when child inclusion was seen as appropriate; and the key ethical concepts underlying each approach. This is followed by a critical analysis of each approach through a feminist ethic of care lens.

**Sceptic approach**

The sceptic ethical orientation may have been connected to organisational role constraints. All four sceptics were also Family Advisors (FAs), and as such, had little involvement in the mediation process or direct child inclusive processes. However, not all FAs were sceptics, indicating this ethical orientation was not synonymous with the organisational role only. Jecker & Self’s (1991: 294-295) concepts of ‘caring about’ (concern for the care of the other; an ‘attitude, feeling or state of mind’) as opposed to ‘caring for’ (the acts of direct care for the other; ‘the exercise of skill, with or without a particular attitude or feeling’ towards the one being cared for) are relevant here. ‘Caring about’ does not necessarily lead to ‘caring for’ in professional practice (Jecker & Self, 1991: 296). While Family Advisors and most mediators claimed to adopt an attitude of care towards children, role boundaries meant that they were limited in their ability to engage in direct caring acts with child clients (see Chapter 4 for role descriptions, pp. 76-79). Sceptics stood out amongst this cohort due to their scepticism towards both the principle and practice of child inclusion.

Sceptics saw parents, not children, as their primary clients, and expressed an ethical ‘caring about’ (Jecker & Self, 1991) for children via the child focused approach. To them, ‘keeping children in mind’ and drawing upon their practice wisdom to do so satisfied their ethical duty to centralise children’s ‘best interests’. Sceptics’ use of practice wisdom involved drawing upon their knowledge of children’s developmental stages and needs post-separation, previous personal and professional experiences, as well as their personal qualities of empathy and compassion. Sceptics valued parental autonomy above all, and trusted parents to represent their children’s interests in FDR.

The parent-centric approach adopted by sceptics reflected somewhat ‘adultist’ attitudes, long held amongst Family Law professionals (Bagshaw, Quinn & Schmidt, 2006: 80; Graham & Fitzgerald, 2010; Graham, Fitzgerald & Cashmore, 2015; Shea
Hart, 2003: 34; Williams, 2016). Adultism assumes ‘that adults are “better” than young people and entitled to act upon young people without their agreement’ (Bell, 2002: 1). This study confirmed that the preference for work with parents and dismissal of the need to engage children in FDR processes was very much present in a minority of participants. Sceptics minimised children’s capacity to participate based on age, displaying the ongoing influence of developmental ideologies on professional constructions of young people. Tensions regarding professional ambivalence about children’s agency recorded in recent literature were evident in the present study (Graham, Fitzgerald & Cashmore, 2015: 264; Williams, 2016).

One could argue that the sceptic approach was also somewhat paternalistic. Sceptics did not view paternalism, defined as a process by which care-givers (both parents and FRC practitioners in this case) ‘assume that they know better than care receivers what those care receivers need’ (Tronto, 1998: 161), as problematic. In her treatise on ‘caring organisations’, Tronto (2010: 18) recommends a consideration of how ‘needs’ are defined, and in turn how these definitions shape the caring process. Sceptics framed children’s primary ‘need’ as the need for parents to care for them, and to make decisions about children’s ongoing care on their children’s behalf. All that was needed to fulfil this need was some capacity-building work with parents, which did not require children’s participation. As such, exclusion of children from the FDR process was ethically justifiable within the sceptic frame. While there is no reason to doubt that sceptics truly cared about the children of parents they worked with, we must be critical of accounts that appear to echo dominant narratives of child exclusion.

Across most of the Australian child welfare service sector, simply ‘keeping children in mind’ is no longer sufficient to satisfy standards for ‘good’ practice. In other NSW-based organisations that work with children and their families, the onus to ensure children participate (and the management of any risk which may arise from that participation) is placed on organisations and employees. In the NSW Out of Home Care sector, consultation with children in matters that affect them is not only mandated, but there are clear practice standards that outline how organisations and workers should enact this participation, as well as established Federal- and State-based

Based on the standards recommended by the recent Royal Commission into Institutional Responses to Child Sexual Abuse (2013-2017), the Australian Human Rights Commission (AHRC, 2018) recently developed a set of National Principles for Child Safe Organisations. The Coalition of Australian Governments (COAG) affirmed the National Principles in February 2019. These Principles not only emphasise an organisational culture where children’s wellbeing and safety are placed ‘at the centre of thought, values and actions’, but also emphasises ‘genuine engagement with, and valuing of, children’ (AHRC, 2018: 4; emphasis mine). Clearly, both ‘caring about’ (in a genuine manner) and ‘caring for’ (Jecker & Self, 1991) are required to achieve the minimum standards for ‘good’, ethical work with children. The emphasis in the National Principles on thought as well as action, combined with the important descriptor of ‘genuine’ engagement, provide firm support for the attendance to professional ethics (AHRC, 2018: 4).

A disposition of care does not necessarily equate with, nor should it always lead to, the act of directly including children in the FDR process. In my findings even activist participants, who professed the strongest commitment to child inclusion amongst the cohort, said that including children via CIP was not always appropriate – especially where participation could increase the risk of harm. However, a service that provides ‘good’, ethical care is a service that is attentive to children’s participatory rights, as well as their right to safety. Children’s rights to protection, participation, and service provision must not be considered mutually exclusive concepts (Eriksson and Nasman, 2008: 271). Scholars have advised that social care professionals be skilled at holding these traditionally paradoxical elements in tension and grow awareness of how their own ethical orientations inevitably influence their practice decisions in their work with children (Helm, 2011; Shea Hart, 2006; 2009; 2012). Narratives that minimise or ignore the moral complexities of children’s participation in FDR are questionable when viewed through the lens of care ethics.

In summary, sceptics expressed some valid concerns with the RANSW CIP model, including a lack of empirical investigation into child inclusion. The sceptic preference
for a child focused approach was unsurprising in some ways, as it was minimally intrusive for parents and involved the least amount of risk. However, I argue that the child focused approach cannot be considered ‘good’ practice in FDR where it is pursued without ethical debate or consideration for how children might be included in the FRC process. While a practice informed by care ethics may be aspirational, drawing upon the caring orientation of professionals has real potential to re-invigorate practice approaches to child inclusion.

**Pragmatic approach**

Pragmatists defined ‘good’, ethical, child inclusive practice as a ‘good’ outcome *following* children’s participation: where parents listened to their children and made tangible changes (in their behaviours and the resulting parenting agreement). Given this outcome-focus, pragmatists had quite strict thresholds for conflict and PRC that they expected parents to meet before they would consider recommending CIP. Ultimately, the principles of parental autonomy and non-maleficence guided pragmatists’ decision-making. In the absence of organisational criteria for CIP, assessment of PRC and conflict was the pragmatic ‘theory-in-action’ (Schon, 1983).

I argue the way in which case-level factors of conflict and PRC were utilised to determine CIP suitability were not expansive enough to consider the complex ethical considerations of this work, and in fact, effectively excluded the very children most in need of both care and inclusion. I present two core arguments as to why pragmatists’ method for assessing CIP suitability was problematic: a) it was highly outcome-focused and parent-centric; and b) the key assessment ‘criteria’, conflict and PRC, were not clearly defined nor consistently measured.

**a) Outcome-focused and parent-centric**

The pragmatic approach to CIP strongly reflected a utilitarian orientation. Utilitarianism is in the tradition of consequentialist ethics; relying on the application of universal, rational principles to guide moral action (Held, 1990: 329; 2006: 58). The utilitarian’s overall aim is to ensure the greatest amount of happiness or ‘utility’ for all, with the morality of an act ‘depending entirely on its own consequences, (i.e.) on whether it does or does not in fact alleviate human suffering or increase wellbeing’
Pragmatists only viewed CIP as moral or ‘good’ if the outcome increased the wellbeing of children and their parents, or at least did not cause further harm to children.

As discussed in Chapters 8 and 9, several pragmatists blamed themselves for poor outcomes following CIP, citing their inaccurate assessments of parents’ reflective capacity. These case stories minimised the difficulties inherent in their approaches. The pragmatic method relied on workers’ ability to accurately measure parents’ reflective capacity and, essentially, their ability to predict the future. One common critique of a utilitarian approach is the near impossibility of being able to predict whether an act may result in harm (see McAuliffe & Chenoweth, 2008: 45). As explored in section b) below (pp. 202-204), at the time of data collection there were no clear or consistent definitions of PRC present either in practice or literature, making ‘expertise’ in assessing it impossible to attain. Koehn (1994: 27) warns that a focus on professional expertise can distract from the good of the service user, and the essentially moral aspects of social care work. The pragmatic approach to CIP assessment focused so intently on parents’ capacities and experiences that a focus on children’s potential needs for both care and inclusion were minimised.

The pragmatic focus on measuring conflict and PRC, along with the broader participant ‘criteria’ of age, need, feasibility and efficacy (see Chapter 7, pp. 128-134) emphasised attendance to ‘technical’ aspects of practice (see Hugman, 2014; Koehn, 1994). Focus on these elements of assessment assumed a rational process of calculation that ‘privilege(d) consequences over motives, acts as opposed to agents’ (Houston, 2012: 654; see also Banks, 2012: 52-53). The outcome of CIP was what mattered to pragmatists, more than the process that brought about those outcomes.

Interestingly, pragmatists did not lend much weight to other ethical principles that might be considered significant in this practice space alongside utility, such as respect for persons (i.e. children) or justice (i.e. attendance to children’s rights). Research with social workers has shown that avoidance of harm/least harm tends to be ranked as one of the most, if not the most, important ethical principle that workers say they draw upon in their practice (Harrington & Dolgoff, 2008: 188; Landau & Osmo, 2003; Osmo & Landau, 2006). In the complex practice space that is FDR, a lack of
consideration of the risks of harm would be ‘virtually impossible (and) potentially negligent’ (McAuliffe & Chenoweth, 2008: 39). McAuliffe and Chenoweth argue that the ‘discerning practitioner’ will attend to risk, but will go beyond this to ‘selectively search for those foundational principles that underlie good practice (and) provide sound frameworks for consistent decision making that will hold up under scrutiny’ (2008: 39). This study makes clear the wide range of ethical principles that informed workers’ CIP decision making, and proposes a good practice framework that considers care, justice and critical reflexivity alongside considerations of utility.

An emphasis on the technical process of weighing risk was not necessarily negative: FRC workers need to be skilled in assessing how parents might engage in the mediation process. However, while the pragmatic approach was ethically justifiable within its broader frameworks of parental autonomy and non-maleficence, its emphasis on utility (along with the abstract notion of children’s ‘best interests’) left insufficient room to assess the needs of individual children, which could vary greatly from case to case. As Banks notes, wholly utilitarian approaches to the ethics of caring professions ‘have not been well developed, partly because such approaches do not lend themselves to taking account of the personal relationship element’ of care work (2012: 52-53). There is the potential for children’s participatory rights to be minimised where harm minimisation and protectionist notions around children’s capacity are combined.

An unwillingness to place children in a position where they could be ‘hurt unnecessarily (or) saddled with impossible problems and dilemmas’ (Sevenhuijsen, 1998: 117-118) is certainly an expression of ‘caring about’ children (Jecker & Self, 1991). Enforcement of children’s right to participate where there is a real possibility that participation could cause them harm would be an uncaring act. The difference is that professionals possessed both moral agency and the power to exclude or include children. Children had no option to refrain from participating in FDR, and as such were completely dependent on practitioners to extend an opportunity for consultation.

One ethical issue with persistent focus on PRC is its emphasis on parental enlightenment and safety by exclusion of children from the FDR process, rather than respect for children’s participatory rights and inclusion to actively support their safety.
This difference in emphasis may be subtle, but as these findings show, worker beliefs around the purpose and hoped-for outcomes of child inclusion had a strong bearing on their actions and decision-making. Aligning professional commitments to child-centred approaches with meaningfully inclusive practices may be assisted by a process of critical questioning. Several of the participants, primarily activists, questioned dominant narratives that reinforced a focus on parental enlightenment, parental readiness, and PRC, to omit meaningful engagement with children. The proposed ethical framework and practice principles are intended as tools to prompt further lines of critical inquiry.

A solely utilitarian approach can be ill-suited to assuring fairness and upholding rights (Held, 2006: 73), and I argue that in the FRC setting, combined with conflict minimisation and cooperative co-parenting discourses, it can have significant limitations. Relationships of care, vulnerability and dependence are deeply personal; these are moral concerns that are inherently ‘messy’ and complex (Held, 2006: 73) and cannot be decided upon by rational calculation alone. A core utilitarian ethic can serve to detract from the professional responsibility to care both about and for children, and their right to be included in decisions that directly affect them (UNCROC, 1989: Article 12). I do not claim a utilitarian framework has no place in the ethical reasoning of FRC workers. Studies in the still-emerging literature on the ethical reasoning of caring professionals show that workers draw upon a range of ethical ideas, and that utility remains an important consideration (see Harrington & Dolgoff, 2008: 188; Landau & Osmo, 2003; Osmo & Landau, 2006. However, utility must be weighed with a consideration of the harm that children may already have experienced (or may currently be experiencing) where they are excluded from participating in the FRC process, as well as alongside other ethical principles (namely justice, care and critical reflexivity) essential to this practice space.

b) Lack of definitions for conflict and PRC

As explored in Chapter 9, participants had no agreed methods of measuring either conflict or PRC and disagreed on the acceptable ‘levels’ of each that might be appropriate in CIP. Disagreement occurred despite the fact that PRC and conflict were framed as essential in assessing CIP suitability, especially by pragmatists. While this
study is not the first to critique the focus on ‘parental readiness’ in child inclusive FDR (see Bell, 2015; Birnbaum & Saini, 2012; Graham & Fitzgerald 2010; Yasenik & Graham, 2016), it is the first to analyse the concept of parental reflective capacity, its relationship with parental conflict, and to consider its ethical implications for child inclusive practice in the FRC setting.

Although pragmatists did not conceptualise it as such, the centrality of PRC as a prerequisite for CIP created a kind of ethical dilemma. Parents were considered either too reflective to need CIP, or not reflective enough to warrant it. Thus, a ‘catch-22’ situation was created: children of parents who were assessed as having a lower capacity to reflect on their children’s emotional experiences were the least likely to be involved in the FDR process, especially where conflict between parents was also considered to be high. These were the children who could potentially benefit most from the opportunity to access professional support, and who were most likely to be victims of domestic violence.

PRC was a crucial indicator to whether CIP would be considered feasible and safe for children. However, PRC was about more than just parents’ ‘readiness’ to hear from their children: it was essentially about their capacity to change their behaviour. PRC represented parents’ ability and willingness to create a more secure relational environment for their children post-separation. Thus far, there has been no research that has specifically explored PRC, nor how workers may assess it in the context of CIP. There is also a lack of literature in the broader fields of child welfare and child protection regarding parental readiness to change (see Harnett, 2007; Platt & Riches, 2016), although interest in this area is currently emerging.

A recent UK-based knowledge exchange project (Platt & Riches, 2016) developed the ‘C-Change’ model. The C-Change model assessed parental readiness to change parenting behaviours where their children were at risk of entering State care, through consideration of behaviour change theory. While direct applicability to the post-separation field may be limited, especially given the additional complexity of assessing parental conflict, there is certainly scope for further research and development of assessment frameworks for PRC specific to FDR-based work. More nuanced and
accurate assessment of the reflective capacity of each individual parent might also aid in DV screening and assessment processes, as explored directly below.

**Activist approach**

In contrast to the parent-centric and efficacy-focused assessment methods of their sceptic and pragmatic colleagues, activists identified a primary ethical responsibility towards children that included attendance to their participatory rights. Activists were more conscious about children’s dependence on them and viewed their responsibilities to not only to protect children from further harm, but also to intervene in a positive way where possible (the principle of beneficence). Activists adopted a dual emphasis on an ethics of care and attention to justice. While activists still discussed the pragmatic weighing of benefit and risk in their decision making around CIP suitability, utility was not the primary principle on which the decision of child inclusion was based. Instead, activists emphasised children’s rights to inclusion in FDR.

Activists delineated a difference between technical inclusion and inclusion that children experienced as meaningful, echoing the emphasis on ‘meaningfulness’ found within the literature (Carson et al., 2018: 42; Fitzgerald & Graham, 2011b: 499; Henry & Hamilton, 2012: 594; Moloney, 2006b: 42). For activists, inclusion in and of itself was not guaranteed to inform a caring practice without concurrent attention to respect and care for children, both in worker disposition and in action.

For Child Consultants in particular, care was displayed through the cultivation of ‘a capacity to understand (the child’s) subjective experience’ (Jecker & Self, 1991: 295), which included the ability to ‘listen and hear’ children not only through the child’s use of language, but through the use of play, posture, art and expressions or gestures (see Jecker, 1990a; Jecker & Self, 1991). Activists emphasised the core values of the ethics of care when describing ‘good’ child inclusive practice: attentiveness, responsibility, competence and responsiveness (Sevenhuijsen, 1998; Tronto, 1993).

Informed by the activist ethical orientation, and specifically its emphases on care, children’s rights and ‘meaningful’ inclusion, I introduced the feminist ethics of care into my analysis. The framework and practice principles which appear later in this chapter emerged directly through the application of an applied ethics of care lens to
my findings, alongside a consideration of existing literature on ‘meaningful’ child participation in post-separation mediation. First, findings around participants’ minimal consideration of domestic violence and its implications for child inclusion are considered.

**Lack of consideration of domestic violence**

The almost total lack of discussion of domestic violence (DV) in case-level considerations across all ethical orientations, including minimal consideration of implications for the FDR process as well as parenting arrangements that might flow from the differentiation of conflict and DV, was surprising. Although this study was not designed with an emphasis on DV, given its prevalence in FRC cases I anticipated it may be discussed in some detail. Instead, there appeared to be a blurring of the concepts of ‘high conflict’ and DV, indicating that DV may be subsumed under the label of ‘conflict’. There was little to no acknowledgement of DV as anything other than physical violence.

Almost completely absent from participant narratives was reflection on the underlying reasons why conflict may be high, or why parental reflective capacity may be low. There were some reasons mentioned as parental inhibitors of PRC including: parents’ trauma, grief, and loss; mental health issues; personality disorders; substance abuse issues; and, of course, conflict between parents. However, only two activist participants mentioned DV as a potential reason for lower PRC in parent-victims of intimate partner violence.

DV can significantly undermine a survivor’s ability to draw upon emotional and psychological resources, which can in turn have significant effects on their parenting (Field et al., 2016; Hooker, Kaspiew & Taft, 2016; Westrupp et al., 2015). DV can also involve targeting the mother-child relationship through a series of both direct and indirect methods, before and after separation (Bancroft, Silverman & Ritchie, 2012; Humphreys, 2011; Thiara & Humphreys, 2015). A worker without in-depth knowledge of DV could very well interpret a parent-victim’s behaviour as evidence of low PRC, where they presented with difficulties focusing on their children’s needs or were engaged in extended conflict with the other parent.
To deny a parent who has survived DV an opportunity to access support or information about how their child is coping because they are assessed as having low PRC, seems highly problematic. I note that participants did not appear conscious of the potential to further exclude or marginalise adult victims of DV in the process of CIP assessment. Although participants said the disclosure of DV could lead to support and referrals for both parents and children, this in turn required workers to be knowledgeable and sensitive to the needs of both adult and child survivors of violence.

Based on existing literature on DV and parenting, as well as case stories from participants indicating that historical DV perpetrators tended to find CIP difficult, it is possible that low PRC and DV perpetration could be linked. Although there is a significant lack of global research into the father-child relationships of violent men (Hooker, Kaspiew & Taft, 2016: 20), the little evidence available indicates these fathers tend to adopt parenting styles characterised by under-involvement, neglectful and/or authoritarian behaviours (Bancroft, Silverman & Ritchie, 2012). Evidence also indicates that domestically abusive fathers tend to have low emotional intelligence and limited reflective functioning (Bancroft, Silverman & Ritchie, 2012; Mullender et al., 2002). Given the well-established high prevalence of DV in FDR cases, professionals ‘need to be looking for evidence of the absence of family violence, and to be suspicious and sceptical if they find none’ (Cleak & Bickerdike, 2016: 23). A deeper examination of the reasons why PRC may be low in each FDR case might help identify DV, and potentially lead to more targeted strategies towards understanding children’s needs in DV cases.

There was also little discussion regarding why conflict might be high or enduring. DV does not always present as ‘overt’ conflict or violence (Hooker, Kaspiew & Taft, 2016: 5; Westrupp et al., 2015: 1967), and there has been blurring in both the literature and in practice between the concepts of ‘conflict’ and DV (Hooker, Kaspiew & Taft, 2015; Laing & Humphreys, 2013), also evidenced by the findings of the current study. It is possible that a worker who did not understand the nature of coercive controlling violence may assign a parent or case to a ‘low conflict’ category, when perhaps a victim-parent has adopted a conciliatory or compliant approach to prioritise their safety and that of their children. Both Holly (FDRP, Child Consultant and activist) and
Eve (RANSW Counsellor, Child Consultant and activist) shared examples of cases where the victim-parent had reported the continuation of abuse following CIP, which the victim-parent attributed to the focus on cooperative co-parenting.

Generally, workers across the Australian Family Law system have a poor understanding of domestic violence (Burnett-Smith, 2012; Dobinson & Gray, 2016; Kaspiew et al., 2015) and can be ill-informed about the appropriate professional action to take in response to it (Cleak & Bickerdike, 2016; De Maio et al., 2012; Laing, 2010; Ysenik & Graham, 2016). A small number of participants said they assessed if a parent was ‘fearful’ of the other parent to help determine FDR suitability, which reflects some understanding of the patterned nature of coercive controlling violence. However, there was a notable lack of discussion around how ‘conflict’, a key concept in screening for CIP suitability, was distinguished from DV.

DV might also be labelled ‘high conflict’ where gendered dynamics of abuse are not acknowledged (see Dobinson & Gray, 2016: 196). The ‘high conflict’ label can be applied in cases of physical and/or verbal aggression, although physical violence is often described as ‘situational’ (Johnson, 2006; 2011) or ‘intermittent’ (Johnson, 1995; 2006). I argue that the ‘conflict minimisation’ narrative present in the RANSW FRCs, a term I have coined similar to Sevenhuijsen’s (1998: 118) ‘harmonious divorce’, can serve to neutralise or ignore both non-physical and physical forms of intimate partner abuse. I view the conflict minimisation narrative as a hegemonic discourse that has constructed an idealised post-separation family, where cooperative co-parenting is the ultimate goal (see Moloney et al., 2007; Shea Hart, 2009; Shea Hart & Bagshaw, 2008;). As noted above, two Child Consultants shared case stories where parent-victims of DV reported negative experiences of CIP (see Chapter 9, pp. 170-171). These clients reportedly said that they felt the emphasis on developing a strong parenting relationship in CIP gave the violent parent license to continue engaging in abusive behaviours.

The RANSW CIP model was firmly centred on parental alliance-building and cooperative parenting, which framed the reduction of conflict as a key goal. For relationships characterised by DV, the form that violence or ‘conflict’ takes can often change after separation: while physical violence may reduce, the perpetrator may
adopt other more covert forms of terrorising and controlling the victim and children (Birnbaum & Bala, 2010; Field et al., 2016; Wangmann, 2008;). A reduction of ‘overt’ conflict behaviours may not necessarily mean that a victim feels safe to participate in FDR, nor does it necessarily mean that pre-existing power dynamics in the parental relationship have been resolved. There was little to no evidence that coercive controlling conflict was consistently held in mind or screened for in CIP assessment, especially in pragmatist accounts.

Expecting a victim of violence to minimise their conflict with the perpetrator-parent in order to undertake FDR could elevate the risks to themselves and their children, including the risk of parenting arrangements that expose children to ongoing abuse (Doyne et al., 1999; Jaffe & Geffner, 1998; see also Laing, 2006; Kaspiew et al., 2014). A minimisation of parental conflict does not necessarily provide evidence of increased parental reflective capacity, although participants had a well-established narrative about the directional relationship between these two concepts. Unless the dynamics of power and gender in parental relationships are explicitly identified and inform case conceptualisation, these dynamics can be minimised or muted in FDR as well as in CIP. While conflict minimisation might expedite the dispute resolution process, DV mislabelled as ‘conflict’ only further disempowers and silences victims of abuse and has potentially dire consequences for children’s everyday lives and relationships (see Hooker, Kaspiew & Taft, 2016; Laing & Humphreys, 2013).

Where participants did acknowledge DV, children were generally excluded from the FDR process. Some participants preferred to exclude children due to the elevated risk that the perpetrator might manipulate or punish either the child or the other parent for what may emerge from CIP. Child victims of violence, therefore, had less access to the very spaces where research firmly indicates, they both want and need their voices to be heard (Bagshaw et al., 2010; Beckhouse, 2016; Carson et al., 2018; Graham & Fitzgerald, 2010; Neale, 2002).

A small number of participants said that children could be included where DV was present, but that both FDRPs and Child Consultants would need to adjust the standard CIP model for this to occur. However, participants did not explore these potential changes to CIP at length in the interviews, beyond the discussion of a ‘more flexible’
model. There was some discussion of the need to remove the RANSW requirement that all child sessions must result in a feedback session, as well as the expectation that feedback must be delivered to both parents (see Chapter 9). Some activists also recommended that the organisational requirement of dual parental permission prior to child inclusion be removed. These are both adaptations that have been made in FRC-based models of CIP outside of RANSW (Hannan, 2013; Williams, 2016). I consider modifications to the RANSW CIP model, including reconsideration of parental permission requirements, in my ethical framework and related practice principles, presented in the final section below.

Research indicates that many children in high-conflict (and DV) post-separation families experience significant vulnerability (Doyne et al., 1999; Hooker, Kaspiew & Taft, 2016; Jaffe & Geffner, 1998; Kaspiew et al., 2014; Laing, 2006; Laing & Humphreys, 2013). This vulnerability increases children’s dependency on adults, and arguably creates additional ethical responsibilities for professionals. Recent inquiries into the Australian Family Law system (ALRC, 2018; Family Law Council, 2016; Standing Committee, 2017) recommend that workers proactively develop a nuanced understanding of DV that encompasses knowledge of coercive controlling violence, as well as alternative models to work with children and their parents in FDR. Reflection on the ethical motivations and dispositions of professionals provides a useful way forward, as do the dual principles of care and justice adopted by activist participants.

**A situated ethical framework for child inclusion in the FRCs**

In the absence of a unifying FRC-based framework for child inclusion, I propose the ethics of care (referred to interchangeably as ‘care ethics’, ‘ethics of care’ and/or ‘feminist ethics of care’) best embodies ‘good’ child inclusive practice as practice that goes beyond abstract professional commitments to children’s ‘best interests’. ‘Good’ practice is considered ethical practice, where it is founded on the values of attentiveness, responsibility, and responsiveness (Hugman, 2005: 76-77). A focus on ethical caring illuminates the hidden ‘ethical voice’ (Ash, 2016) as participants described it, and helps us reflect on the actual relationships between various actors in new and helpful ways. Rather than attending to an abstract principle of ‘best
interests’, the proposed framework invites reflection on the professional ethical responsibilities that flow from relationships with children (see Gray, 2010: 1797-1798).

I propose a situated ethical framework for child inclusion in FDR that centralises both an ethic of care and attendance to social justice. The significance of a ‘situated’ framework is its contextualisation within a particular practice space (see Ash, 2016; Held, 1990; Hugman, 2005; Tronto, 1993). This framework and its accompanying practice principles bring together multiple forms of knowledge to bridge the gaps between theory, research and practice. The framework is designed to inform decision-making around child inclusion in the FRC practice space, further extending activist participant suggestions around ‘good’ child inclusive practice. I do not propose a strict hierarchy of ethical principles, but rather pose a reflective model to guide decision making, and to assist practitioners and organisations in articulating key ethical principles and concerns regarding child inclusion (see Harrington & Dolgoff, 2008: 184, 192).

My approach reframes the relationships between the individual concepts of protection, participation and service provision for children (see Eriksson & Nasman, 2008: 271) and weighs the professional responsibilities of both care and justice in determining the course for each case. Here I advocate for a ‘dialectic interplay’ of justice and caring relationships (Orme, 2002: 809), where justice is a moral activity that must encompass a morality of caring (see also Sevenhuijsen, 1998). The definition of ‘good’, ethical practice within this framework is ‘meaningful inclusion’: inclusion that is attentive and responsive to children’s needs for both care and participation.

This framework focuses on the internal character, critical reflexivity and moral reasoning of the Family Relationship Centre practitioner, prompting them to draw upon the resources of compassion and empathy in consideration of child inclusion, as well as upon professional ethical commitments to justice and respect for persons. This framework also centralises children’s role in defining what they consider meaningful and important to their participation in FDR. An explanation of each of the individual elements (care, justice and phronesis) of the ethical framework are presented below, interspersed with the 13 ‘good practice’ principles that align roughly with each
element. Phronesis takes on a meaning synonymous with ‘professional wisdom’ or ‘practice wisdom’ (Banks, 2013: 598-599) when applied in a professional context. I have chosen to use the term ‘phronesis’ for my framework as it encompasses both reflection and action – moral sensitivity and the accompanying moral courage to act in ethically difficult circumstances (Banks & Gallagher, 2009: 187; 190). Practitioners’ engagement of phronesis enables them to connect the ethical concerns of care and justice in their appraisal of child inclusion.

**Care**

Both justice and care are essential to ethical considerations of child inclusion. However, I envision care as the broader framework for action, as it contains commitments to respect and autonomy (see Orme, 2002; Sevenhuijsen, 1998). The feminist ethic of care conceives the moral agent not as the autonomous individual, detached and ‘disinterested’, but as an interdependent and interconnected person who both gives and receives care (Sevenhuijsen, 1998: 123-124; see also Gilligan, 1977; Held, 1990; Sevenhuijsen, 2003; Tronto, 1995). As such, care enables a more encompassing and creative approach to practice that is better suited to the complex moral issues that arise in intimate familial relationships, forming ‘the starting point for political reasoning (which can) lead to new conceptions of social justice’ (Sevenhuijsen, 1998: 123-124).

I agree with the notion expressed by Morris (2001) and others (Banks, 2011; 2012; 2016; Held, 1990; 2006; Orme, 2002; Sevenhuijsen, 1998) that the ethics of care must involve a prioritisation of the person who is being cared for – in this case, the child – and that without integration of the values of rights and justice, care ‘cannot be attentive or competent’ (Hugman, 2014: 184). My framework conceives justice and care in dialectical relationship with one another.
Feminist considerations of justice are vital to an ethics of care, particularly in the highly gendered Family Law setting of this research. A feminist ethic of care critiques dominant patriarchal narratives that insist biological descent is the central principle on which regulation of parent-child relationships must be based following separation (Sevenhuijsen, 1998: 123). It also provides a critique of normative, idealised images of the ‘good’ family and ‘good’ (i.e. harmonious) divorce (Sevenhuijsen, 1998: 118). An ethics of care frames separation itself as a moral situation that can lead to complex ethical dilemmas between parents, the mediation of which can often be characterised by an imbalance of power (Sevenhuijsen, 1998: 119).

Feminist theorists view justice as a moral process that must encompass a ‘morality of caring’ as the source of moral action (Orme, 2002: 809). Justice attends to the need to protect and empower vulnerable victims of abuse, as well as the rights of family members to individuation (Held, 2006: 69; Self, Jecker & Baldwin, 2003: 54-55). In caring for and about children specifically, attention to justice requires that we avoid ‘paternalistic and maternalistic domination’ (Held, 2006: 69) or an ‘adults know best’ approach. An ethics of care acknowledges that even when well-intended, care can be provided in such a way as to be oppressive or insensitive (Held, 1995: 121-122). This
speaks to the need to consider what is meaningful to children about their inclusion in FDR, and a move beyond technical consultation to a consideration of genuine inclusivity.

**Practice principles aligned with the element of ‘care’**

Seven practice principles were developed in line with the element of care. These principles connect participants’ suggestions of ‘good practice’ facilitators and are aligned with Tronto’s (1995) values of attentiveness, responsibility, competence, and responsiveness. These 7 principles envision increased access and opportunities for children to engage in participatory FDR processes, which extend beyond the single-session CIP model:

- **Principle 1**: Children’s rights to participation, safety and service provision are considered *together*, not in mutually exclusive terms, with consideration of how children’s wellbeing and safety might be affected if they are excluded from participating.

- **Principle 2**: Children are given options about the ways in which they can participate in family dispute resolution, and given information and support to help them decide how to participate.

- **Principle 3**: Children have access to follow-up supportive sessions, either with a Child Consultant or a trained child specialist counsellor.

Activists said that ‘good’ practice in CIP was where children felt they had been respected and genuinely heard (see also Carson et al., 2018: 68), had some choice about how they participated, and had time and space to build trust with the Child Consultant. The attitude or disposition of the ‘one-caring’ was just as important as the act of consulting children (see Barnes, 2007: 140, 147). The importance placed on an attitude of care was reflected in activists’ desire for a more expansive model, including follow-up consultation sessions and groups for children, to give Consultants more time to build relationships of care and trust with children.

- **Principle 4**: The Child Consultant position is funded as a primary organisational role, with Consultants co-located at each Family Relationship Centre.
- **Principle 5**: Child Consultants are suitably trained and skilled in work with children, and are given ongoing support and professional development opportunities.

Designating the Child Consultant as a primary organisational role, and co-locating at least one Consultant within each FRC, could go a long way towards enabling ‘good’ child inclusive practice as it is described here. The resourcing and funding of Consultants could enable the development of child group programs, availability for follow-up sessions and the evolution of more accessible participatory processes. High standards of professional competency for child inclusive work, ongoing organisational support and practitioner commitment to professional development are other vital elements to maintaining ethical practice.

- **Principle 6**: Children are kept informed about the family dispute resolution process as it progresses, and about the outcomes following their parents’ exit from the process.

- **Principle 7**: Children’s feedback on the service is consistently sought, recorded, and taken seriously; in addition, complaints and concerns procedures are clearly communicated to children.

Speaking to children directly about their relationships with parents and their experiences of professional care in the FRC context is vital to form an understanding of meaningful care relationships. The epistemological approach of care ethics is one of moral understanding and sensitivity; the ‘goal’ is the achievement and maintenance of relationships of trust and care, making it essentially a consideration of relationships and how they can be at their best (Held, 1990: 332; 339-340). Thus, this framework prioritises direct engagement with children at multiple points in the FRC process, as well as practitioner responsiveness to the needs of children for both care and inclusion.

For activists, the meaning children made of their own inclusion was important. Several activists acknowledged the gap in empirical and organisational knowledge of children’s first-hand accounts of their participation in FDR. Activists advocated for a model that went beyond pure one-off consultation to meaningful inclusion and
engagement with children at multiple points in the process (Fitzgerald & Graham, 2011b: 495-498; see also Henry & Hamilton, 2012: 594). In this framework, concerns of care and justice are related as children are considered clients in their own right. Attendance to children’s feelings about the FRC process, including facilitating access to complaints procedures, is an important measure that supports children’s safety and ensures organisations and practitioners are responsive to children’s experiences.

**Justice**

Professional accountability to the public also necessitates a consideration of ‘justice’, which I refer to in the sense of issues of individual rights, fairness, and standards for practice (see Self, Jecker & Baldwin, 2003: 54-55). I consider that care alone is insufficient in the context of child-inclusive FDR and requires justice to refine it. While notions of justice call for the responsible use of public resources, it is critical to provide services in ways that are empowering, sensitive and ‘infused with the values of care’ (Held, 2006: 69). I consider that a commitment to justice should include resistance to neoliberal practices and policies (Banks, 2010: 2182), with a focus on the quality of caring relationships over and above economic efficiency (Tronto, 2010: 165-166). Activists, in particular, were clear that they were trying their best to care in an environment of resource scarcity, and critiqued organisational rules that conflicted with their understanding of ‘good’, ethical care. These critiques provide an example of ‘phronesis’ (moral discernment and critical reflection in action), a key concept within this framework, which is explored below.

It is important to note that wider organisational and systemic structures provide the foundation for practice at a case level (Ash, 2016: 140; Tronto, 2010). My findings showed that participants wished to adopt more caring practice but were constrained by a lack of resources. Some participants reported that they avoided inviting children into a process where they would not be meaningfully cared for. Ethical considerations of justice apply a political awareness to understanding the constraints individual workers face, as moral agents who are also involved in dependent relationships with organisations and power structures. A systemic, integrated approach to an ethic of care and justice is vital to the pursuit of ‘good’, ethical practice ‘on the ground’ (see Hugman, 2014: 178; Tronto, 1993: 136-137; 2010). While this framework and its
accompanying practice principles were developed in the specific context of the RANSW FRCs, they also designed to inform other FDR providers and post-separation services, in consideration of ‘good’ child inclusive practices.

**Practice principles aligned with the element of ‘justice’**

I argue a framework that attends to considerations of care and justice for children’s participation in Family Law matters must, in turn, be framed with attention to gendered violence. The prevalence of DV and lack of professional knowledge about how to manage it within the standard FDR process, let alone when children are included, was a strong emergent finding in this study. A feminist perspective on social justice takes a critical stance against ‘institutionalised patterns of violence and normalisation,’ attending to power dynamics as well as the quality of care in family relationships (Sevenhuijsen, 1998: 120-121). Parent and child victims of violence have a right to be safeguarded from abuse (Sevenhuijsen, 1998: 121), which involves attention to the needs of victims in each case and, arguably, an assumption of responsibility to act on the part of the professional.

- **Principle 8:** Each case is carefully assessed for domestic violence, with ‘conflict’ and domestic violence clearly distinguished from one another.

- **Principle 9:** An alternative Child Inclusive Practice model is developed and adopted where domestic violence is present, which allows for more flexible feedback to parents, and does not emphasise parental alliance or conflict minimisation.

- **Principle 10:** Where domestic violence is present, a consideration of how children’s perspectives can safely be brought into family dispute resolution is a matter of priority.

Justice emphasises awareness of the link between vulnerability and oppression (Self, Jecker & Baldwin, 2003: 54-55), which in the context of FDR means victims of violence may need more and different types of assistance to participate. A lack of awareness of adult dynamics of power and control can ‘reactivate children’s sense of powerlessness, making it even more difficult for them to express their wishes and feelings’ (Bell, 2002: 7). A clear delineation of ‘conflict’ from DV enables a nuanced
understanding of how children’s needs, attachments and trauma histories may have been affected by violence, conceiving parental perpetration of DV as child abuse as well as a ‘failure of care’ (Held, 2010: 119-120). The findings of this study show that the development of a CIP model that is specifically tailored to DV cases, and able to be used in the FRC context, is an urgent concern for researchers and practitioners alike.

**Phronesis**

‘Phronesis’ is a term originally coined by Aristotle to describe the concept of ‘practical wisdom’ (Banks & Gallagher, 2009; Clark, 2007). It describes a ‘meta-virtue’ that guides moral action in an individual situation (Radden & Sadler, 2010: 145). Phronesis helps the professional choose between conflicting values and enables them to make a choice based on their informed experience (Clark, 2007: 70). Phronesis entails an ability to: *perceive* what virtues or ethical approaches are relevant to a situation; to *deliberate* on how to proceed to promote ‘human flourishing’ in that situation; and to *act* on this knowledge (Banks & Gallagher, 2009: 78; see also Banks, 2001: 158).

Phronesis is a vital quality for FRC professionals, who in many respects are constantly working beyond the limits of empirical knowledge, as well as gaps in the knowledge about children’s experiences of life and familial relationships (Clark, 2007: 61). Phronesis commands a conscious engagement with the ethical content of work (Banks, 2001: 158; 2013:601-602) and attention to the reason and emotion behind everyday practice. My findings showed that many participants were practicing phronesis, particularly where they highlighted ethical issues and gaps in meaningful service provision for children (see Chapter 7, pp. 134-140).

**Practice principles aligned with the element of ‘phronesis’**

- **Principle 11:** Workers are trained and supported to develop ethical awareness and critical reflection skills, specific to child participatory practices in family dispute resolution settings.

- **Principle 12:** Child Inclusive Practice case outcomes are consistently tracked and communicated to staff, and research and evaluation activities on child inclusion are prioritised.
Principle 13: Organisational policies and procedures are developed in line with these good practice principles.

Critical reflexivity is vital to the development of phronesis and involves the self and others in scrutinising practice – not only to judge the exercise of technical skill, but also the moral and ethical components of the work (Banks & Gallagher, 2009: 91-92). This is why ongoing evaluation, research, and follow-up with children and their parents is an important part of the ethical framework and practice principles 11-13. Ethical care cannot exist in a vacuum and must be informed and shaped by those receiving care. While ethical judgement may involve an intuitive process that should incorporate empathic understanding (Banks, 2013: 599), attending to both care and justice necessitates a critical reasoning that does not reproduce dominant oppressive narratives. Thus, the practice of phronesis is closely connected with an ethics of care: moral sensitivity connects with Tronto’s (1993) caring elements of attentiveness and competence; critical reflexivity with the values of competence and responsiveness; and research and evaluation with the elements of responsibility, competence and responsiveness.

In the ethical framework for child inclusion, phronesis is what enables the professional carer to connect and apply the ethics of justice and of care within each individual case. These applications involve willingness and skill in identifying the moral elements of a situation: to attend to emotion (both of self, and the emotional experiences of others); to challenge and question; to sit with ethical ambiguity and exercise ‘moral imagination’ in discerning how to act; as well as the ability to give a reasoned account of decisions (Banks, 2013: 598-599). The goal of ‘good’, ethical child inclusive practice is a combination of both care and justice to achieve meaningful inclusion: inclusion that is not only technical, in the sense that children are engaged directly in the FRC process, but which is also experienced as meaningful (caring and just) by those same children.

Meaningful inclusion: Principles for practice

Care ‘must be about more than ‘good intentions’ (Hugman, 2014: 178): any useful approach to professional care must include strategies and principles to guide decision-
making. In addition to the broader ethical framework, I propose 13 principles for ‘good’, ethical child inclusive practice. These principles are intended to provide guidance to individual workers, and more broadly to inform child inclusive policies and procedures at both organisational and program levels.

While the proposed principles were formed within this research project, and thus are directly informed by the work and practices of RANSW, they may also apply to the broader Family Relationship Centre context. In addition, although this research represents a snapshot in time, the literature indicates ongoing gaps and calls for clarification regarding the purpose, processes and criteria for ‘good’, ethical child inclusive practices in post-separation FDR (Banham et al., 2017; Dobinson & Gray, 2016; Williams, 2016). As outlined in this Chapter, an ethics of care approach is highly compatible with FRC operational guidelines, FDRP accreditation standards, the recent National Principles for Child Safe Organisations (AHRC, 2018) and existing research on children’s participation in Family Law processes.

By proposing a framework specific to the FDR setting, broader sources of policy, professional and empirical knowledge are situated in the post-separation practice space. These practice principles align with feminist concerns for a focus on actual relationships, as opposed to abstract universal principles, in determining what is ‘good’, ethical action and work with children (see Held, 1990: 330; Hugman, 2005: 70-71). The figure on the following page provides a summary of the practice principles.
GOOD PRACTICE PRINCIPLES FOR CHILD INCLUSION IN THE FAMILY RELATIONSHIP CENTRES

**Principle 1:** Children’s rights to participation, safety and service provision are considered *together*, not in mutually exclusive terms, with consideration of how children’s wellbeing and safety might be affected if they are excluded from participating.

**Principle 2:** Children are given options about the ways in which they can participate in family dispute resolution, and given information and support to help them decide how to participate.

**Principle 3:** Children have access to follow-up supportive sessions, either with a Child Consultant or a trained child specialist counsellor.

**Principle 4:** The Child Consultant position is funded as a primary organisational role, with Consultants co-located at each Family Relationship Centre.

**Principle 5:** Child Consultants are suitably trained and skilled in work with children, and are given ongoing support and professional development opportunities.

**Principle 6:** Children are kept informed of the family dispute resolution process as it progresses, and of the outcomes following their parents’ exit from the process.

**Principle 7:** Children’s feedback on the service is consistently sought, recorded, and taken seriously; in addition complaints and concerns procedures are clearly communicated to children.

**Principle 8:** Each case is carefully assessed for domestic violence, with ‘conflict’ and domestic violence clearly distinguished from one another.

**Principle 9:** An alternative Child Inclusive Practice model is adopted where domestic violence is present, which allows for more flexible feedback to parents, and does not emphasise parental alliance or conflict minimisation.

**Principle 10:** Where domestic violence is present, a consideration of how children’s perspectives can safely be brought into family dispute resolution is a matter of priority.

**Principle 11:** Workers are trained and supported to develop ethical awareness and critical reflection skills, specific to child participatory practices in family dispute resolution settings.

**Principle 12:** Child Inclusive Practice case outcomes are consistently tracked and communicated to staff, and research and evaluation activities on child inclusion are prioritised.

**Principle 13:** Organisational policies and procedures are developed in line with these good practice principles.

*Fig. 7: Good practice principles for child inclusion in the Family Relationship Centres*
At a minimum, this vision for ‘good’, ethical practice involves children in some form of conversation where they are both heard and given an opportunity to contribute their own determination regarding their care needs (see Held, 2010: 121-122; Orme, 2002: 810; Sevenhuijsen, 1998). ‘Good’ practice invites a commitment to ongoing research and evaluation activities, especially those which elevate children’s perspectives on their participation, and form recommendations for continuous practice development. These principles also recommend ongoing support and resources for practitioners, to encourage the development of moral sensitivity and critical reflexivity, and to balance concerns of care and justice for children within each case.

Conclusion

This chapter provided an account of the unique findings of this study in light of the overall aim of this research: to contribute to understandings of ‘good’, ethical child inclusive practice. I have critiqued the CIP decision-making frameworks employed by RANSW FRC practitioners from a feminist ethic of care lens, including analysis of parent-centric assessment and the pressing need for more nuanced understandings of domestic violence in ‘high conflict’ FDR cases. Finally, I propose a situated ethical framework for meaningful child inclusion, with a dual emphasis on care and justice. This framework is translated into practice by phronesis, critical reflexivity and an integrated commitment to ‘good’, caring practice across the FRC program. Strengthening the ethical commitments of care for children – including a commitment to children’s rights – provides a useful path forward, both for individual practitioners and organisations, as the FRCs move into their second decade of operation.

The following chapter concludes my thesis and provides possible areas for policy and future research.
Chapter Eleven: Conclusion

Introduction

I originally embarked on the path to this thesis as an Undergraduate student, a novice in both practice and research. As a final year Social Work student, I was troubled by the small number of children engaged directly in the work of the Family Relationship Centres, particularly given persistent professional rhetoric that children and their interests were central to the FDR intervention. It was this feeling of disquiet that motivated me to pursue first an Honours, and then a PhD project, on the topic of child inclusion in this particular practice area.

Through the journey of this research, both as a developing practitioner and a researcher, I came to understand more about the complexities of work within the FRCs. I gained insight into the enabling and constraining factors affecting workers’ decisions on when to include children, and their understandings of what form child inclusion might take in their practices. It became increasingly apparent that facilitating children’s participation in FDR practice was far from straightforward.

The emergent data from this study identified organisational-level barriers to the implementation of child inclusion. The main finding was that these professionals understood the purpose and value of child inclusive practice in very different ways. While most participants expressed their support for children’s participation in principle, the translation of this principle or belief into the practice of direct inclusion was not commonly occurring in practice. Time and time again, participants emphasised assessing parents’ levels of conflict and parents’ reflective capacity as prerequisites for children’s consultation. While some participants identified child inclusion as an ethical issue and expressed some frustration with the lack of clear organisational guidance or practice frameworks, others did not consider child inclusion with much import. I was surprised to find that while most participants spent a large proportion of their interviews discussing the risks of inclusion, most did not mention the potential consequences of excluding children from FDR. There was also a notable lack of discussion around domestic violence and its potential effects on
children and their participation, which was especially surprising given empirical data on the high rate of DV amongst FRC cases (see Chapter 2, pp. 42-46).

Through successive rounds of analysis, I began to see what Ash (2010; 2016) has termed the silent ‘ethical voice’ in participants’ accounts. While ‘ethics’ and ‘ethical practice’ were not part of the original design of this study, from its conception I was interested in understanding how FRC practitioners, as gatekeepers to child inclusion exercising a high level of discretion in their professional practice, made decisions about whether or not to include children. Accounts from activist participants drew me to incorporate secondary literature on professional social care ethics into my analysis. The theory of care ethics illuminated the hidden space between minimally detailed policy and actual practice, where the individual worker’s daily decisions essentially operationalised child inclusion.

Although participants did not explicitly frame their decision-making processes as ‘ethical dilemmas’, they spoke at length about the tensions of weighing up many complex factors in exercising professional judgement. The common process of negotiating professional judgement and personal engagement, common across roles of the caring professions, is what Banks (2013: 589) terms ‘ethics work’. Everyday ethics does not speak in a loud voice, but it is present and vital in the relationships and decisions of professionals charged with pursuing the public good. Many years after the FRCs were abruptly established, these practitioners were still attempting to understand how children’s perspectives might be meaningfully included and experiencing ubiquitous roadblocks along the way. This study showed the strong influence that the individual worker’s ethical orientation towards child inclusion had on their decision-making, especially in the absence of organisational guidelines and frameworks. In my analysis I identified a number of ethical issues as part of the RANSW CIP model, in operation at the time of data collection.

Throughout the research process I experienced a consistent struggle between the real-world demands and tensions of practice (wanting to deliver a ‘product’ of sorts to my practitioner colleagues that would be of practical use), and the theoretical and conceptual demands of a PhD thesis. Many participants were hopeful that clear child
inclusive practice criteria would be developed as an outcome of my research, which if nothing else would pique the interests of RANSW management. While I cannot be sure my participants will be satisfied with the actual outcome, I am confident that the proposed ethical framework and good practice principles will contribute to important and ongoing conversations about children’s participation across the Family Law sector and beyond.

As an organisational insider of many years, I am well acquainted with the fact that FDR practice evolves much more quickly than what the published research can capture. In light of this knowledge, I have chosen to focus my contribution on the broader critical questions about what makes ‘good’ child inclusive practice, ‘good’. This thesis provides a snapshot of the practice experiences of one cohort of FRC professionals alongside a review of empirical knowledge on children’s own FDR participation experiences. While the fieldwork for this study took place in 2013 and thus has certain historical limitations, this is the first study to apply feminist ethic of care theory to the Australian FDR practice space, and to child inclusive FDR practices in particular. This is also the first piece of research to explore the concept of parental reflective capacity (PRC), and its relationship with parental conflict, as the key assessment factors for CIP amongst these FRC professionals. My unique contribution is the proposal of a situated ethical framework for child inclusion, and associated ‘good’ practice principles, as directly informed by my empirical research and care ethics theory.

There is much evidence to show the Australian Family Law system is failing to attend to children’s participatory rights, as well as failing the most vulnerable children who are victims of domestic violence (see discussions in Chapter 2, pp. 49-53; and Chapter 3, pp. 64-67). This research project has collected, analysed and presented evidence to show that a dual focus on the ethical mandate to care for children and facilitate access to their participatory rights provide a useful path forward. My proposed framework encourages a shift away from the binary care/participation dichotomy and towards genuine child participation, with particular attendance to differentiating between ‘conflict’ and DV in the parental relationship, as the FRCs move into their second decade of operation. My framework and accompanying principles have transferability across broader child welfare organisations, many of which are currently exploring how
to include children’s perspectives in meaningful ways. My work provides an example in the still-evolving literature surrounding the application of care ethics, of how practice-based research and theoretical frameworks can combine to reflexively inform professional decision-making.

Recommendations for child inclusion in FRC and FDR programs

My situated ethical framework and accompanying good practice principles, presented in Chapter 10 (see pp. 209-218), provide guidance for meaningful child participation in the FRC/FDR setting. These principles are intended to inform the National Network of FRCs, and beyond this, other community-based child inclusive mediation providers. With the recent introduction of the National Principles for Child Safe Organisations (AHRC, 2018) and ongoing public consultation regarding State-based implementation of the National Principles (Office of the Children’s Guardian NSW, 2018), the need for guidance regarding ethical child participatory practice is arguably more pressing now than ever before. My framework fills a gap regarding good practice principles specific to child inclusive FDR, thus far not addressed in existing literature.

To best satisfy the growing policy-level calls for genuine child participation, I contend that the FRCs could re-frame their focus from supporting parents to make arrangements ‘in the best interests of their children’ (Attorney General’s Department, 2017: 9), to a focus on care. This approach is not care as protectionist approaches to child welfare traditionally conceive it. Rather, this is care that is attentive, competent and responsive to children’s needs for both meaningful care and participation, as the activist participant cohort described. This study draws attention to the need for the FRC professional to apply moral sensitivity, critical reflexivity and ultimately an ethic of both care and of justice to their work with separated families. My ethical framework conceives ‘good’, ethical practice as that which is meaningfully inclusive of children, while also acknowledging that children have not yet had much opportunity to define meaningful inclusion in FDR for themselves. Several of the practice principles relate to follow-up and evaluation activities with children, to ensure processes are responsive to their needs.
In addition to my proposed framework and principles, I suggest that more detailed ethical frameworks and ethics-based training for FDRPs, Child Consultants, and other FRC staff could be developed. The strong influence of practitioners’ underlying ethical orientations towards child inclusion on their decision-making around CIP provides support for the proposal that existing ethical frameworks must be brought to the fore, and conversations about ethical responsibilities towards children prioritised. It does not necessarily follow that better resourcing, or changes to make an organisation’s CIP model more expansive or flexible, will lead to ‘better’, more ethical practice. In this study, workers disagreed about the very definition of child inclusion, its purpose, the case-level criteria that indicated it may be appropriate, and what they described as a ‘good’ outcome following CIP. Continuous training, support and development of workers’ critical thinking skills, specifically related to child inclusion, can enable workers to practice phronesis, as detailed in my ethical framework.

My framework emphasises the importance of workers acting with care by not only technically including children in FDR, but also by adopting a disposition or an attitude of care. This contention is strongly supported by existing empirical findings on what children say they experience as caring and inclusive when they participate in Family Law interventions (see Chapter 3, pp. 63-68). As outlined in Chapter 10, more recent policy frameworks also emphasise the importance of the internal character, motivation and values of workers required to achieve the goal of genuine child participation. Thus, worker interrogation of existing personal and organisational narratives and assumptions, and the development of ethical awareness specific to the practice of child inclusion, is both appropriate and useful to continuous practice improvement.

The ongoing development of professional identity is particularly important to the relatively new profession of FDR. To date, FDRPs have had little formal guidance regarding their duties and responsibilities to children, and the facilitation of child participatory approaches. FDRPs tend to come from diverse professional backgrounds, as confirmed by the participant cohort in this study. While diversity can be a strength it can also result in a plethora of ethical understandings and can potentially lead to disparate practice approaches. Further exploration of professional
practice principles, values and guidelines to determine ‘good’ child inclusive practice across each role group has the potential to inform existing practices in a thoughtful and critical manner. Expanded knowledge is especially important when it comes to the ethical issue of DV and CIP, and the lack of existing models and frameworks for child inclusive practices where DV is an issue. There is also the potential for existing cross-organisational relationships to be further strengthened and for formal professional associations to develop. Professional development, training, supervision, and research activities across the FRC network could be resourced as child inclusive capacity-building projects.

**Future research directions**

There are many research priorities in the under-explored area of child inclusive FDR practice. Above all, future research must prioritise ongoing consultation with children about how they experience FRC processes, and what can be changed to ensure children feel cared for and meaningfully included. Further exploration of the needs of child victims of domestic violence, and development of FRC and FDR-specific models for work with child victims and their families, is vital.

Investigation of the relationship between ‘high’ parental conflict and parental reflective capacity has the potential to inform good practice conceptualisations. Whether these concepts can be usefully measured, and whether they have any predictive effect on mediation outcomes and children’s experiences of inclusion is another priority for ongoing research. The ethical framework of child inclusion proposed should be empirically investigated, to see if it is helpful to FRC practitioners and FDR providers in developing meaningful participatory practices. The ethical orientations of FRC workers, and the potential challenges with asking workers to adopt a dual ethic of care and justice, should also be explored.

**A final word**

This thesis has explored the relationships between the theory and practice of child inclusion in post-separation FDR. My own conceptualisation of the relationship between professional social care practice and theory has been radically transformed
through the process of this study. I now see theory and practice as existing in a dialectical relationship: as non-binary elements, which are constantly interacting with one another to alter and shape the form that each will take. I have produced a situated ethical framework, which recognises multiple forms of knowledge (empirical research, policy, my own and others’ practice wisdom), while also applying a critical theoretical lens. I have applied feminist care ethics to analyse and articulate ‘wise’, ethical practices, and to connect practitioner accounts into a cohesive middle-range theory of ‘good’ child inclusive practice.

While this study provides a snapshot of the practices of 27 workers from a single organisation, at a set point in time, FDR practice and theory are continuously evolving. This research provides a tool that will prompt reflective conversations about ethical care, justice, and post-separation interventions that are meaningfully inclusive of children.
Section Six: References and Appendices
References


House of Representatives Standing Committee on Social Policy and Legal Affairs (2017). *A better family law system to support and protect those affected by family violence: Recommendations for an accessible, equitable and responsive family law*


APPENDIX A: RANSW STEP 7a: CHILD INCLUSIVE PRACTICE (2010a)

STEP 7a: CHILD INCLUSIVE PRACTICE [CIP]

This procedure is underpinned by the following RA NSW policies & procedures:
- RA NSW Access and Equity policy
- RA NSW Suitability Policy and Procedures
- RA NSW OH&S Policy
- RA NSW Reporting of Serious Matters
- RA NSW Family Safety & Procedure
- RA NSW Child at Risk Reporting
- RANSW Suitability of Services
- RA NSW Safety and Security Policy
- RA NSW Supervision Policy for Service Delivery Staff
- RA NSW Customer Complaints: Policy and Procedure
- RA NSW Client Incident Reports
- RA NSW Fees Policy
- RA NSW Privacy & Confidentiality Policy
- RA NSW Referral Policy
- RA NSW Data Management Policy.

Summary

The primary Family Dispute Resolution Practitioner [FDRP] is responsible for:
- assessing each case in regard to suitability for incorporating Child Inclusive Practice [CIP] at both the Pre-FDR and first joint FDR sessions
- where appropriate, recommending CIP to both parents involved in the case.
- arranging the CIP referral and forwarding a completed Child Consultant Referral and Briefing Form to the child consultant or to the delegated staff member – for example the Clinical Coordinator.

The child consultant is responsible for:
- contacting each parent to assess the suitability of CIP
- conducting the interview with the child/ren
- preparing and delivering the feedback session for the parents – in conjunction with the primary FDRP.

Note:
The primary focus for the parent feedback session is to build a parental alliance.
The child consultant and FDRPs are required to:
- schedule a debriefing session following the feedback session to the parents
- participate in CIP supervision as required.

**7a Child Inclusive Practice [CIP]**

**7a.1 Scope**
This procedure is underpinned by relevant RA NSW policies [as listed on the previous page] and is to be read in conjunction with the Guidelines for Inclusive Practice [refer to Attachment 1 for Step 7a].

*Note:*
For CIP to proceed, both parents must complete and sign an RA NSW Child Consultation Consent Agreement [refer to Attachment 1 for Step 7a].

**7a.2 The Role of the primary FDRP**
The primary FDRP is responsible for:
- assessing the case in terms of suitability for incorporating CIP [both at the Pre-FDR meeting & the FDR joint session]
- recommending CIP to both parents
- encouraging both parents to sign an RA NSW Child Consultation Consent Agreement [refer to Attachment 2 for Step 7a]
- arranging the CIP referral and forwarding a completed Child Consultant Referral and Briefing Form [refer to Attachment 3 for Step 7a] to the child consultant or to the delegated staff member – for example, the Clinical Coordinator
- maintaining all required paper and electronic records in accordance with the FRC’s data management system [refer to Green Box F: Data management].

The FDRP is required to attend:
- the feedback session for the parents
- a debriefing session with the child consultant following the feedback session to the parents
- CIP supervision [as required].

**7a.3 Setting up a CIP session**
The child consultant or the delegated staff member is responsible for:
- making contact with both parents to:
  - further assess their suitability to participate in CIP
  - provide further information about CIP and their role in supporting the child/ren and attending a feedback session
appointing a child consultant for the session [in cases where forms are forwarded to a delegated staff member] and confirming the name of the child consultant with the primary FDRP.

7a.4 The role of the child consultant

The child consultant is required to:

- review the case with the primary FDRP prior to scheduling the session with the child/ren and to discuss scheduling options for the consultation, feedback and debriefing sessions
- arrange the consultation times with the child’s/rens’ parents
- inform the FDRP when an appointment[s] have been confirmed
- conduct the consultation with the child/ren
- provide feedback to the primary FDRP following the session with the child/ren
- work with the primary FDRP to formulate the feedback to the parents
- participate in:
  - the parent feedback session
  - a debriefing session with the primary FDRP following the feedback session with the parents
  - CIP supervision as required
- provide to the primary FDRP a:
  - list of the sessions undertaken including dates
  - a written summary of the parent feedback session.
APPENDIX B: RANSW GUIDELINES FOR CHILD INCLUSIVE PRACTICE (2010b)

ATTACHMENT 1: GUIDELINES FOR INCLUSIVE PRACTICE

Guidelines for ‘Child Inclusive’ Practice

7.1  Best Interests of Children: Overview

From the time a client first presents at the FRC, our emphasis is on offering an assessment, information and referral service that is clearly in the best interests of the child.

7.2  Child Focussed Practice

‘Child Focussed’ practice means professional interventions that place a primary emphasis on practices and solutions focussing on the needs of children. Contact with clients at the FRC should always be child focussed.

7.3  Child Inclusive Practice

‘Child Inclusive Practice’ (CIP) means a specific professional intervention that brings the voice of the child(ren) into a family dispute resolution process. A child consultant interviews the children and then later presents feedback to the parents during a joint FDR session.

7.4  CIP Background and Rationale

CIP aims to transform the relationship between high conflict parents for the benefit of their children. When properly conducted, child consultant feedback can have a dramatic impact and helps to shift parents into a parental alliance.

RA NSW’s model is based on the theoretical principles developed and described by Dr. Jenn McIntosh and her colleagues:

- Child Inclusive Practice (CIP) begins with an assumption that most parents have an instinctive concern for the welfare of their children.

- Parents struggle to put those concerns into action due to extreme distress from the breakdown in their own relationships.

- It is a process not dissimilar to protecting a broken bone from being bumped. That is, we may protect ourselves from emotional hurt by turning inwards and paying ourselves a great deal of attention. We may also be focused on who has caused us the pain and distress.
• These processes, however, can often dilute parents’ capacities for attunement towards and for sensitive care of their children. For the child, the relative absence of predictable nurturance may herald reasons to doubt his or her own worth.

• Through CIP, each parent is supported and educated toward a higher understanding that neither parent is in fact indifferent to the children.

• Parents can be helped to understand the ways in which their children are trying to make sense of the break-up – to see their children’s behaviour and attitudes in terms of strategies they are adopting in an effort to ensure their own survival. Parents are helped to see how such strategies make sense to the children within their own developmental sphere of logic.

• Crucially, parents are supported to understand better how, as their children try to prop up their parents’ failing relationship or develop an ideology of support for whichever parent looks most able to ensure their ongoing care, their emotional resources are in fact being continually drained.

• Once former partners begin to refocus on their parental alliance, their children’s exhausting need to maintain strategies to keep their world in some sense of order can begin to diminish. They can, once again, become children.

(Hewlett B. Accessing the Parental Mind Through the Heart: A Case Study in Child Inclusive Mediation, J Fam Studies, vol 13, Issue 1, May-June 2007).

Based on her research, Dr. Jenn McIntosh has concluded that CIP (CI) produces a superior parental alliance than child focussed (CF) practice:

• There are similar benefits for both groups but they are less durable for CF than for CI;

• Conflict and acrimony was reduced in both groups but for fathers in the CF group, their anger partly returned after a year;

• CI parents both had improved satisfaction with living and visiting arrangements;

• CI fathers seemed more impacted than mothers and developed greater satisfaction with living and visiting arrangements even though they had lower overnight contact than CF fathers group;
• CI fathers perceived the feedback as ‘fair’ perhaps because the news about their children came from a neutral source rather than from mother;

• Children interviewed a year later perceived CIP fathers as significantly closer and more available than CF fathers;

• Agreements made between CI parents were more durable than for CF parents, with half as many filing new legal matters as compared to CF parents;

• Children’s mental health improved about same in both groups, but children’s anxiety, clinging behaviours, depressive symptoms and fears dropped significantly more with CI than CF.


7.5 **CIP Guidelines**

*Step 1: Explanation to Parents*

• Clients are provided with information about Child Focussed and Child Inclusive Practice during intake with FPOC and FA,

• The practitioner normally will introduce the idea of CIP during the Assessment,

• The FDRP is positive and hopeful as well as opinionated with parents about the benefits of CIP,

• It is useful to focus on a single, simple agenda for the CIP: establishing the parental alliance,

• The Practitioner needs to know and describe the research so as to connect with parents about the important need to address their children’s’ mental health,

• The Practitioner can appeal to parents’ self-interest: ‘don’t you want to know how it’s going for your kids?’

• The Practitioner can combine the question ‘are you ready to try something different?’ with an attitude of optimism and hopefulness about how the process can ‘get you to a better place for your kids’
• Try not to get hung up on fees. If they come up, ask ‘Can we talk about that later?’ Often later they don’t care anymore,

• While we remain impartial to all adults that we work with, we are tasked by the Family Law Act to be advocates for the children and CIP fulfils this obligation and parents usually find it to be a very useful service.

**Step 2: Screening and Consent**

• The FDRP discusses CIP with parents at first joint session and recommends CIP in appropriate cases,

• CIP is not appropriate in all cases:
  
  o Usually we will not see children under age five.

  o We will not recommend CIP if:

• There are unresolved safety concerns,

• There is parental opposition to hearing feedback from a child specialist,

• The children have mental health issues or are in therapy,

  o Both parents need to demonstrate some ego maturity and genuine intent to better manage their dispute,

  o Both need to demonstrate some appreciation of their children as having needs of their own,

  o Both need to demonstrate some willingness, with support, to consider the children’s views and reconsider their own.

• If CIP is suggested and agreed to by the parents, the FDRP gives them an information sheet to review and they sign the parental consent form during the first joint session.

**Step 3: Scheduling, Fees and Salary Transfers**

The interview is scheduled with one or both parents who will bring the children in to the appropriate RA or FRC office. Usually the feedback session (2nd joint session) can be scheduled at the same time.
When doing CIP work, the time spent outside sessions should be documented in 4DISCS. If it is part of a coordinator’s time, such as setting up the Child Consultancy, then it won’t need to be salary transferred as it is part of a coordinator’s duties. The time that is spent speaking to clients in regard to their child/ren and doing the CC should be charged back to Mediation/FRC as a salary transfer. There is a sliding scale for the Child/ren’s interviews that was developed when we started doing SOS work. If the Court is ordering and paying for the service, we can speak to the person who is administering the funds and request that the Child Interview is paid for.

The Consultant’s time for the interview is charged at the same rate as the mediation hourly fees and paid at the time of the feedback session. Currently this is the only charge parents pay for CIP which is over and above applicable mediation fees. The Consultant fills in a salary transfer form charging the interview time to the mediation program (RA or FRC).

For the feedback session, the clients currently are not charged any fee over and above their mediation hourly fee (if any). The Consultant fills in a salary transfer form charging the feedback time to the mediation program (RA or FRC).

Non-contact preparation and debriefing time currently is not charged to clients. The Consultant fills in a salary transfer form charging non-contact time to the mediation program (RA or FRC).

**Step 4: Pre-Interview Preparation (FDRP and Consultant)**

The Child Consultant meets with the FDRP (in person or by phone) to hear the FDRPs views on any particular circumstances and concerns about the separation, children, and identifiable barriers to the parents’ reflective capacity.

The Practitioner explains the level of conflict and some of the themes illustrating the constraints disrupting the parental alliance, such as that both parents consider the other evil or the father being angry because he’s not given any credit for being a good parent, etc.

**Step 5: Child Interview(s)**

The child consultant contacts each parent to introduce themselves and to check on anything in particular that the parent needs to inform them about their child/ren (eg learning difficulties, chronic illness)

At the interview appointment, the Consultant settles the children and parent(s) by first meeting with the whole family, then just the children, and lastly conducts individual meetings with each child (unless deemed inappropriate).
The interview includes use of a number of projective tools, including bear cards (to compare feelings before and after separation), dream drawings, separation story stems, advice to other children, magic wand wishes, etc.

The overall objective is to inquire into the impact of the separation on the children and mostly importantly to capture how it is for the child in the child’s own words which the parents will recognize.

**Step 6: Pre-Feedback Preparation (FDRP and Consultant)**

The Consultant and FDRP meet again, this time to prepare for the feedback session (preferably before the feedback session date).

The purpose of this meeting is to develop ideas and wording that captures how things are for the children in the most powerful way possible. This is done by conveying the unique way in which these particular children are responding to their parents’ conflict.

The objective is, quite literally, to stop parents in their tracks.

The Consultant lists key responses describing what is going on for the child emotionally. The Consultant and Practitioner then reduce each child’s initial responses into themes.

They then reduce them still further into a word or two that powerfully captures the essence of how that child is travelling.

It is important to keep searching for essence words by asking ‘why’ - for example if the themes are ‘grieving, abandoned, burdened, invisible, lost, overlooked, and neglected’ one possible essence word that explains why could be that the child projects a sense of ‘worthlessness.’

**Step 7: Feedback Session**

This is the heart of CIP. It is important to remember that the only agenda for the feedback session is to re-establish the parental alliance. Put differently, the objective is to draw parents into becoming present in the conversation as parents.

The overall message to the parents is that ‘Mary needs you to be here as her parents.’

Reduced to its essence, a feedback session can include:

- What a lovely child you have, but I’m concerned about her;
- Here’s what the developmental and attachment theory research says;
- Here’s what seems to apply to this child;
• A failure to change this will affect the child developmentally;

• To bring about change, there needs to be a parental alliance;

• Let’s talk about what is getting in the way of restoring the alliance.

Bill Hewlett describes ten stages in an effective feedback session (see graphic below):

a) **Engaging the parents.** Parents may have strongly held views about the wellbeing of the children and they will not relinquish these easily. The engagement process must strike a chord with the parent’s natural concern for the children and argue powerfully for them to listen and be open to influence.

b) **Capturing the child’s essence.** The power to influence change through CIP is largely embedded in its capacity to ‘bring the child into the room.’ The more effectively the child’s conundrum is highlighted, the more readily parents will be open to change.

c) **Citing research.** Create a backdrop of empirical evidence firmly establishing the link between parental conflict and the developmental damage caused to children. It is essential that the child consultant takes an unequivocal position and an ‘expert’ role about the clear evidence supporting the essential requirement to reduce parental conflict to avoid severe consequences for children.

d) **How is the child now?** Illustrate the manner in which the child has dealt with his or her own journey through parental conflict, bearing in mind that no child can be immune to the consequences of parental conflict and that coping strategies used by the child may mask their distress.

e) **Ethical benchmarks.** Energise the parents’ capacity for change by tapping into their natural desire for the children to thrive, now and as functional adults in the future. Hypothesise about whether or not the strategy currently used by the child to deal with the conflict may in the future damage the child’s own relationship prospects (e.g., using a strategy of ‘pretending there’s no problem’ and refusing to discuss difficult issues to avoid escalating conflict).

f) **This can’t go on.** If the parents have some capacity to reflect, they will reach a stage whereby, individually at least, they are feeling that the information conveyed by the child consultant has persuaded them that ongoing conflict is damaging to the child.
g) **Alliance.** The idea of a parental alliance is introduced to diminish the negative consequences of parental conflict upon the children.

h) **Shifting the blame.** It is usually necessary to address pessimism about the prospects for a parental alliance and beliefs that the ‘other parent’ lacks good intent. The consultant shifts the blame away from the individuals and onto the previous parenting relationship. This creates an opportunity for the parents to move from their individually focused and pathologising view of what went wrong to a systemic one in which blame is less prominent.

i) **Criteria for maintenance of alliance.** Before the parents return to the narrative of hostility, they are asked to clarify their criteria for maintenance of the alliance which is clearly written up on a whiteboard. Hostile statements are reframed positively (e.g., ‘She needs to stop bad mouthing me and saying I’m a bad father’ is put up as, ‘I need to be described as a good father’).

(Based on, Hewlett, *Accessing the Parental Mind Through the Heart: A Case Study in Child Inclusive Mediation*, Ibid.)

**Tips for effective feedback by a Child Consultant:**

- Retain a positive attitude and be confident of your instincts! Pick and choose examples from the interview to disrupt the parents’ injustice/anger story.

- Remind them that problems are caused by the relationship and the lack of alliance not by any one parent or the other. The response therefore needs to be a joint one.
• When the parties return to their sense of injustice and anger about the relationship breakdown, the mediator tells them this will be on the agenda for later (‘I’m noting that this is an important issue for you and we’ll get back to that stuff later’). Be tactful but bossy about it. This other stuff usually becomes easier to resolve later once the parental alliance is re-established.

• If Party A says the child behaves ‘better’ post-separation, note that this is probably not because the ‘evil parent’ (Party B) is now gone from the household, but because the child is taking responsibility for making Party A feel less sad and angry. This is not a healthy role.

• Kids in an unstable, conflict-dominated environment become exhausted; it’s like standing in a rocking boat all day.

• Respond to that part of the parents’ words that support their children’s’ needs.

• Don’t make generic statements about children – be specific and concrete about their particular child.

• Combine support (‘you’ve done a great job’) with a sense of how it’s wrong for the kids now. Tell them you’re worried about the impact of the current conflict on these great kids.

• Re-frame parents’ comments in positive terms. eg, ‘Billy needs to stop spending time with his mothers’ loose friends’ becomes ‘Billy needs to be around good people.’

• Ask: ‘What kind of parent do you want to be?’

• Ask: ‘How do you want the kids to look back on these times 15 years from now?’

• Ask: ‘Are things moving toward or away from being able to discuss the kid’s best interests?’

• Explore what was different prior to the conflict and ask how was it back then and what, specifically, would have to change to be able to discuss the kids as you used to?

• Keep returning focus to the kids when they fight.

• Don’t ask parents whether they agree or confirm what you’re saying! Teach them as an expert.
Step 8: Post-Feedback Discussion (FDRP and Consultant)

The Consultant normally does not return for further sessions and it is therefore important for the Consultant to debrief with the Practitioner to ensure that the children's perspectives can be adequately reintroduced at the beginning of the next joint session. This is generally necessary to re-energise the momentum of desire for positive change. It is also appropriate in some cases to invite the Consultant to attend subsequent sessions to reinforce the feedback.

Step 9: Negotiate the Agreement

The parents return for a third joint mediation session (more if necessary) to negotiate the details of their parenting plan and finalize their agreement.

Step 10: Joint Supervision

The FDRPs and the Child Consult meet together for joint supervision. This is particularly important if an FDRP and Consultant have worked together for the first time.
APPENDIX C: Practice standards and training requirements to conduct child consultations at Relationships Australia (2009)

Practice Standards and Training Requirements to Conduct Child Consultations at Relationships Australia

A Specialised and Experienced Practitioner Activity

The practice of child consultations in the CIP process in RA has been promoted to parents as being provided by a “child specialist” and has been regarded in the counselling program as specialised and senior counselling activity.

While there is presently no formal qualification, accreditation process or practice standards in the FRSP sector to determine who can to conduct child consultations, in recognition of the additional and advanced skills and knowledge required to competently perform the following specialised activity of ‘Child Consultations.’

The minimum entry requirement is:

An award of an appropriate bachelor degree with an orientation to the behavioural or social sciences, education, and psychology or other relevant degree with a post graduate qualification in counselling, psychology or psychotherapy and a minimum of two years direct experience in working with children, adolescents and their families in a health professional setting.

The supplementary entry requirements include:

1. Assessed competence in all aspects of their relevant 2b clinical competencies (counselling, FDRP, FA) as part of the performance appraisal with a focus on section 6 “Child Inclusive Practice Competencies (see appendix)

2. A demonstrated interest and training aspiration to conduct child consultations as identified in the practitioner’s performance appraisal.

3. A recommendation from the practitioner’s primary clinical supervisor, endorsed by manager.

4. Prior attendance at core and/or prescribed and /or accredited training as designated by the relevant program either provided by the organisation or externally (in accordance with staff training and development policy).

Note: If the practitioner is not routinely working directly with children, adolescents and their families in their current recruited position within RA and has not previous had the opportunity to be observed and appraised as to their competency to work directly with children the practitioner needs to undertake the following:
A) The direct or video-taped observation of a minimum of three child consultations including feedback conducted by an experienced child consultant

B) Conduct a complete child inclusive intervention including

referral briefing from FDRP, assessment parent of suitability, child consult, development of feedback and delivery to parents via direct consultation and live supervision with the with their primary supervisor or other nominated supervisor who is experienced in child consultations.

C) Submission of a written self-critique by the practitioner of the work conducted

D) A written individual development work plan commensurate with their assessed level of competency in conducting all aspects child inclusive practice prior to independently conducting child consultations.

Ongoing practice requirements include the following:

1. Submission of name to a central register as a child consultant at head office.

2. Initially practitioners new to conducting child consultation activities should be eased into the activity and allocated less complex presentations. They should be provided with additional support and guidance via opportunities to observe and be coached by experienced practitioners, co-team work, and simulated role plays, live and video-taped supervision, under take further appropriate professional reading.

3. Any future training needs should be identified in performance appraisal discussions with supervisor and subsequently approved/nominated by the regional/program manager. Appropriate documentation of records of attendance at training and copies of proof of qualifications kept on file.

4. In addition to their core supervision complement practitioners will be offered opportunities to consult with or be supervised by designated supervisors or consultants who are recognised as having the necessary expertise in the specific practice area. Practitioners will require ongoing access to activity specific support, professional development and supervision to manage high complexity situations and to promote enhancement in performance.

5. Access to practice discussion forums, debriefing sessions.

6. Even when a practitioner has been assessed as fully competent against relevant checklists and recognised as sufficiently experienced by the clinical/program supervisor the practitioner needs to continue to maintain adequate practice experience in the delivery of child consultations. A record as to the number and frequency of child consultations conducted should be kept and regularly monitored by the practitioner’s supervisor as should a
record of professional development activities e.g. professional reading, attendance at seminars etc

7. Feedback from the FDRP involved should be sort at regular intervals as should client evaluations.

8. Annual performance appraisals should be conducted of specialised activities undertaken. (See Supervision Policy).

9. *Completion of annual clinical audit to be submitted to DCS.*
APPENDIX D: Practitioner interview schedule

Interview Schedule: Practitioners

1. Please describe your educational background and work history.
2. What is your current role at your Family Relationship Centre?
3. Do you believe children’s voices should be included in the process of family dispute resolution?
   a. Why? What models/values/people inform your practice?
   b. What do you think including the child looks like?
   c. What choices can the practitioner make to include the child?
4. What policies and/or procedures are in place around work with children in family dispute resolution?
5. In what ways are children’s voices being included in family dispute resolution in your Family Relationship Centre / organisation?
6. What do you believe is the purpose of including children’s perspectives in FDR?
7. What do you believe is good practice when working with children in this context?
   a. What encourages good practice?
   b. What hinders good practice?
8. Please describe a practice situation where including the child was appropriate and where you feel this was done effectively.
9. Please describe a practice situation where you chose not to include the child, and you feel this was effective.
10. Do you think the Family Relationship Centres are an effective service to address the issues faced by children post-separation?
    a. Why?
11. In an ideal scenario, how would your organisation’s work with children look?
12. What, if any, changes do you feel should be made to include the voices of children in family dispute resolution?
13. Is there anything else you wish to discuss?
APPENDIX E: Manager interview schedule

Interview Schedule: Managers

1. Please describe your educational background and work history.
2. What is your current role at your Family Relationship Centre?
3. What are the features of your program around family dispute resolution?
   a. What does the process of family dispute resolution look like in your Family Relationship Centre?
   b. How was the practice of including children in FDR introduced, across the organisation and within your FRC?
4. What are the features of your program around post-separation work more broadly?
5. What are the funding requirements around services delivered to children and families?
6. What constraints, if any, do these funding requirements place around work with children?
7. What policies are in place within your organisation related to children and family dispute resolution?
8. What did the organisation provide to ensure policies were translated into practice?
9. How do you define/construct the voice of the child in family dispute resolution?
10. For what purpose/s are children’s perspectives included in FDR?
11. What do you think is communicated to children when they are included in FDR?
12. In an ideal scenario, how would your organisation’s work with children look?
APPENDIX F: UNSW Human Research Ethics Advisory Panel B Approval
Letter

Human Research Ethics Advisory Panel B

Arts, Humanities & Law

Date: 16.04.2013

Investigators: Mrs Amelia Wheeler

Supervisors: Dr Jan Breckenridge

School: School of Social Sciences

Re: The child’s voice in family dispute resolution: a study of organisational influences and professional understandings of child participation in a selection of Family Relationship Centres across New South Wales

Reference Number: 12 169

The Human Research Ethics Advisory Panel B for the Arts, Humanities & Law is satisfied that this project is of minimal ethical impact and meets the requirements as set out in the National Statement on Ethical Conduct in Human Research*. Having taken into account the advice of the Panel, the Deputy Vice-Chancellor (Research) has approved the project to proceed.

Your Head of School/Unit/Centre will be informed of this decision.

This approval is valid for 12 months from the date stated above.

Yours sincerely

Associate Professor Anne Cossins, Panel Convenor
Human Research Ethics Advisory Panel B
Cc: Dr Chris Walker, Head of School
School of Social Sciences
Human Research Ethics Committee: Response to your application

April 22nd, 2013

Dear Amelia Wheeler,

Your project “Bringing the child’s perspective into family dispute resolution: a window to the current practice context” was reviewed at the last HREC meeting, and has been conditionally approved. Here is the feedback from the HREC in dot-point-form.

- Please save any audio recordings of the interviews to a CD and archive for a minimum of 7 years.
- In addition to gaining signed consent to participate in an interview, please provide a consent process once the participant has checked the interview transcript.
- Please update the HREC secretary with the approval letter from the University of New South Wales, before data collection commences at our service.

Subject to the changes above, the HREC approves the conduct of your project. As these are minor changes, you are not required to re-submit your application but provide soft copies of the adjusted documents to either myself or the committee secretary Tracey Leupen (traceyl@ransw.org.au).

Please let me know if you have any questions or comments in relation to these requests. We wish you the best of luck in this project and would be happy to provide ongoing support in relation to the ethical dimensions of your project.

Yours Sincerely,

Rebecca Gray MA
Convenor, HREC
Senior Research and Evaluation Officer
Australian Institute for Relationship Studies
Relationships Australia NSW
My name is Amelia Wheeler and I am a PhD Candidate from the School of Social Work, within the Faculty of Arts and Social Sciences at the University of New South Wales. You are invited to participate in a study of the involvement of children in family dispute resolution within the Family Relationship Centres. This research is part of a PhD study in Social Work at the University of New South Wales. I hope to gain a picture of how practitioners perceive the voice of the child in family dispute resolution, and their opinions and perceptions around good practice with children in this context. You were selected as a possible participant in this study due to your position as practitioner at a Family Relationship Centre.

If you decide to participate, I will ask you a series of questions in a semi-structured interview. This interview will be audio-recorded for transcription purposes only with your consent. The duration of this interview will be approximately one hour. I will provide a copy of the transcript from our interview for your approval, and to provide you with the opportunity to make any additional comments. Any identifying information will be removed from the interview transcript and a pseudonym will be immediately assigned to this transcript. Your contact details will be stored securely and separately to interview recordings and transcripts.

In order to protect your confidentiality you are able to elect a Relationships Australia (NSW) site where you prefer the interview to be held. I will of course negotiate a time appropriate to your schedule and work load. This study is completely voluntary and there will be no report back to Relationships Australia (NSW) or any other organisation regarding your choice to participate or not.
Any information that is obtained in connection with this study and that can be identified with you will remain confidential and will be disclosed only with your permission, except as required by law. If you give your permission by signing this document, I plan to publish the results in my PhD dissertation, which will be distributed and marked through the University of New South Wales. Participants will have access to this final work via copies distributed to Relationships Australia. I also plan to disseminate findings through presentations to staff and summaries of my research that will be distributed across the organisation. In any publication, information will be provided in such a way that you cannot be identified. I cannot and do not guarantee any personal benefit will arise from your participation.

Any complaints may be directed to the Ethics Secretariat, The University of New South Wales, SYDNEY 2052 AUSTRALIA (phone (02) 9385 4234, fax (02) 9385 6648, email ethics.sec@unsw.edu.au). Any complaint you make will be investigated promptly and you will be informed out the outcome.

As mentioned above, copies of the final research findings will be distributed throughout your organisation in order to provide feedback.

Your participation in this study is completely voluntary. Your decision whether or not to participate will not prejudice your future relations with the University of New South Wales or Relationships Australia NSW. If you decide to participate, you are free to withdraw your consent and to discontinue participation at any time without prejudice.

If you have any questions, please feel free to contact myself or my supervisors at the University of New South Wales. Contact details can be found below:

Mrs Amelia Wheeler
0433 952 201
amelia.wheeler@gmail.com

Dr. Jan Breckenridge
9385 1863
j.breckenridge@unsw.edu.au

Ms. Kerrie James
9385 1962
kerrie.james@unsw.edu.au

If you have any additional questions at any point, please do not hesitate to let me know.

You will be given a copy of this form to keep.
PARTICIPANT INFORMATION STATEMENT AND CONSENT FORM (continued)

‘The child’s voice in family dispute resolution: a study of organisational influences and professional understandings of child participation in a selection of Family Relationship Centres across New South Wales’

You are making a decision whether or not to participate. Your signature indicates that, having read the information provided above, you have decided to participate.

Signature of Research Participant

Signature of Witness

(Please PRINT name)

(Please PRINT name)

Date

Nature of Witness
REVOCATION OF CONSENT

‘The child’s voice in family dispute resolution: a study of organisational influences and professional understandings of child participation in a selection of Family Relationship Centres across New South Wales’

I hereby wish to WITHDRAW my consent to participate in the research proposal described above and understand that such withdrawal WILL NOT jeopardise any treatment or my relationship with The University of New South Wales or Relationships Australia NSW.

..........................................................
..........................................................
Signature
Date
..........................................................

Please PRINT Name

The section for Revocation of Consent should be forwarded to:

Amelia Wheeler (Chief Investigator)

Please scan and email to: amelia.wheeler@gmail.com
## APPENDIX I: Activist ethical orientation by Centre location, organisational role and prior experience working with children

<table>
<thead>
<tr>
<th>Participant name (Activists)</th>
<th>Centre</th>
<th>Primary role / secondary role</th>
<th>Prior experience working with children</th>
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<tbody>
<tr>
<td>Dee</td>
<td>D</td>
<td>Manager / FDRP</td>
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<tr>
<td>Renata</td>
<td>D</td>
<td>FDRP / Child Consultant</td>
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<tr>
<td>Marnie</td>
<td>D</td>
<td>FDRP</td>
<td>N</td>
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<td>Sarah</td>
<td>D</td>
<td>FA</td>
<td>Y</td>
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<td>Eve</td>
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<td>Jenni</td>
<td>E</td>
<td>FDRP / Child Consultant</td>
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APPENDIX J: Pragmatic ethical orientation by Centre location, organisational role and prior experience working with children

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<tbody>
<tr>
<td>Felicia</td>
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<tr>
<td>Adrian</td>
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APPENDIX K: Sceptic ethical orientation by Centre location, organisational role and prior experience working with children

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<th>Prior work with children</th>
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<tr>
<td>Anna</td>
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<td>E</td>
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<td>FA (Senior)</td>
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<td>N</td>
</tr>
<tr>
<td>Gina</td>
<td>FA (Senior)</td>
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<td>Y</td>
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