

What children and young people think should happen when families separate

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Commissioner
Y for Children &
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We listen to the views of children and young people, collaborate with them and represent their diverse voices in the public arena with a special focus on those who struggle to have their voices heard.

Our advocacy is directed by the experiences and issues that children and young people talk about and have asked us to focus on.

Commissioner's forward



As the inaugural South Australian Commissioner for Children and Young People I did not think that issues like Family Law would be top of the agenda. This changed once I commenced my Listening Tour and stakeholder meetings. Children and young people raised issues of feeling isolated when their parents were breaking up and talked about the challenges they faced with living in two households.

I also received a number of concerns from worried parents, principals and families about children feeling powerless and not being heard in the Family Law process. So when the Australian Law Reform Commission (ALRC) announced the Review of the Family Law System it presented a good opportunity to talk to children about their Family Law experience and represent their unique views and solutions to decision makers.

However, after talking to children and young people (and some adults) I thought a simple submission was not enough. The depth of knowledge and wisdom that these children possessed warranted more. To do anything less would not do their thoughts, suggestions and opinions justice.

What is often forgotten when 'Parenting Orders' are implemented are the children themselves. It is their life that is affected the most. If the parents are not seeing eye-to-eye their focus can move away from the children towards an adversarial - win at all costs - approach. If the Family Law Act's ('the Act') main concern in respect to children is their 'best interests' then children should be at the forefront of the courts and parents minds. As they are not permitted to participate in many parts of the process, the focus on the child can be lost, and the parents' needs and demands take precedence. Often with devastating consequences as the media and research shows us time and time again.

This must be rectified. It is not impossible. Overseas jurisdictions are moving their focus back towards children having a greater say in the process, including Judges talking to children, judgements being written for children and children having the right to make an application to court. Children can also have an opportunity to feed back to the courts and other related bodies through youth advisory boards. None of these changes are big, but they are big enough to ensure children have more of a say in their life.

A handwritten signature in black ink, appearing to read 'Helen Connolly'.

Helen Connolly

Commissioner for Children and Young People

Introduction



The Australian Law Reform Commission's 'ALRC' Review of the Family Law System provided the SA Commissioner for Children and Young People 'Commissioner' an opportunity to carry out focused consultations with children and young people about the Family Law system. The Commissioner talked to children and young people who had experience with the system and some who had not. She also talked to parents and other stakeholders about their concerns in the Family Law process.

In 1990 Australia ratified the UN Convention on the Rights of the Child 'CRC' which gives rights to children, including rights to a home, a family, education as well as a right to participate in processes that affect their own life.

In relation to the Family Law process, children have a right under the CRC to:

- Form his or her own views and 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 (Article 12).
- Freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice (Article 13).

Unfortunately, children's right to participate in the Family Law system is often overlooked, for their perceived 'own good' to, 'not worry them'. However, this approach more often has a negative effect on children and young people.

The children and young people involved in these consultations were not asked about their personal experiences; instead they were given scenarios and questions. The aim was to ask children and young people how they want to be supported when their parents separate and how the system could ensure their voices are heard.

This report reflects what children said they would like from the time their parents separate to after the Family Law process officially concludes. This is supported by best practice case studies of how these steps could be achieved and recommendations to bring the focus onto children.

Executive summary



The children and young people who participated were thoughtful in their responses and suggestions. Those who had not been through the experience of parents separating chose to participate in the consultation also provided invaluable insights.

All children and young people clearly expressed the importance of children being told the truth, and having a voice when it comes to deciding where and when and with whom they want to live. When parents separate, often their needs and wants are prioritised over the children's. What the children are saying is often diluted through 'expert' reports and what they perceive is in the child's best interest. This is despite the Family Law Act stating that the child's best interest is the primary factor in parenting disputes.

Overall, the take home messages provided by children and young people were that they want:

1. More information and much sooner.
2. The opportunity to choose the extent to which they are involved in the process and the opportunity to attend court.
3. Access to clear and easily understandable information on the Family Law process and the adults involved in the process
4. People in the system to be kind, listen and believe what they say.
5. Someone who is there just for them, from the start.
6. Adults to recognise that siblings are not the same and might need different arrangements.
7. The opportunity to have decisions reviewed, to monitor outcomes when circumstances changed.



Children and Young People affected by separation in South Australia



The number and ages of children and young people in South Australia who are affected by parental separation and are in the Family Law system are not actually known. This is a serious concern as a court's primary consideration is the best interests of the child. The Australian Bureau of Statistics collects information on children and young people involved in divorce. That leaves a large cohort of children and young people unaccounted for - those children whose parents have never married, or are separated but not divorced.

Further, statistics from the Family Court in relation to Parenting Orders only summarise case outcomes (e.g. settled at mediation, judgement, etc.) and how long they go for. The Court does not count how many children are involved in each case, how old they are, whether they have seen a Family Consultant or Independent Children's Lawyer (ICL) or whether they have been accessing other services. The Commissioner for Children and Young People (CCYP) understands information on children and young people is not being collected at this time. The courts should be recording data in relation to children and young people so they are able to provide the adequate resources and supports for children and young people undergoing a Family Court process.



The sessions



Our Approach

The consultations undertaken were underpinned by a child-safe environments approach: to be respectful, safe, inclusive and engaging.

The consultations with children and young people are built on principles gathered from a range of theories and modalities, such as social group work, strengths-based approach and narrative techniques. At all times, the strategy is to build a safe, respectful environment that will build rapport and trust.

Methodology

We facilitated three consultation sessions with children and young people through host organisations. We also met with individual parents as a small group and a Principal of a primary school. There were 20 children and young people between the ages of seven and 22 years.

Participants were from diverse socio economic backgrounds and circumstances and included a mixed group of young people with and without a lived experience of the Family Law system.

The consultations with children and young people aimed to explore what they thought needed to change and what they would recommend to improve the process, professionals and the system. The sessions were designed to ensure the conversations were externally focussed, to ensure children were not sharing their personal experiences and to minimise any risk of distress.

The sessions were designed around an activity using scenarios – the system, processes and roles were broken down into four parts. Each scenario had an introductory sentence, examples and questions. Each session was adapted to suit the needs and ages of the group, to ensure they could make positive contributions and suggestions. We had four illustrations commissioned by a local artist that were used to facilitate the discussions. They are seen throughout this report.

Quotes of children and young people in this report are scribed verbatim, with any corrections in brackets.

When parents **separate**



What and when do children want to know?

According to the children and young people we consulted, they overwhelmingly want to be told the truth, and want to be told about the separation as soon as possible. In the majority of cases, they to be told by a parent. Some said they would want a close family member to tell them or someone they trust.

Children and young people also said they need to know that they are not the reason for the separation and that they are loved. Being told nothing is 'not okay'. When no-one tells them anything it can result in them blaming themselves over what has happened between their parents.

What children and young people say: What and when they want to know

"Whats going on what is happening"

"Kids need the truth"

"Clarity, truth, a small dosage of sugar coating, allow them to have a say and not be judged"

"Simply truths, safety and prioties (priorities), not be told if their (they're) blamed, not used as bargaining tool"

"Needing someone to talk to is important, to get things 'off their chest'"

Best Practice - Compulsory child-focussed programs for parents

At this stage, children wanted parents to get some information on what the children were experiencing and how they could best support them. Children and young people wanted parents to continue focussing on the needs of the children and what children are saying to them. Already a child's voice could be lost, sometimes with negative consequences – including disengagement from school, self-harm and any deterioration in mental health.

This is often a time of high emotion and at least one of the parents may want to change their life. What is often not considered is the fact that children may be quite happy with their life, their school, group of friends and extracurricular activities. However, their life can be turned upside down as a result of the separation. Especially if parents lose sight of children's needs.

Research shows¹ that parents who involve children in decisions of when and where they live results in happier children with strong relationships with both parents. Of course, this can only happen when there is no abuse within the relationship and parents prioritise children's needs.

¹ Parkinson, P., & Cashmore, J. (2008). The voice of a child in Family Law disputes. Sydney: Oxford University Press. Kaspiew, R., Carson, R., Moore, S., De Maio, J. A., Deblaquiere, J., & Horsfall, B. (2014). Independent Children's Lawyers Study: final report. Canberra: AGD. Retrieved from <www.ag.gov.au/Publications/Pages/IndependentChildrensLawyersStudy.aspx>.

Stakeholders have told our office that post-separation parenting programs², that help parents stay focused on their children after separation, should be made compulsory to all parents who make an application to the Family Court for Parenting Orders. Mediation is already compulsory, so this is just one more element that might ensure that parents work together to come up with a solution that works for everyone.

What do children need?

Someone to talk to

Children and young people overwhelmingly want someone they can trust to talk to as it can be a traumatic and upsetting time. Children and young people suggested a number of people that could help them at this time, including family, teachers, counsellors, peers, or support groups who have an understanding about the situation.

Access to information and support

Information about what would happen and any processes that they may be involved in was considered important and necessary. This information needs to be clear, simple, detailed and unbiased. It also has to be tailored to the age of the child. Older children made it clear that they did not want to be given information aimed at a five year old.

It is clear from those children who have experienced parental separation that they were not sure who they could talk to apart from family and friends. They were also unsure where they could go to find out more information.

There is information available, but it is piecemeal, inconsistent and hard to access. Adult stakeholders have told us that they have found it difficult to access information.

What children and young people say: Information and support

“Good people to provide support are those connected to the situation, but not closely connected – if family member does not take sides.”

“To get it of (off) your chest – family, nan, pop, my teacher, friends”,

“Peer support group”

“By someone who has had some similar experience”

“By a counsellor who is specifically trained”

“What’s going on now and the future.”

² See, for example, Post Separation Cooperative Parenting courses at Relationships Australia, Centacare, Anglicare, Uniting Communities and AC Care.

Best Practice: Some suggested access points for children could include:

- Schools and/or local youth organisations having information available through the principal, teacher, sports coach, youth leader or social worker.
- A dedicated phone line or online chat forum where children and young people can ask questions and receive advice anonymously. Similar to Kids Helpline.
- If the matter has to go through the formalised Family Law process that a child can choose to appoint an advocate at any time to support them.
- If the matter goes to court, communication is sent to children as well as parents about what is happening.

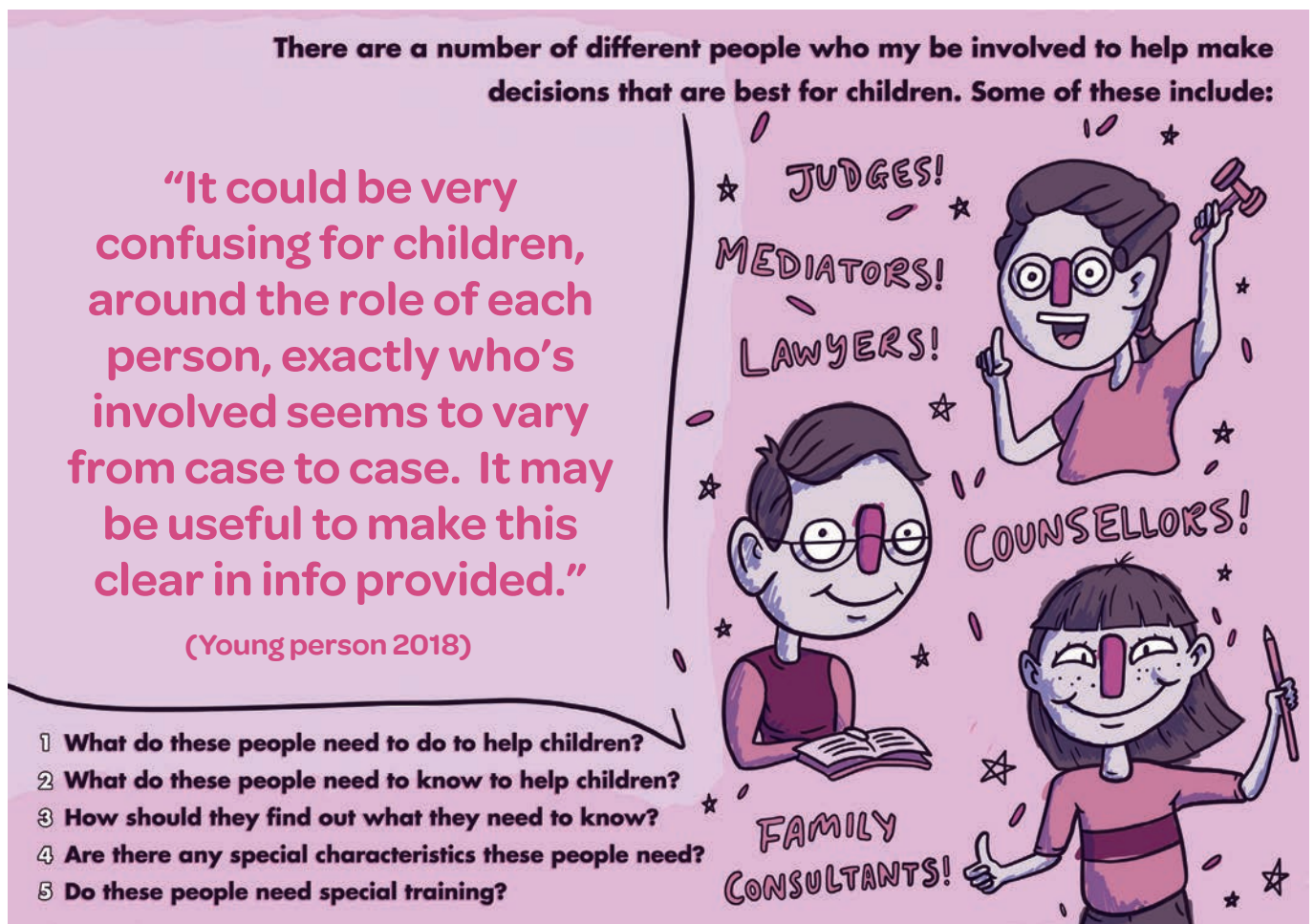


Illustration one - People in the Family Law process.

Best Practice: National Youth Advisory Service

This UK rights-based charity provides socio-legal support for vulnerable children and young people when they need it in many legal situations. Services it offers include:

- Supporting children and young people by giving them an advocate ensuring children and young people's rights are protected.
- Providing a person with an independent visitor. This is a volunteer who will spend time with a child or young person to build and develop trusting and positive relationships.
- Providing legal services for children and young people.

The charity also encourages children and young people to involve themselves in decisions that they make and allows them to take part in any projects the charity undertakes.

In Australia there are few advocacy and legal support specifically provided to children and young people, particularly in relation to Family Law. This needs to be addressed to ensure children and young people are given the legal advice and supports they require during this time.

What Children and Young people want adults to know

- We need to be told the truth and know we are still loved.
- We need to be asked how we feel and expect our parents to not get upset if they hear something they don't like.
- We need to remind both parents that they are the ones who have control over how happy we are during this time and they should be listening to us.
- Look for non court alternatives which include us in the decision making.
- Go to counselling if you need help.

How CCYP thinks the system could respond

- Provide a website or an app accessible offline to inform children and young people about separation, divorce and where they can go for support and help.
- Develop a service for children and young people - with specialists in Family Law and personal support for them to confidentially talk about their situation and receive support.

When parents can't agree and the formalised Family Law process starts

Children in the Family Law process

Although children are the experts in their own lives, their involvement in the Family Law process does not support this. This can leave children feeling confused and anxious about what is happening.

Once parents start formalised proceedings children speak about the uncertainty this creates and their fears about their lives being turned upside down. They raised concerns about being able to remain at the same school, stay in the family home, etc. Continuity and certainty is a priority for children at this time.

When talking to children and young people, they spoke about confusion with the formalised Family Law process and the part they play in it. Those that had been through this process said that there was no person they interacted with that explained to the process to them.

They know who the lawyers and Judges are, but are unclear about all the other people they met and their role in the process.



Illustration two 'What children want to know'

What children say about the adults in the Family Law process

Family Consultant

"A person who helps you through the rough times"

"Like a lawyer but doesn't help though"

"Not sure if children get to meet them. I haven't"

Counsellor

"Don't know if they were a councillor or a lawyer coz adults don't explain things very well."

"A family councillor"

"Not sure (who it was)"

"No, don't know (who they are)"

Judges

"They can change things a lot."

"Judges actually judge"

"Change the law"

Lawyer

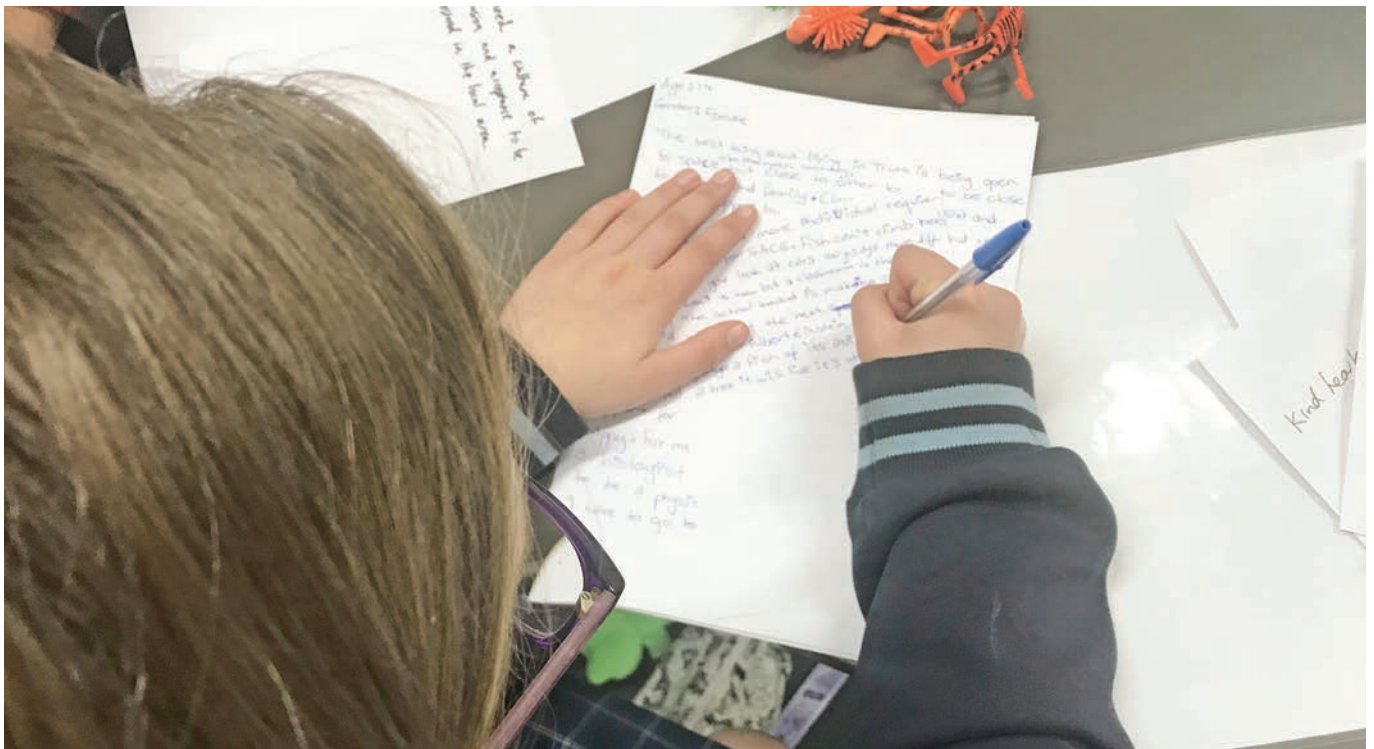
"They ask questions"

"They listen, sort of"

"They don't listen to kids"

"Need to listen to both sides, believability"

"Some don't listen to you and just listen to one side of the story."



What children want throughout the formalised Family Law process

What was loud and clear was the children we consulted wanted to engage more in the entire Family Law process so that they had a say in their own lives. In some countries children are able to become a party in the proceedings, communicate directly with the Judge and go to court. A more active role could be supported by a child advocate who speaks for and on behalf of the child.

With respect to keeping children away from proceedings so they are 'protected' from the arguments between parents; children and young people told us they know what parents are saying to the court, even when parents think they don't.

In these situations, children have said they need validation and to be believed, to have consistency and information, to feel safe and supported, to have some control over what is happening, to have a choice and to feel they have a voice in the Family Law process. The children and young people we spoke to said they felt disempowered, isolated and that no one was there just for them. Including them in the Family Law process could deliver a more empowering system than current arrangements.

What children and young people say: the Family Law process

"Children are still seen as possessions, even if not legally there is still a social stigma. They have opinions but they are seen as if they are a child they can't have an opinion. They should not be seen that way because they have opinions and emotions which are very real."

"When people can sort it out diplomatically, and calmly, they have the child's and parents best interests at heart, that's all dandy. It's when an agreement cannot be reached and best interest are no longer at heart, and it's just a competition someone who has no emotional attachment needs to step in a take charge."

Best Practice - Child Advocates

Child Advocates are increasingly being used in many different legal processes, especially in relation to criminal matters; these advocates guide and support children through the entire legal process. They assist all parties to get the best out of children. They provide a report so that questions can be presented in a way that children understand. They also help the child understand the process and be there in court if they are a witness. In South Australia for example, children provided with a child advocate (called a Witness Assistance Officer) going through the criminal law system have been as young as four years old.

This 'child advocate' is somewhere between the UK Family Court Advisers and Australian Independent Children's Lawyers. In the UK, the Family Court Advisers are specifically there to put 'the children's needs, wishes and feelings first, making sure that children's voices are heard at the heart of the Family Court setting³.' However, they are not an advocate for the child per se. Independent Children's Lawyers (ICLs) are similar, they may see the child, collect evidence and then present what they think is in the best interests of the child. They are not there as a support throughout the entire process.

³'About Cafcass', <https://www.cafcass.gov.uk/about-cafcass/> accessed 15 July 2018.

Children and Young people's thoughts on child advocates

Children and young people told us they need an advocate that could:

- Guide children through the Family Law process and be there to answer any questions they might have.
- Give information to children about the rights and services that could help them.
- Be someone children can talk to confidentially about their feelings and wishes.
- Communicate directly what children want to mediators, lawyers and/or the court in the mediation process.
- Provide recommendations to the court.
- Help guide the court/mediators if children want to be witnesses.

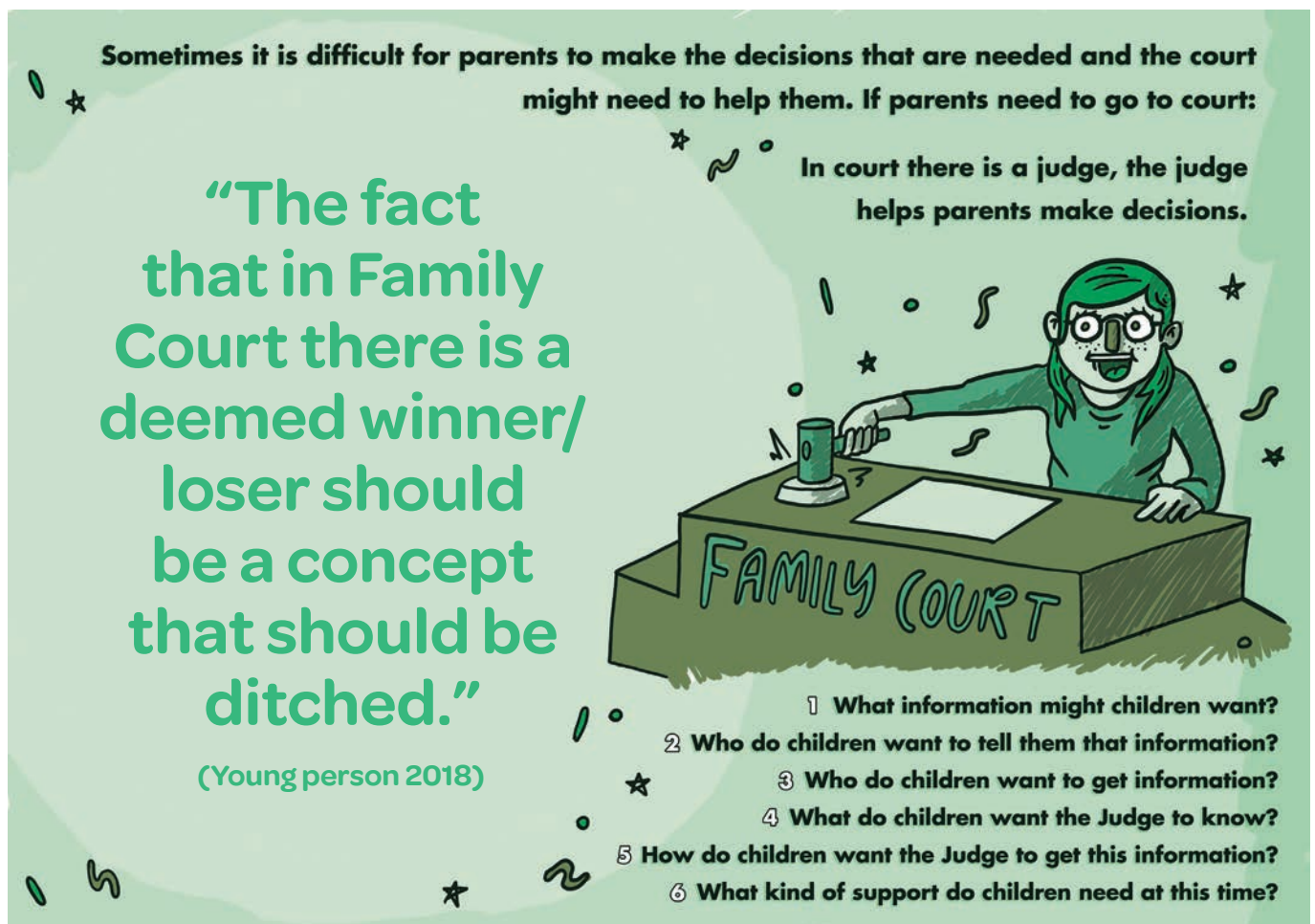


Illustration three: What happens if you have to go to court.

Children want advocates that:

- Like them.
- Listen to them.
- Believe them.

Children want advocates to be trained:

- To talk to children and relate to them, at all ages.
- To understand the emotional and mental capacity of the child and how they communicate.
- To detect any abuse.
- In trauma informed practice.
- Have a degree in social work/psychology and some understanding in the Family Law process.

Children's involvement in Mediation

Children and young people told us they want to be an active participants during the mediation stage. That mediation should not just be between parents; it should be between children and their parents. This is where a child's advocate could be useful as they could represent and support children in the process.

What children and young people say: Mediation

"Mediators: If more than one child likely to have different needs, if a mediator between the child and parent rather than between the parents."

"In mediation phase, if the mediator facilitates discussion between child and parent, again, is it each child or the children as a unit. The views an (and) opinions of children are often different, even in siblings there may be situations in that children don't want to be grouped together."

Best Practice - Child Inclusive Mediation

Research shows that where children are given a direct opportunity to be involved in child inclusive mediation it results in far more positive outcomes than child focused mediation alone (where no children are directly involved). Children and parents are more satisfied with outcomes and children often have closer relationships with both parents.

Some of the reasons for this include:

- Parents are given information about what was happening to their children and how they felt, which has a strong impact on their own behaviours and is seen as a 'wakeup call' for the parents.
- Perceived fairness and a level playing field for both of the child-inclusive parents who 'appear able to listen to views that sometimes did not support their own argument'.

- Stating the children's needs helped focus parents on the individual needs of the child, especially where there are multiple children⁴.
- An agreement made through child-inclusive mediation was more likely to maintain the same arrangement over time than those parents who went through child-focused mediation⁵.

How CCYP thinks the system could respond

- The Family Court provides for child inclusive mediation and should start using it more consistently and where it is appropriate. Further, they should collect data on the outcomes of this style of mediation and make available to the public.



Illustration four: What happens when parents separate.

⁴Children inclusions as a principal and evidence-based practice: Applications to Family Law services and related sectors, AFRC Issues No. 1- July 2007, <https://aifs.gov.au/cfca/publications/child-inclusion-principle-and-evidence-based-practic/section-2-child-inclusive-dispute> accessed 15 June 2018

⁵McIntosh J, Smyth B, Kelaher M, Wells Y and Long C, Post-separation parenting arrangements: Patterns and developmental outcomes: Studies of two risk groups, March 2011, <https://aifs.gov.au/publications/family-matters/issue-86/post-separation-parenting-arrangements#ftn2> accessed 15 June 2018

Going to court



Children have told us they want to have a choice about being an active participant in the court and to be able to make applications, even in difficult cases. The issues that go to trial are often the most difficult and where there is evidence of abuse by one parent (emotional, financial or physical), mental health issues, or a high level of conflict.

Even so children are saying that their ability to be involved should be assessed individually so they can be involved in the court process and be supported to be included. This could be done by a child advocate who could present to the court their communication needs and provide guidelines to get the best from the child during the process.

The Judge's role

Even if the child did not want to play an active part in the court process, they still said they wanted to know what is happening at trial, to talk to the Judge directly and have their opinion heard and respected.

Children want Judges to talk to them and ask what they are thinking and what they want in their lives. They also want Judges to look at the case from the children's perspective and how it is affecting them.

Although orders are written for parents, the children expressed that it is their lives that are affected and they don't feel they always work for them, but they comply often to keep one of the parents happy. Therefore, Judges should hear from children whether they are happy with the orders and if they can live by them.

Children and young people also wanted Judges to have training to talk to them. Judges in New Zealand and the UK are talking to children more frequently. In New Zealand, it is becoming the norm, not the exception.

What children and young people say – How can Judges help children and young people

"The child should be presented as a person with an equal stake in the outcome."

"Talk to the kids a [and] ask their advice. Talk face to face because you can see what the kids are getting put through."

"Need to change the law so children can only talk about their needs."

"To see the situation of the kids."

"Judges to talk face to face with kids."

"Kids should go to the Judge (so they) can hear kids own desition (decision)."

The lawyer's role

Children said they wanted lawyers to focus on what they are saying. A number of children said they felt they were not believed by the Independent Children's Lawyer (ICL), or Family Consultant.

Young people consulted, suggested that an ICL should speak to the child first, then talk to independent third parties and review any third party reports (police, health, etc.) and then read the evidence from the parents. This would assist to focus the issue back on the wellbeing of the child.

Most of the children we consulted did not see a lawyer or did not know whether they had a lawyer. This was even true in cases where the adults reported to us that their child had seen a lawyer. From this it appears that even if a child does see a lawyer they are unclear about who the lawyer is and what they do.

What children and young people say: What can lawyers do to help us

"Our lawyer (lawyer) did not believe (believe) me because they think me and mum aren't (aren't) telling the truth."

"The (They) don't listen. Listen to kids. Listen to all sides. I think they should care about kids (and) how they are getting in this position."

"Didn't believe us, talk to our Dad and said we were dirty."

"They don't talk mean to you"

"The lawyers (lawyers) should be focusing (focussing) on the kids(.) not so much on the adults because it's the adults that are fighting (fighting) not the kids and the kids are getting bossed around."

"Lawyers (look at best interest) should speak to the children independent not with the parent and not with either side of the firms to represent either of the parent".

"They need to be nice!"

What children and young people say – Ongoing training for professionals

"All need special training."

"Do training with kids."

What children and young people want adults to know

- Don't lose sight of us. This is when both parents start getting stuck in their stories and blaming the other, with us children being left in suspense and feeling like we don't have control of our own lives.
- Keep talking to us and ask us how we feel and tell us we are loved.
- Allow us to see someone if we want to.
- Allow us to bring our views to the table.

Support children and young people's active involvement in court processes through

- Formal feedback mechanisms for children
- Providing trained support people to guide children and young people throughout the process
- Give capacity for children and young people to initiate their own reviews of decisions made

Reform court processes to support direct communication between children and young people and the Judge.

Best Practice: The UK model and Cafcass as Family Advisers

In the UK, the government has formed the Children and Family Court Advisory and Support Service (Cafcass). This organisation has been created to ensure that the children's needs, wishes and feelings are put first. It's there to ensure that their voices are heard at the heart of the Family Court setting and those decisions are made in the children's best interests.

Cafcass is independent of the courts, social services, education and health authorities and will assist the court in providing the evidence to serve the children's best interests. Cafcass is only used in Family Law situations when parents can't agree and the matter is going before the court.

What is important in this model is that children and young people are given an opportunity to provide feedback in relation to their experience with Cafcass and complaints are acted upon. If there are any negative consequences due to Cafcass officer's recommendations then they should be informed and a review about how the officer got to their decision and any learnings that could come out of it.

In Australia, Family Consultants are appointed through the Family Court. Information about what they do is contained in the Family Court website, and unlike the Cafcass equivalent they are not necessarily child centred.

The Judgement and life after



Children want any decision made to be explained to them by one of their parents, early in any proceeding. If the matter goes to court then children and young people said that it would be more appropriate that they spoke to a professional, such as a lawyer or child advocate or someone similar.

They said they still want access to supports like counsellors and peer support groups if and when they need them. This could assist children and young people in any transitions and changes that occur after orders are finalised. Children said that just because a case is closed and an order is made it does not mean that all the problems in relation to the family disappear, therefore continued support is imperative for their physical and mental wellbeing.

What is important to children and young people was that they want to have the ability to have a decision reviewed when appropriate. This could be because the orders do not reflect reality, because the child is genuinely not happy with the outcome, the child's situation has changed or parents cannot agree with the change the child is asking for.

Evidence shows, that if the final orders arrangements are starkly different to current arrangements, there should be a transition process so that children and young people have time to get used to their new circumstances.

What children and young people say – after court

"After court need regular reviews"

"Child interest after a certain age (review order)"

"Orders should also be up for regular reviews, with options to propose, submit and make changes, so that orders reflect shifting circumstances of the children,"

Best Practice: Family Youth Justice Board – keeping the focus on children

One way to keep the focus on children is for the government to create a board under legislation, consisting of young people who have been through the Family Law process. These children and young people could review and implement improvements to the system that is in contact with children. These Boards are in the UK (in both Family Law and criminal law) and have ensured that the courts and supporting organisations become and remain child focussed.

The Family Youth Justice Board (FYJB) is a group of 50 children and young people aged between seven and 25 years old who have had direct experience with the family justice system. This board's work is to deliver improvement to the family justice system so that it provides the best result for children who come into contact with it.

In 2017, the FYJB did the following⁶:

- a. Reviewed eight courts and made recommendations on how to make the courts more child friendly
- b. Inspected 25 contact centres and made recommendations to make the places more child friendly.
- c. Were commissioned by the Judicial College to develop a non-online learning module around the child's experience of the family justice system and what they need to do to improve this.
- d. Developed the Top 10 tips aimed at professionals working with children and young people in the Family Law over a number of areas.
- e. Worked with organisations to better explain to children and young people the services these organisations provide.
- f. Developed a national charter that sets out the aspirations that children and young people want from family justice services.

What children and young people want adults to know

- Let us get back to being children, without guilt and the feeling we have to make parents happy.
- Start refocussing back on us and support our relationships.
- Give us the freedom to be able to seek support, get on with our lives, see friends, etc.

How CCYP thinks the system could respond

- Formally investigate the option of an advisory structure of young people to provide ongoing advice on the Family Court system.

⁶Family Justice Young People's Board, Annual Review 2017.

Reflections from **adult** stakeholders



Parents we have spoken to - both during the Family Law process and through general inquiries to our office - consistently raised questions about the independence of the adult stakeholders in this process, mostly in relation to Judges, Independent Children's Lawyers (ICLs) and Family Consultants. Parents were concerned they favoured one parent over the other, rather than focussing on the child and have concerns regarding protracted hearings that hurt the child even further.

One concern is that the ICLs selection is dependent on each state and is not legislated. There are concerns about the level of experience with the ICL's and questions regarding their ongoing professional training. In addition to overall principles, it would be beneficial if the training curriculum was open to public review and input.

Non-legal stakeholders we talked to held concerns about how children and families were being treated in the Family Court. We heard many times about children's interests not being placed central to the process and of children not having their wishes represented. There are also concerns that third parties are not asked about the wishes, health and wellbeing of these children outside of the family. Often teachers can see how children are behaving and coping when arriving back at school after a weekend with one of the parents and this would be invaluable information for the system.

Many stakeholders also believe that the legislation should have a mechanism so the children or another concerned party could make an application to the court when parties are concerned or not happy with the current orders.

Recommendations from Stakeholders

- Give children and young people the right to make an application to the court.
- Provide opportunities for third-parties who see the children day-to-day (like teachers) to provide information on behalf of children.
- Support Family Consultants and ICLs to provide age appropriate information to children on their role.

Conclusion



The Convention on the Rights of the Child binds adults and government to protect the rights of children, gives children the right to voice their opinions on issues that affect them, and for adults to listen.

Implementing this participation of children and young people in decisions about their lives, involves seeing children and young people as capable citizens who are able to meaningfully contribute to the decisions that impact on them.

Children and young people have insights and perspectives about their lives; we need these perspectives to create laws, policies and practices for children and young people that will positively influence their wellbeing.

This report demonstrates that children and young people have sound and practical recommendations to place children 'front and centre' in the Family Law process.

We are submitting this report to the ALRC and will circulate it to agencies and organisations involved in the Family Law System across Australia. This is a contribution to the body of knowledge that people draw on when thinking about children in the Family Law System, we hope the children and young people's recommendations will be included in practice.



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- City of Mount Gambier
- Millicent North Primary School

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Aboriginal Legal Rights Movement

Anglican Community Care

Children and Law Committee (Law Society of South Australia)

Department of Child Protection

Junction Australia

Law Society of South Australia

Legal Services Commission of South Australia

Relationships Australia South Australia

South Australian Family Law Pathways Network

University of South Australia

Women's Legal Service of South Australia



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