

Child inclusion as a principle and as evidence-based practice: Applications to family law services and related sectors

Dr Jennifer McIntosh

The growth of child-inclusive family law dispute resolution in Australia represents a response to empirical and clinical evidence about its efficacy in the treatment of post-separation parental conflict. At the level of social justice, the approach represents a strategic extension of the United Nations Convention on the Rights of the Child, giving children the right to present their wishes in family law proceedings about them, and to have those experiences thoughtfully considered by their parents and the dispute resolution practitioners involved. The child-inclusive genre embraces the psychology of family transition and the paramount need to assist warring parents to refocus on and plan for the needs of their children post-separation. The work combines developmental consultation within a therapeutic mediation process, occurring either within court or community-based services. It is a process that ultimately seeks to refocus on the best interests of the child beyond legislative mantra, through higher levels of engagement of their parents' capacity to think and plan more cooperatively about them.

An evidence base is growing around the potential benefits to many separated parents of engaging in a focused dispute resolution forum that assists them to hear and consider their children's experiences and needs within a brief, therapeutic mediation process. Two successful applications of the child-inclusive model are outlined in this paper, with their data confirming the potential of "children's voices" to realign parental states of mind and elicit higher levels of cooperation and shared decision-making than were previously practised. Importantly, McIntosh and Long (2006) have found evidence that improvement in mutual regard of the parties for each other as parents and an increased emotional availability of parents to their children often resulted from the child inclusive intervention, with important flow-on effects for the emotional wellbeing of their children up to one year after intervention.

Implications for the wider application of this work are discussed.



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Section 1: The mandate for child inclusion

A fundamental shift has occurred in Australian dispute resolution practices, away from negotiation models founded in neutrality and empowerment and towards models that actively seek to facilitate the often unspoken developmental agendas of the children affected by the dispute. Instructed by the UN Convention on the Rights of the Child (“Children’s Convention”) and buoyed by evidence of the impacts of post-separation conflict on children, an ethical mandate emerged for dispute resolution services to promote the psychological adjustment of separated families, in addition to facilitating the legal resolution of their parenting disputes (Moloney & McIntosh, 2004).

Article 12 of the Children’s Convention has been a driving force behind a move towards more thoughtful and thorough representation of children in legal matters that affect them. Article 12 states:

State parties 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, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law.

An early dominant discourse in Australia unfolded, around the responsibilities of “hearing children”, and listening to “the voices of children”, which was of interest in a number of ways. It underscored the equity and respect with which children would now be regarded in this field. Yet, on another level, the language belied an element of naivety about “listening to children”, and the complex nature of the work it entailed. In the ensuing years, policy and practice moved beyond the position that “we will listen to children’s voices because it is their right to be heard and, therefore, we should”, to a more nuanced position, formed on a meeting ground between psychology, human rights and family law. This is a position characterised by a different emphasis, along lines such as these:

We enable consenting children to share their experiences of family separation, and for this to be sensitively considered with their parents, such that both the child’s natural expressions and their often unspoken developmental

agenda may be better understood and responded to within the context of their familial attachments and within the context of the family law dispute that surrounds them.

In timely fashion, research fed a deepening psycho-legal collaboration with evidence about divorce impacts and about mitigating factors for child wellbeing. The field acknowledged the normative nature of conflict and emotional distress in post-divorce parenting (King & Heard, 1999), but took to heart the additional layer of risk posed for children embroiled in high-conflict disputes (McIntosh, 2003a). So began a focus on persistent conflict between spouses, both former and current, which so pervasively undermines the quality of parenting and parents' affective or emotional responses to children (Fincham, Grych & Osborne, 1994; Krishnakumar & Beuhler, 2000). A spillover of negative affect between parent and child was identified (Kerig, 2001), increasing the likelihood of harsh styles of discipline and negative parenting behaviours associated with several child outcomes, including poorer social awareness, poor self-awareness and social withdrawal (Kline, Johnston, & Tschann, 1991; Harrist & Ainslie, 1998). While policies and practices focused on fathers and the importance of paternal involvement, McIntosh and Long (2006) added evidence of the crucial nature of maternal emotional availability to children's outcomes in divorce.



In timely fashion, research fed a deepening psycho-legal collaboration with evidence about divorce impacts and about mitigating factors for child wellbeing.

With these warnings came epidemiological data indicating that, in Australia, dependent children of divorced parents were twice as likely (25% versus 12%) as children from never-separated families to develop mental health difficulties in childhood (manifested in behavioural and emotional disturbances) (Sawyer et al., 2000). Early figures indicate that up to 40% of children involved in Family Court of Australia matters develop substantial mental health symptoms during the course of their childhood (McIntosh, 2006). Such findings reflect multiple strains inherent in this population of separating parents, including mental health issues together with the stresses of protracted litigation (McIntosh, 2006).

On this empirical base, the active representation of children's psychological needs within family law matters has taken its position as a public health imperative. The combined influence of the Children's Convention and indications from empirical research on divorce impacts opened for further review the core responsibilities of the family law field, resulting in a system prepared to move beyond its legal legacy, and to adopt an ethical mandate to influence the psychology of family restructure (Moloney & McIntosh, 2004). This evolution in turn required better synthesis of legal and psychological knowledge bases (Lamb, 2006) and, in significant ways, this is being realised in Australia.

The importance of child-inclusive practice is increasingly seen across the echelons of family law dispute resolution, from the Child Support Agency to the mediation consulting room. Changes on the frontline are notable; newest to the field, the Family Relationship Centres aim for early education and intervention with parents, promoting developmental sensitivity in the outcomes of divorce mediation and aiming to shorten the potentially hazardous journey of children going through conflicted family separations. These new services still require significant and rigorous evaluation, but their genesis in empirical research and social justice principles has created a solid conceptual beginning. Telephone services for separating parents, such as Mensline Australia and the Family Relationships Advice Line, now undertake to consider the child as a hidden client and, in their conversations with aggrieved parents, the telephone counsellors support parents to consider their child's experience of the conflict, often creating within the parent the motivation to better manage their dispute. At the highest end of the conflict spectrum, the Family Court of Australia has re-created much of its process, seeking to contain the psychological burden of an adversarial process for the children of parents already in bitter emotional dispute (McIntosh, 2006; McIntosh & Long 2006).

Research foundations for child inclusion

Beyond the reasons for "hearing children" and, moreover, enabling parents to hear their children, the clinical aims of child inclusion have also emerged from an evidence base about the predictors of children's adjustment to family trauma.

The role of parenting style and emotional responsiveness

The research literature suggests that two properties of parental presence are important to children's capacities to manage parental conflict and transition. At the psychological level, parental attunement is a concept upheld across the attachment and divorce literature as the cornerstone of a child's security, in the face of all manner of trauma. At the behavioural level, sensitivity of parental response is the manifest expression of parent's attunement to their children's needs and experiences.

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Parental attunement or, more specifically, parental reflective function, refers to a parent's capacity to take their child's perspective. Parental reflective function is a crucial human capacity that is intrinsic to the regulation of affect and to productive social relationships. It is the clarity and accuracy of the parent's reflection on his or her own internal emotional states and ability to differentiate and process the child's internal states that lead to security for the child in his or her attachment relationships and sense of self (Slade, 2005).

"Secure base parents" refers to parents who, despite their own current experiences, have the capacity to experience, hold and regulate emotion, for both themselves and their children. Their children need make only minor adaptations to their own internal experiences. These children do not have to modify what they feel in order for the parent to better cope (McIntosh, 2005). As Marvin, Cooper, Hoffman, and Powell (2002) describe, major and ongoing derailments of parental reflection and sensitive response to children are powerfully disruptive to a child's development.

Evidence-based targets of a child-inclusive model

The child-inclusive interventions described in this paper are designed to target known risk and mitigating factors in children's wellbeing, in pre- and post-separation parental conflict:

1. the risks inherent in divorce itself (Amato, 2006);
2. the compounding nature of interparental conflict surrounding separation (Cummings & Davies, 2002; Kelly & Emery, 2003);
3. parental capacity for attunement to the child, and restored emotional availability of the parent to the child (Buchanan, Maccoby, & Dornbusch, 1996; Cheng, Dunn, & O'Connor, 2006; Grych, Seid, & Fincham, 1992; Katz & Gottman, 1997);
4. quality of the parental alliance (Abidin & Brunner, 1995; McIntosh & Long, 2006);
5. parental acceptance and consistency of discipline (Wolchik, Wilcox, Tein, & Sandler, 2000);
6. an emotionally available relationship with one and preferably two parents (Buchanan & Heiges, 2001);
7. parental warmth, scaffolding and praise, with low levels of derogatory comments about the other parent (Emery, 1999; Katz & Gottman, 1997); and
8. increased father involvement whenever appropriate for children (Amato & Rezac, 1994; McIntosh & Long, 2006).

A wide body of divorce education literature also underpins this model, focusing on the impact of core parent education strategies that are informative and therapeutic and tailored to the unique experience of each family (Emery, 2001; Johnston, 1998; McIntosh, 2006; McIntosh & Deacon-Wood, 2003).

Section 2: Child-inclusive dispute resolution: An evidence-based practice model


This section describes the clinical model of child-inclusive mediation that has been systematically trialed in multiple settings, as described in the research chapter later in the paper. It refers to points of difference with alternate models, and gives the reader a working knowledge of the core processes involved for parents and children in this way of working.

In Australia, we have come to distinguish two main forms of child-responsive approaches: “child-focused” and “child-inclusive” practices. In 2003, McIntosh (2003c) suggested the following distinctions and definitions to the Family Law Pathways Forum:

Child-focused practices: Finding the child’s voice in the absence of the child

The aims of child-focused dispute resolution are to:

- create an environment that supports disputing parents in actively considering the unique needs of each of their children;
- facilitate a parenting agreement that preserves significant relationships and supports children’s psychological adjustment to the separation, including recovery from parental acrimony and protection from further conflict;
- support parents to leave the dispute resolution forum on higher rather than diminished ground with respect to their post-separation parenting; and
- ensure that the ongoing mediation/litigation process and the agreements or decisions reached reflect the basic psycho-developmental needs of each child, to the extent that they can be known without the involvement of the children.



In Australia, we have come to distinguish two main forms of child-responsive approaches: “child-focused” and “child-inclusive” practices.

This process of child-focused dispute resolution has been described and demonstrated by Moloney and McIntosh (2006) on the DVD, *Child focused dialogues*, and accompanying handbook.

Child-inclusive practice in dispute resolution: Finding the child’s voice in the presence of the child

Child-inclusive practices have been systematically introduced into the community mediation field in Australia over the last ten years and have been substantially developed and researched in that time. The model of child-inclusive practice described in this paper shares the same goals as those outlined under child-focused practices, and crucially also includes:

- consulting with children in a supportive, developmentally appropriate manner about their experiences of the family separation and dispute;
- ensuring that the style of consultation avoids and removes any burden of decision-making from the child;
- understanding and formulating their child’s core experience within a developmental framework;
- validating children’s experiences and providing basic information that may assist their present and future coping;
- forming a strategic therapeutic loop back to the child’s parents by considering with them the essence of their child’s experience in a manner that supports them to hear and reflect upon their child’s needs; and
- ensuring that the ongoing mediation/litigation process and the agreements or decisions reached reflect at core the psycho-developmental needs of each child.

Influenced by a number of disciplines and paradigms, there is not one readily transferable method that can be identified as “child-inclusive practice”, nor a single language from which to borrow. The child-inclusive method as developed and researched by the author provides the focus for this paper. It is best described as a specialist therapeutic mediation model, anchored clinically within frameworks of attachment and developmental theory. Its primary aim is to assist parents to re-establish or consolidate a secure emotional base for their children after separation. The approach is organised around a careful evaluation of parents’ suitability for the work, a screening assessment of the children by an independent specialist, followed by a dialogue between parents, child specialist and mediator about the unique developmental needs and psycho-emotional adjustment of each child within the family. The mediation then proceeds on the basis of this feedback.

[The] primary aim [of the child-inclusive method] is to assist parents to re-establish or consolidate a secure emotional base for their children after separation. It is best described as a specialist therapeutic mediation model.

This framework is equally applicable to marital counselling contexts, when conflict is a key presenting issue. Parents may not have physically separated, but their discord can make its presence felt in the lives of their children. While the application to marital counselling has not been empirically researched, clinical and anecdotal experience suggests that the guidelines described here in relation to a divorce mediation process would provide a good structure for a marital counselling process. The same cautions apply to screening and confidentiality as are described below.

Stepping through the child-inclusive model

The summary provided below of the core clinical processes gives a flavour of the approach, but is not intended to substitute for the specialist training and supervision that this practice requires (see Section 4).

Child-inclusive dispute resolution involves two professional roles: mediator(s), who conduct a formal negotiation of the dispute with parents, and a child consultant, who meets with the children and provides parents and mediators with feedback. Particularly in cases of significant conflict or complexity, and when neutrality appears important to good outcomes, it is not advisable for one person to try to accomplish both roles.

Intake

Parents attend individual intake sessions to ascertain their eligibility. The parameters of suitability for child-inclusive mediation have been tested in a longitudinal study (reported in detail in chapter 4 of McIntosh and Long, 2006), and can be defined as:

1. *Parents are separated or are considering separation.* They may have been married or de facto, or may not have been in a co-habiting relationship.
2. *Their dispute includes child-related matters.* They may also present with disputes around property and assets, which are best dealt with subsequent to the negotiation of parenting arrangements (research shows that successful parenting discussions often expedite the financial settlement process (McIntosh, 2000)).
3. *At least one child implicated in the parenting dispute is of school age.* The model can be applied to pre-schoolers, but only by developmentally trained mental health specialists. This work often takes the form of developmental consultation with parents (discussing with them their child's developmental stages, needs and responses within the context of their own family), rather than being centred on the sharing of the child's own story.
4. *Both parents demonstrate some intent to better manage or resolve their dispute.*
5. *Adequate ego maturity of both parents.* Our research has shown this approach to be contraindicated for parents engaged in high levels of conflict who also have marked character disturbance such that their ability and intent to focus on the needs of their children or give due consideration to the experience of their former partner are seriously in question (see McIntosh & Long, 2006, for details).
6. *In the absence of interpreters as needed, parents speak/read English at a Year 7 level or above.* Our research indicated good applicability for this work across the mainstream cultures represented in the sample, although the sample was largely second generation, and was not large enough to test across a greater diversity.
7. *Consent of both parents and children is required for children's participation in a mediation context.*
8. *Children are likely to benefit in their own right from discussing their experience of the separation,* and the process does not unduly replicate other recent professional involvement with the children (e.g., assessment for court-reporting purposes).
9. *Voluntary and mandated cases are applicable.*
10. *A broad range of conflict severity can be tackled in this approach.* However, screening of family violence issues must be carried out, precluding parents who remain actively intimidating and threatening, and giving careful consideration to the psychological safety of

each parent. Shuttle sessions can safely be conducted where parents are not able to be in the same room at the same time.

- 11.** *Mental illness, including reactive depression, if present, is experienced as well managed by both parents.* Our research demonstrated the need for careful screening of mental health issues, particularly early phases of untreated illness (see McIntosh & Long, 2006, for details), and showed undiagnosed and poorly managed mental illness to be contra-indicated for this brief intervention; clearly more intensive services are needed in these cases.

The offer of a child-inclusive approach is not made until a careful screening of the above factors has occurred. It is preferable to see parents in a joint session before interviewing the child, to review the purposes and boundaries of the process, and to assess their shared capacity to participate in the spirit required. Parents can, at that session, be guided in how to discuss the interview with the child.

Parents are introduced to parent education resources at this point, particularly the booklet *Because it's for the kids* (McIntosh, 2005), a cooperative parenting resource that includes valuable material to support optimal child-inclusive outcomes in the mediation.

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Developmental history of the child

The process of understanding the meanings of children's material from their assessment necessarily occurs in a developmental context. A brief history is needed from each parent about the child, ascertaining the caregiving and attachment history with each parent, reactions to parental conflict over time and to the separation, their peer relationships and their school performance. They also need to be screened for developmental traumas or other vulnerabilities that may affect the child's current adjustment to the separation, their relationships with each parent and their needs into the future. This history is best taken by the consultant who will interview the children and combined with the opportunity to meet and speak with each parent prior to interviewing their child. If this is not possible, developmental histories are taken by the mediator and conveyed to the child consultant.

Children's assessment

School-aged children attend at least one separate interview with a specially trained child consultant. A well-equipped children's play interview room is needed, with standard play therapy toys, drawing materials, and low and high chairs for all ages. Children with their siblings are brought (usually) by the agreed parent. They are encouraged gently to separate from their parent and come to the interview on their own. Siblings are first seen together, as well as being seen individually. One session will suffice for screening purposes, but more sessions are needed for comprehensive assessments or for difficult presentations.

The interview involves a careful and warm explanation of the process and forging an understanding with the child about confidentiality and safety. The interview proceeds in a focused manner, concentrating on the separation and conflict issues that are implicated in the parents' dispute. Some sections of the interview take the form of discussion, some of play and storytelling and, for other sections, pencil and paper tasks can be useful. Older children are usually happier to simply talk.

The child consultation represents a brief diagnostic interview of the child's capacity to adjust to parental separation and to enjoy an ongoing uncompromised relationship with each parent. Central to this task is the determination of the following questions:

- 1.** What is the child's current attachment security with each parent? How does the child experience the caregiving function and capacity of each parent, and how does this resonate with their developmental history?
- 2.** What role may previous separations or traumas have had to play in their current experience of their parents?
- 3.** What self and other attributions do they make around the origins of their parents' separation and conflict?
- 4.** What are the sources of strain and developmental stress for this child?

5. What systemic and internal resources does the child bring to their situation?
6. What do the child's preferences around living and visiting arrangements reflect about his/her current adjustment and the parental capacity to support the child?
7. What developmental needs of the child need to be prioritised within the dispute resolution outcomes?

Some of the areas covered and tools used in the research described in chapter 4 of McIntosh and Long (2006) are also appropriate for clinical use, adapting and blending them to the unique context of each interview:

- Children's understanding of their parents' separation and conflict:
 - family drawings and discussion;
 - Children's Perception of Inter-Parental Conflict Scale (Grych et al., 1992);
 - Security in the Interparental Subsystem scales (Davies, Forman, Rasi, & Stevens, 2002); and
 - Caught in the Middle Scale (Buchanan et al., 1991);
- Children's experience of the parent-child relationship:
 - Kvebaek Family Sculpture Technique (KFST; Cromwell, Fournier & Kvebaek, 1980);
 - Child-Parent Relationship Scale (McIntosh, 2003b);
 - clinical use of attachment story stems and interview extracts;
- How does the child see her/himself within the conflict?
 - card-based tools, such as *The Bears* (St Luke's Innovative Resources, 1992); and
 - Separation Story Stems (McIntosh, 2003d).

The interview covers the child's feelings about the current living and visiting arrangements and their hopes for the future, without placing them in a position of having to say or decide what they want.

The interview covers the child's feelings about the current living and visiting arrangements and their hopes for the future, without placing them in a position of having to say or decide what they want. It is a highly skilled interview that needs to be paced well for each age and situation and in which signs of trauma are carefully monitored.

Feedback to parents is discussed with each child, including agreement about any content that they are reticent to have shared with their parents. Care is taken not to promise any particular

outcome to the child, but rather to ensure them that everything possible will be done to help their parents better understand their children's experiences and resolve their conflict.

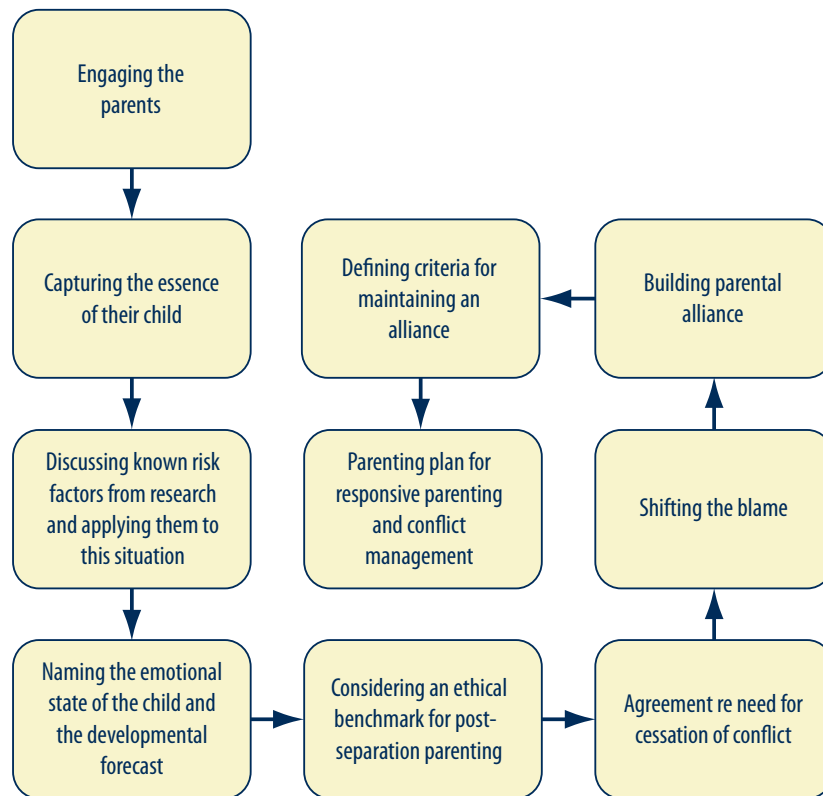
Feedback session(s)

The child consultant discusses feedback from the children's session with parents at their next mediation session. This takes the form of a highly skilled conversation with parents about their children's responses and needs in light of the separation, where the child consultant functions as both an ally for the children and a support for the parents' capacity to reflect sensitively on the needs of their children. The mediator(s) and child consultant assist the parents to develop a clear view of the children's needs in light of the separation and conflict. As appropriate, the consultant may stay on for the remainder of this mediation session, and into further sessions to support thought and decision-making about the children.

Hewlett (2007) described the child consultant's work in a feedback process to a high-conflict family based around several stages, which have been adapted and shown in Figure 1.

In reality, the process is iterative and must be paced according to the capacities of the parents, never exceeding their ability to digest and think about the meanings of the material being presented. With complex cases, feedback sessions need to merge into further therapeutic discussion. Feedback may go beyond one session when there are multiple children with varying needs or when the capacities of one or more parent require it. It can be enough for the child consultant to provide a comprehensive account of the children's current experience, to consider the core issues of the dispute from their perspective, and essentially help to re-craft the mediation agenda in a developmental light. In such a brief and focused session, the quality of interplay between mediator and child consultant is, of course, germane to good outcomes. A skilled mediator will facilitate assimilation of information by each parent, and will build with them a child-focused dialogue that begins to transcend polarised views and agendas. It is beyond the capacity

Figure 1: The flow of a typical feedback session to parents (adapted from Hewlett, 2007)



of this paper to describe the clinical process involved, but the reader is directed to case studies such as Grimes and McIntosh (2004) and Hewlett (2007) for further details.

The child-inclusive process of intake, child interview and feedback is a kernel from which the work continues to grow. To capitalise on the movements that can occur in this brief but powerful piece of work, follow-up sessions for parents are often important, where parents continue to work with the booklet *Because it's for the kids* (McIntosh, 2005). Some parents benefit from therapeutic exploration of unresolved separation issues and, in some settings, may require referral on for this. Children may be offered a follow-up session with the child consultant at the conclusion of the mediation, in order to share outcomes and messages from their parents.

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In addition to the child consultant, mediation could be conducted by a solo worker or by co-mediators.

Other models of child-inclusive dispute resolution in Australia

Anecdotally, other interpretations of this core model are evident in practices across Australia, although none have been systematically described in the published literature, nor are those applications yet underpinned by empirical evidence.

Some organisations have experimented with the roles of mediator and child consultant being conducted by the same social science expert, in lower-conflict cases. Some have experimented with having the child present in the feedback session, or having parents present to witness the child's interview through a one-way screen. Both of these latter applications raise strong concerns in any kind of complex or high-conflict presentation, and both, in the view of this author, place children in positions that carry risk of exposure to further conflict and pressure, and the burden of de facto decision-making.

Wider applications of the child-inclusive model

Beyond family law dispute resolution settings, the child-inclusive approach has potential for application to a number of areas. Some are detailed below:

Marital and pre-separation counselling

Applied in this context, the child-inclusive approach may play a preventative role in supporting parents early in their conflict to remain attuned to the experiences of their children and to weigh these together with their own needs and responses to estrangement and discord within the adult relationship. In some cases, this kind of process may motivate parents to continue working at their relationship. In others, it can help them toward a more mindful separation process than may have otherwise occurred. Preventing triangulation of children within parental conflict, and equipping parents to approach a separation or reconciliation process with the added clarity of their children's views and needs would seem important targets for pre-separation child-inclusive work.

The tensions in this work are similar to those described in the post-separation family law model. The process remains one of gentle enquiry, not placing children in the position of knowing more than they should (e.g., "Did you know that Mum and Dad are thinking of separating?"), or of making decisions about their parents' dispute. Unlike family law matters, many children in this field will not be aware that their parents are in conflict or considering divorce, and the consultation process must respect this, erring toward a posture that aims to let all family members safely review and share their current happiness and concerns about the family. Skilled family therapists frequently enable children to have these conversations with their parents. Independent children's interviews and separate feedback sessions can provide an important front end to that work. This work can also provide an effective screen, picking up children who have been exposed to high levels of pre-separation conflict and referring them on, where needed, for treatment.

Disability and adult mental health services

Children with a parent who is disabled by particular physical or psychiatric conditions carry a unique emotional load. Degenerative, chronic or rapidly progressing illnesses that compromise parents' capacity to care for their child are of particular concern.

Children with a parent who is disabled by particular physical or psychiatric conditions carry a unique emotional load. Degenerative, chronic or rapidly progressing illnesses that compromise parents' capacity to care for their child are of particular concern. In these areas of family support, there are frequently situations where knowledge of the children's coping responses would benefit treatment and case management plans. The child-inclusive process described in this paper can be applied to this area, with feedback given to parents and also to professionals assisting the

parent. The screening function of this model is again beneficial in detecting children who may need additional supports in their own right.

Foster care and out-of-home care

What of children whose attachment relationships with their parents have been disturbed or lost and whose care is determined by people and professional bodies who act *in loco parentis*? Beyond the forensic interview process associated with child protection matters, case plans and treatment strategies for fostered children may frequently benefit from greater insight into the lived experiences of the fostered child. For such a disempowered group of children, to be given safe passage to share their experiences, fears and hopes with those who care for and plan for them would seem a particularly important enactment of the Children's Convention.

Section 3: Empirical support for child-inclusive dispute resolution

A small pilot study on child-inclusive mediation showed promising trends for promoting greater understanding by parents of their children's experiences of their conflict (McIntosh, 2000), but beyond this there has, until recently, been no empirical evidence to distinguish the impacts of various dispute resolution processes on the parental state of mind or on children's mental health outcomes. This section summarises findings from two empirical studies of the outcomes for parents and children associated with a child-inclusive dispute resolution process. Part 1

summarises findings from a prospective study that compared long-term outcomes for two groups of separated families who took part in two different interventions in community settings: child-focused and child-inclusive mediations (McIntosh & Long, 2006). Part 2 summarises findings from a recent study of a child-inclusive intervention within the Family Court of Australia (McIntosh & Long, 2006). Implications from these studies are discussed in the final section of this paper.

Part 1: Children beyond dispute: A prospective study of outcomes from child focused and child inclusive dispute resolution¹

This study compared outcomes over one year for two groups of separated parents who attended mediation over parenting disputes. These parents engaged either in a child-focused intervention or a child-inclusive intervention at one of three Relationships Australia services (Canberra, Melbourne and Adelaide). This part briefly summarises the way in which the study was conducted and its core outcomes (see McIntosh and Long (2006) for full details of the research, including technical information).

Two hundred and seventy-five parents took part in the study (142 families). They reported on 364 children, and 193 of those children, aged 5–16 years, also participated directly in the research. Families were allocated to treatment groups depending on which month they entered the service and, from that point, indicated whether they were willing to participate in the research. No significant demographic differences were found between consenting families in the two treatment groups. There was a good retention rate over the year of 75% for the children and 83% for parents.

The child-focused intervention prioritised the psychological and relational elements of parents' separation, and making parenting arrangements that would best support the developmental needs of the children. Their children were not seen for the purposes of the mediation. The average length of time spent with both parents in this intervention, including intake, was 5.1 hours.

The child-focused intervention prioritised the psychological and relational elements of parents' separation, and making parenting arrangements that would best support the developmental needs of the children.

The child-inclusive intervention shared the same intent and approach, but also involved a brief direct assessment of children's experiences of the separation and of their relationships with each parent. The children's material was carefully formulated and considered with parents, and core themes incorporated into their negotiations. The average duration of this intervention with parents, including intake and feedback of the children's material, was 6.2 hours, plus a separate 1.5 hours with children.

Extensive repeated measures were collected from parents and children prior to mediation commencing, and then again 3 and 12 months after the conclusion of mediation. Outcomes monitored in this study included changes in:

- post-separation parental alliance;
- conflict management;
- parent–child relationships;
- nature of and management of living arrangements;²
- children's wellbeing and adjustment;
- children's self-representations of parental conflict; and
- children's perception of parental availability and alliance.

Outcomes that were common to both groups

The baseline data showed clearly that entry into mediation was a point of high risk for both groups of families. Mothers and fathers reported high to very high current acrimony with their former partner and a low rate of resolution of disputes. Their children reported still higher rates of conflict between parents. Of concern was that, on parent report, one-third of children aged 5 to 16 were in the clinical range of psychological symptoms at the time of intake.

1 This study was funded by the Australian Government Attorney-General's Department, and conducted through a collaboration between Family Transitions, Relationships Australia and La Trobe University.

2 Scale adapted with permission from Smyth, Qu and Weston (2004).

Over the year that followed mediation, follow-up data showed that significant and enduring reductions in levels of conflict for both treatment groups had occurred. The majority of parents reported improved management or resolution of the initial disputes that had brought them to mediation. Across all ages, children in both interventions perceived less frequent and intense conflict between their parents and better resolution of it, with a significant lowering of their own distress in relation to parental discord.

Outcomes that were specific to the child-inclusive intervention

There were no outcomes for parents or children in the child-focused intervention at either follow-up points that were not also evident in the child-inclusive treatment. In contrast, the child-inclusive intervention was associated with a number of effects not evident in the other treatment group. These effects were strongest for fathers and for children. One year after intervention, repeated analyses showed significantly better outcomes for the child-inclusive group in the following areas:

- lower acrimony reported by fathers in relation to their former spouses;
- greater improvement in the parental alliance for fathers;
- children's reports of improved emotional availability of their fathers and greater sense of closeness to them;
- greater contentment by children with care and contact arrangements and less inclination to want to change them;
- greater satisfaction of fathers with care and contact arrangements of their children, despite initially lower levels of overnight contact than the fathers in child-focused interventions;
- greater stability of care and contact patterns over the year;
- preservation or improvement of the mother–child relationship, from the perspectives of both mother and child; and
- significantly more durable and workable agreements over a year, as rated by mothers and fathers. Of those cases with no prior court involvement, child-inclusive parents were half as likely to instigate new litigation over parenting matters in the year after mediation than were the child-focused parents.

Considering the difference in outcomes

Three unique change mechanisms were identified for child-inclusive parents and children:

- 1. The wake-up call.** The immediacy and intimacy of material created by the child consultation process meant that parents were frequently “moved” in a lasting way by the feedback they heard from and about their own children. The “wake up call” to these parents—to alter their behaviours around their children and their attitudes about their previous partner—was direct, compelling and made a strong impact. Although both interventions actively focused parents on their children's responses to their conflict and their needs in the post-separation restructure of the family, discussion about children and parental cooperation was necessarily generic in the child-focused intervention because the children's direct experiences were not obtained for mediation purposes. In this light, the power of parental projections and inaccurate assumptions about their children and about their relationship with each parent had greater licence to continue unchecked through the child-focused intervention. Resulting arrangements in that group could only be tailored, at best, to what parents “believed” their children needed.
- 2. A level playing field for fathers.** The perceived “fairness” of the child-inclusive intervention was notable for fathers. Through the father's eyes, this intervention often functioned to remove the mother from the psychological role of “gatekeeper” of the information about their children. As such, in negotiations around his children's needs, this created the experience of a more level playing field for the “child-inclusive father” than for the “child-focused father”. The child-inclusive fathers and mothers appeared able to listen to views that sometimes did not support their own argument when these views came from their children and were conveyed with empathetically by an independent specialist. Fathers in particular described the feedback session about their children as valuable and transformative.
- 3. “Developmentally appropriate” arrangements.** Through a sharpened focus on each of their children's emotional and stage-specific needs in the child-inclusive treatment, parents'

agreements tended to favour stability of residence and improved attachment relationships. Fathers in the child-focused treatment initially obtained significantly higher rates of overnight contact, which were then subsequently reduced over the course of the year, often through litigation. Fathers in the child-inclusive intervention tended to agree to maintenance of overnight contact rates, rather than driving for their “equal share”. Of interest is the finding that these fathers were also substantially more content with the care and contact arrangements than fathers in the child-focused group, and that they reported closer relationships with their children. The findings suggest that the child-inclusive intervention assisted parents to create “developmentally appropriate” agreements, tailored to the core experiences of their children, and made it easier to resist arrangements tailored to any sense of adult entitlement.

Children’s mental health outcomes

Children’s overall mental health tended to improve over the year after intervention, although 21% of children remained in the clinical range, in contrast to about 15% in the general population. The combination of factors that best accounted for children’s poor mental health outcomes over the year were their father’s low education, high parental conflict, shared care and the experience of poor emotional availability in their mother. The findings suggest that the children whose emotional health suffered most were those for whom shared care posed a developmental risk.

The combination of factors that best accounted for children’s poor mental health outcomes over the year were their father’s low education, high parental conflict, shared care and the experience of poor emotional availability in their mother.

Characteristics of poor progress

Both treatments had less success with long-term high-conflict cases and where parents had serious mental health issues. Findings support a careful screening of the entrenched and high-conflict spectrum, aiming to divert parents in extreme conflict into tailored, longer-term therapeutic interventions with the family. The data suggest a strong need for close screening of personality and early mental health symptoms at intake. Findings overall support the inclusion of criteria for both interventions that are *capacity-* rather than *issues-*based, that is, based around the ability of a parent to usefully participate and consider alternate and, at times, challenging information, rather than adhering to criteria based on the presence or absence of specific issues.

Implications for targeting the child-inclusive intervention

The child-inclusive intervention showed a capacity to bring about more durable and workable agreements with parents presenting with low alliances or poor mutual regard and cooperation than did the child-focused intervention. Parents presenting with undamaged or adequate alliances reported similar levels of progress across the two groups.

While both the child-focused and child-inclusive dispute resolution interventions led to reductions in parental conflict, findings of this study suggest an enduring level of relationship repair was specific to the child-inclusive approach. Significant changes in the quality of dyadic relationships were evident across the year between former partners and between each parent and their child(ren). From the children’s perspective, the child-inclusive intervention was associated with closer relationships with their fathers and more emotionally available care from their mothers. In this light, the data point to the potential of the child-inclusive intervention to target the crucial public health issue of children’s emotional wellbeing post-separation, through a consequent effect of improved parental relationships.

The data also point to the importance of the developmental and relationship context around care and contact arrangements. In keeping with other findings in this study, the data suggest that successful substantially shared care is an arrangement best determined by the capacity of parents to exercise maturity, cooperate, embrace the developmental needs of their children, and provide each child with emotionally available parenting in a climate of low conflict.

In all, this study provides evidence to support the further development and application of child-inclusive, therapeutically oriented mediation. The method promoted a significant level of repair

to the parental relationship, offered children a greater sense of their parents' availability and produced developmentally appropriate agreements, with which parents and children remained more content over the year following mediation.

Part 2: A study of child inclusion within the Family Court of Australia: The Child Responsive Program

The Family Court of Australia introduced a series of significant changes to its responsibilities and role in relation to post-separation parenting disputes. The less adversarial trial (LAT) (formerly known as the Children's Cases Project) was the first of these major initiatives. The Child Responsive Program (CRP) is the second, designed to provide improved screening and support intervention that precedes and complements the work of the less adversarial trial.

The less adversarial trial is a supportive, consensual court process for separating parents, aimed at maximising the chances of settling their dispute effectively, without the full adversarial armoury.

The less adversarial trial is a supportive, consensual court process for separating parents, aimed at maximising the chances of settling their dispute effectively, without the full adversarial armoury. The LAT focuses on the interests of the child and the parents' or caretakers' proposals for the future of the child, rather than the history of the parties' relationships. A single judge, who adopts an inquisitorial approach in determining the issues to be decided and the way in which evidence will be accepted, manages each case. Crucially, as McIntosh (2006) found, the less formal, supportive

and available manner of the LAT judge was pivotal in creating better outcomes for parents and their children than were achieved through the mainstream court process.

While sweeping in its beginnings, a new child-inclusive process was designed to precede the LAT, to better assist parties to focus on their ongoing parenting responsibilities and consider with greater sensitivity the developmental issues at hand in their dispute. The essence of the Child Responsive Program is the provision of a pre-trial service that rapidly engages parents in productive and supported consideration of their children's experiences and needs, as related to the dispute.

The Child Responsive Program sits in front of the less adversarial trial as a stand-alone or preparatory intervention. The core clinical process has been adapted from the child-inclusive model described in this paper, and is undertaken by a family consultant. There are up to six key stages in the Child Responsive Program:

- 1. Information sessions.** These provide parents with core, multimedia information about post-separation conflict.
- 2. Intake and assessment meeting.** A systematic exploration of the history of the conflict, parental relationship, substance and alcohol misuse, mental health issues, safety issues, children's needs and future care options, conducted separately with each parent.
- 3. Children's interview.** This play-therapy-style session explores children's core needs and views. Brief feedback is given to parents on the day of this interview about the children's core concerns, feelings and needs in relation to the dispute.
- 4. Preliminary report.** This report is prepared by the family consultant based on the parents' assessment and children's interview. It takes into account parents' initial responses to the feedback from their children's session and is used as a summary for the forthcoming feedback meeting with parents and legal representatives.
- 5. Feedback meeting.** A formal feedback meeting is held with parents and their legal representatives, and a court registrar, re-stating the core themes from the children's session and the issues around the dispute resolution outlined in the preliminary report. Therapeutic and educational conversation with parents and their lawyers occurs, in the hope of increasing all parties' attunement to the needs of the children for effective dispute management and cooperation. The matter may settle at this stage, and Consent Orders are then made by the presiding registrar. Parents may also agree to test out particular arrangements for a period of time. Where necessary, the matter is set down for trial by the registrar.
- 6. Less adversarial trial.** If the matter does not resolve during the CRP, the matter is set down for the LAT. The family consultant accompanies the parents through the LAT process, participating in the courtroom on the first day, speaking to the preliminary report and preparing

a family report if ordered by the judge. After the LAT, the same family consultant conducts any follow-up required.

The formal evaluation of this program continues through 2007. Stage one is complete, having explored post-service data from parents and guardians who participated in the Child Responsive Program in the Family Court Registries of Melbourne and Dandenong during the first eight months of the pilot program. The purpose of this first study was to capture parents' immediate impressions of the Child Responsive Program and to document any sense of change that they reported in the nature of their dispute or their preparedness to cooperate with their former partner. (A further study in 2007, funded by the Family Court, will track families 4 months beyond the completion of their matter and explore outcomes at that point, with comparison to a similar group of families who went through the less adversarial trial in NSW, without the Child Responsive Program at the front end).

The data reported here are from 49 parents who participated in a full child-inclusive process and for whom complete pre- and post-service measures were available. The pre-service questionnaire was completed at intake, and the post-service survey was completed within 2–3 weeks of the last CRP contact.

The early findings are encouraging. Findings of note included:

- 1. Increased willingness to cooperate:** A striking change in parents' willingness to attempt to cooperate with each other followed immediately after the CRP intervention. Parents reported a strong swing from very poor parental cooperation pre-CRP to an immediate improvement in their future intent to "get along", for the sake of their children. The extent to which this intent translates into ongoing improvement in cooperation is currently being explored in the follow-up study.
- 2. Pre-court settlement:** In 55% of matters explored in this study, the CRP process was able to settle the dispute without the matter proceeding to trial.
- 3. Positive impact of the children's interview:** No parent expressed concern about the nature of the children's interview or its impact on their children. The vast majority of parents reported positive experiences for their children and for themselves from the early involvement of the children. Forty-four per cent of parents said the feedback from their children was the most influential aspect of their court process.
- 4. Conflict reduction:** A trend for reduction in minor conflict, acrimony and distrust was evident between the parents in this study. No change was seen in levels of major conflict in the phase immediately following the CRP; however, the follow-up study will further explore parents' post-court management of conflict.
- 5. Satisfaction with care and contact decisions:** Parents reported high levels of satisfaction post-CRP with the living and visiting arrangements decided during the CRP.
- 6. Clarity about future directions:** Ninety per cent of the sample left the CRP with a strong sense of how to carry on from that point in the management of their separation and dispute.
- 7. Preferred method for CRP practitioners:** The family consultants uniformly experienced the CRP as a powerful and preferred way of working with families pre-trial. The overall mood of the family consultant group, despite a heavy workload, remained positive throughout the pilot. They reported a sense of privilege in being able to work in this way, of feeling they had arrived at a model of pre-trial intervention that did justice to the psychological distress of the family and, in particular, of the children affected by the dispute.

An important screening role for the CRP was identified in the early detection of children who require child protection or therapeutic services, and of parents with personality or mental health disorders who require specialist services to assist their adjustment to and management of the separation and their ongoing relationships with their children. Limitations were identified in the capacity of the CRP to impact on the dynamics of parent–child alienation matters, which clearly require long-term therapeutic intervention.

The application of the child-inclusive model to the less adversarial trial program and to community-based family dispute resolution are new and exciting initiatives in Australian family law. As discussed in Section 1, aside from the way in which these programs embrace the UN Children's Convention, they have produced significant therapeutic outcomes. The mechanism of change

in each appears to involve support for the higher capacities of the parent who sits within the aggrieved litigant or mediation party. Hearing the inevitable appeal from their own children for a reduction in conflict and change in the climate of family communication has had powerful effects that are not equally well achieved by methods that do not permit direct exploration of children's experiences or by adversarial processes that further inflame parental acrimony.

Section 4: Staffing and supporting a child-inclusive team

This section examines the clinical requirements for child-inclusive work in various family law dispute resolution settings, focusing on issues of qualifications, training and supervision. Comments are offered on the appropriate screening of cases for various levels of service delivery, with some limitations and cautionary tales about the application of a child-inclusive approach.

The position advocated in this paper is for a well-paced and managed evolution of child inclusive practices, underpinned by practice standards that reflect the true complexities encountered in this psychological territory, and the supports required to navigate it.

The position advocated in this paper is for a well-paced and managed evolution of child-inclusive practices, underpinned by practice standards that reflect the true complexities encountered in this psychological territory and the supports required to navigate it. One of the challenges for any service embarking on child-inclusive work is to plan for staffing and support structures that enable the upgrading of the skills and expertise that this intervention requires. An important precursor to this is an honest and credible evaluation of existing skills, expertise and culture within an organisation.

A rush to extend this new approach to as many families as possible, particularly as the evidence of its effectiveness in the family law field mounts, risks overlooking the need for an ongoing structure to support the work, namely in the employment of qualified child consultants, their professional development and their ongoing supervision. With the development of the Family Relationship Centres in particular, the temptation may be to forge ahead, despite budgets that are not yet designed to support child inclusion. Sufficient program development and targeted recruitment are requisite to any effective clinical practice.

In qualified and well-supported teams, the results of child inclusion can be penetrating and enduring. As Hewlett (2007) summarises:

The structure, rules and boundaries of mediation, specialist developmental knowledge of the Child Consultant and the astute use of therapeutic technique offers an opportunity for parents to re-establish a workable alliance with each other and to again hold the children's interests to be of primary concern. Because they are party to the forming of their alliance and because their compassion for their children is endorsed through this process, their commitment to maintaining it is far greater than any less inclusive processes. (p. 103)

Qualification standards for child consultants

As McIntosh and Long (2006) have described, careful guidelines are needed around competencies and training for the role of child consultant. In the approach described in this paper, the role is a specialist one. The child consultant must be able to recognise and think sensitively about chronic presentations of distress in children and parents alike. Particular experience is required in working with children whose presentations include depression and traumatised states, and with young children whose non-verbal communications are their chief tool of expression. Well-founded developmental knowledge and therapeutic skill are at the core of the skills required for considering the histories that one finds beneath the divorce impasse, particularly the ravages of loss and humiliation interacting with complex personality patterns in parents.

Anyone who has worked as a clinician in a child and adolescent mental health service (CAMHS) or the like in Australia will recognise the core of the child-inclusive framework in the "CAMHS model". This model of psychological consultation, carried out by tertiary-qualified mental health professionals, involves four stages over multiple sessions: hearing the family presenting its problems, taking the family and developmental histories from both parents, assessment of the child, and having a feedback conversation with parents conveying the professional's formulation, diagnosis and treatment plan. Importing this frame into the family law dispute resolution arena has required considerable translation in some areas but, at core, the model remains one of

developmental consultation and therapeutic conversation. One of the difficulties, however, for application of what is essentially a psychological intervention, has been the widespread lack of adequately qualified child and family mental health professionals in the family law arena. Kelly (Kelly & Moloney, 2002) has noted that in the USA too, until fairly recently, the family law field simply did not possess the skills or have sufficiently sophisticated research-based knowledge to bring children confidently into this difficult area of practice.

To cope with this, the tendency in Australia has been to move generic counselling and welfare professionals from their roles in marital and family guidance and re-train them for the role of child consultant in a dispute resolution process, perhaps along the lines of “after working with complex divorcing parents for so long, it can’t be much more difficult to include their children”. Some were eager to test this out. The risk is that the significant complexity of children’s psychological presentations in the high-conflict divorce arena is overlooked. Without adequate knowledge and experience, any in-depth understanding of complex presentations is simply not possible, and much important information can be missed, replaced by intuitive, or at worst, ideologically driven interpretations of what “might” be in the best interests of the child.

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In short, the answer to what kind of staffing model is required for a child-inclusive team relies first on the answer to the following: “what is the purpose of child inclusion in this context?” If it is to meet children’s socio-legal rights to have their opinions heard, then welfare and legally trained staff working within child representation models may be adequate (though this work too presents challenges not always adequately understood in those contexts). But if one accepts the argument put in this paper that child inclusion is a method best used to assist the quality of a family’s psychological adjustment to trauma and separation, and the ongoing attachment relationships upon which the child’s development depends, then the tools required for this work must be of a different kind. Child-inclusive consultation in this light cannot be regarded as a generic, skills-based task.

Suggested professional standards for child consultants in family dispute resolution

In light of the complexities that necessarily accompany protracted disputes in family law, the child consultant must be equipped with an adequate social science background. Substantial formal training in developmental, attachment, trauma and family systems theories and experience in the clinical application of these theories is requisite. A postgraduate qualification in counselling, psychology or psychotherapy is recommended as a *minimum* benchmark for formal qualifications, coupled with two years’ experience in working with children, adolescents and their families in a mental health or community health setting. Legally trained professionals are invaluable in the role of mediator, but as the process is one of psychological rather than legal representation, legal training does not suffice for the role of child consultant. Qualified family dispute resolution practitioners acting in the role of mediator also require additional training to adapt and apply their skills within a child-inclusive frame.

Further dialogue is needed around professional standards for this work, but below are thoughts on standards for qualifications and experience of the child consultant within various family dispute resolution settings. Such standards are important to achieve quality outcomes. The risks clearly are that such a powerful method in inexperienced or poorly supported hands may add to, rather than lift, the complexity of parents’ journeys through dispute resolution.

- 1. For brief, non-complex consultations³** (e.g., reasonably insightful parents, manageable conflict levels):
 - a.** core child-inclusive training of at least four days; prefaced by
 - b.** tertiary degree or equivalent, encompassing the psychological development of children and the psycho-dynamics of attachment relationships (with membership

³ See later section on screening of referrals.

- of the associated professional body: clinical social work, counselling psychology, developmental and clinical psychology, child psychotherapy, family therapy); plus
- c. a minimum of two years' prior supervised clinical practice with children and families, including in a post-separation context; and
 - d. ongoing supervision with a specialist, at least one hour per case.
2. **For complex cases** (e.g., high or entrenched conflict, impaired parental insight as to children's experience):
 - a. as for **1** above, but with *postgraduate* qualifications (Masters or equivalent) in one of the above areas.
 3. **For high-level complexity and therapeutic intervention** (e.g., presence of mental illness/personality disorder, relocation, alienation and estrangement issues):
 - a. as for **2** above, but with a minimum of *three* years' prior supervised clinical practice with children and families, including in a post-separation context.

Supervision of child consultants

The issue of adequate supervision for this work is also not readily solved, given an ironic dearth of developmental specialists in the family law dispute resolution sector.

The issue of adequate supervision for this work is also not readily solved, given an ironic dearth of developmental specialists in the family law dispute resolution sector. Standards for supervisory status in the field also need consideration. It is suggested that a solid pool of supervisors can be drawn from child and adolescent mental health professionals who have had good experience with family law matters, or from in-house well-qualified staff with experience in this method across a diversity of cases. New child

consultant practitioners can be given the opportunity to participate in an "apprenticeship" of sorts; for example, through a program of group supervision sessions, watching senior practitioners at work and steadily accumulating adequate experience to begin independent practice under supervision.

Finally, even very experienced practitioners in this field need good supervision opportunities, to enable de-briefing from and reflection on complex presentations.

Standards for mediators working with parents in a child-inclusive process

The role of facilitating parents in a child-inclusive process also requires a good deal of skill. Normally, it is recommended that this person be different from the person who is seeing the children. When cases are complex, this division of roles becomes even more important, to retain neutrality and to achieve a level of meta-analysis that can be very difficult as a solo practitioner. This person is best supported through a specific training program (at least two days on the application of child-inclusive work to family dispute resolution), in addition to their prior core qualifications in dispute resolution and/or counselling. Ongoing supervision is again germane to quality work.

A cautionary tale

The following extract from a child-inclusive dispute resolution consultation provides a cautionary tale about the skills and expertise of those charged with the task of a) enabling children to share their own stories, and b) enabling parents to hear and think about the children's material, which may well be challenging to them.

The interview is an amalgam of many brought to the author for supervision. No identifying details are contained. In this example, our hypothetical practitioner, Kerry, is at the beginning of her involvement in child-inclusive work. Her background is in education and student guidance. Kerry is well-intentioned, but anxious and poorly equipped, and challenged by the prospect of new learning. She is in this role because her manager, whose background is bureaucratic and not in therapy or counselling, ascertained that Kerry was the best-equipped person in the small service to provide this work: she "likes children" and has years of experience talking to children in schools. However, she has no clinical training in child development nor qualifications in child psychology or family therapy.

Kerry's meeting with Eric

Eric was aged 9 years. His parents separated three years ago and have been in very high conflict, with repeated litigation. Eric's father was a high-profile public figure. He was seeking to increase contact, from three nights a fortnight to eight, and to offer Eric the more permanent home, as he had re-settled with his new wife and her children. His mother believed that this would be a strain that Eric did not need. They chose to mediate the dispute and a child-inclusive process was recommended. Both agreed, with the father saying he knew that Eric agreed with him and would be able to say this to an independent person. Eric's mother wanted Eric to have his own say, and looked forward to hearing his views. The case was referred to Kerry. She did not meet with the parents prior to meeting Eric, but was briefed by the mediator on the nature of the dispute and what each parent wanted from the child interview. The following is an extract from her interview with Eric.

Session content	Comments on the process
<i>Eric comes into the room looking worried. Kerry, the child consultant, smiles and asks him to sit with her on the floor.</i>	
K: We are going to talk today about your family; how Mum and Dad live separately. I'd like to get an idea from you about how that works, and what you want to be different. How about drawing me a picture of your family?	The consultant is anxious and has forgotten the crucial early stage of connecting gently with Eric and contracting around confidentiality.
E: <i>(Pauses)</i> I'm not really ..., I'm not very good at it.	
K: Well go ahead anyway, just something to help us with our talking.	Consultant ignores Eric's signal that he is uncomfortable with her suggestion.
<i>Eric starts to draw a stick figure, and stops when Kerry speaks.</i>	
K: This is private what we are doing here today. My job is to talk with kids like you and to find out how they are going with their parents' separation and what decisions they prefer about living arrangements. Most parents argue and it's normal, but some argue too much. Do yours? What do they fight about?	Consultant comes back to the contracting phase, but her language is awkward and she inadvertently may have set Eric up to think he will be involved in making decisions. In her anxiety, she rushes him into an emotive topic without having established rapport or boundaries.
E: <i>(Puts down his pen and says quietly:)</i> About me.	
K: You know whatever you say to me is private, but I will talk with your Mum and Dad about what you want them to do. So you can tell me what you want me to say to them. You can draw while we talk. Who is in the family?	Consultant misses Eric's crucial communication about feeling caught in and possibly responsible for his parents' conflict.
E: <i>(Picks up his texta again)</i> Mum and me, and Dad has a new family.	Eric in fact cannot draw while he talks. The consultant did not collect a developmental history from his parents and has missed the fact that Eric has a specific learning disorder. Aside from the history, she has missed the clinical clues that he cannot process auditory and visual information at the same time. She persists with her small array of techniques, which do not enable him to express himself. She inappropriately suggests to Eric that he add his stepfamily to his drawing.
K: What do you think of the new family?	
E: It's OK I suppose.	
K: Will you put them in your picture?	
E: OK. <i>(Draws.)</i>	
K: What school do you go to?	
E: St Joe's. <i>(Stops drawing.)</i>	

Session content	Comments on the process
K: What footy team do you go for?	
E: Bombers.	This late attempt at rapport is superficial, ill-timed and now diversionary from Eric's efforts to discuss his own experiences.
K: I go for the Saints. Do you like to go to the footy?	
E: Sometimes.	
K: Well it doesn't seem like you want to draw for me. Maybe we'll just have to talk.	Consultant is frustrated at what she perceives to be "monosyllabic responses" and lack of cooperation with the drawing. Eric is made to feel bad in having "failed" the drawing task.
<i>Eric puts the lid back on texta.</i>	
K: If you had a magic wand and you could make it the way you wanted, what would you do?	The magic wand question is a good one, but is not used correctly. Eric's communications of sadness and hopelessness are missed as the consultant rushes ahead, looking for concrete information that she can feed back to his parents. Her anxiety continues and the failure to engage and empathise with the boy has resulted in a missed opportunity and an unhelpful interaction for Eric. His story remains untold; his burden is no lighter (and is possibly heavier). The consultant has not elicited Eric's subjective experience of his attachment to each parent, nor gained an understanding of Eric's needs around future planning.
E: (<i>Shrugs</i>) There isn't much I can do.	
K: Well, what should I tell Mum and Dad that you want?	
E: It really ... I don't know ...	
K: Well, we are nearly out of time. I need to get a better idea from you about how Mum and Dad could solve their argument over where you will live. Would you like to draw about what a good arrangement would be? What would you like—to stay the same or have more time with Dad?	

Post-session

Kerry's comment in supervision revealed a limited understanding of her own impact upon the interview, and its purpose: "Eric was very difficult. He just wouldn't speak; it was like drawing teeth and I couldn't get anywhere with him. I kept wondering what to say and do, and nothing worked. I'm worried that I have nothing to tell his parents now. That will be embarrassing, especially given who the father is". In her feedback to his parents, Kerry was able to offer useful thoughts on their conflict and how it was likely to be affecting Eric, but was unable to comment on the way in which he experienced his relationships with each parent, his thoughts about their conflict, nor his needs in relation to his father's proposed changes to the living arrangements. She offered advice on the boy's arrangement that did not come from Eric's material, but rather appeared to come from her own anxiety and unprocessed alignment with the father.

This case in some ways suggests a caricature of poor clinical skills, but is sadly real. Such breaches of basic counselling skills and insensitive approaches lacking in developmental knowledge and basic diagnostic skill are possible when the work is planned and implemented by professionals not grounded in child development or having no solid experience in parent and family work. Even given the lack of richness and warmth in the interview, Kerry's idea that "there is nothing to tell his parents" is a betrayal of what this process should be about on many levels. If one goes into a child consultation with the idea that we simply "hear the child's voice" and come out of it knowing "what the child wants" with respect to living arrangements, then "tell the parents", the potential of the process is under-utilised, and worse, potentially corrupt. A naive downsizing of an adult interview model, with the idea that what children say equates with their experience, or indeed their needs, misses much of the very nature of children. Working with non-verbal processes and projective material is germane to the child consultation approach described in this paper, as is examining the child's material through a developmental lens. This obviously requires a particular set of skills. The work of feedback to parents can be more complex still. Here, both child consultant and the parents' mediator or counsellor require particular skills to engage parents in a dialogue about their children, supporting them to reflect upon their children's experiences, suggesting new child-focused directions for the resolution of their dispute and the rebuilding or consolidation of their parenting alliance.

Complex presentations: The need for skills and screening

The skill set required for child-inclusive work is deeper still when considering complex clinical presentations. Given the rates of psychological disturbance in the high-conflict divorced population of children, it is inevitable that puzzling and troublesome presentations in children will appear across all family law service areas. Chief among these are unresolved grief, depression, post-traumatic stress and attachment disorders. Parent–child alienation and estrangement, reunification issues and lengthy litigation also involve intricate dynamics that require careful consideration and adequate supervision for the consultant to be able to think clearly, often in the face of parents’ unprocessed hostilities and active attempts to sabotage one another. Screening at intake becomes important at this point, enabling each case to be directed to the most appropriate team or service from the outset, and also allowing practitioners to arrange additional support from a practice advisor. Screening can utilise standardised pen-and-paper-style measures that parents complete in their own time, looking at types of conflict pre- and post-separation, the nature of their own alliance and the psychological acrimony they hold for one another. These three areas have been shown in our recent research to be predictive of progress in brief child-inclusive work, and parents with a poor alliance gained most from this method (McIntosh & Long, 2006; see this report also for details of measurement tools).

The costs of child-inclusive dispute resolution

Some have debated the merits of child inclusion in family dispute resolution on the grounds of excessive financial cost. Cost–benefit arguments would draw attention to the gains of preventing the very high costs of escalating conflict and of litigation. McIntosh and Long (2006) found that once a service is up and running with trained and qualified staff, child-inclusive mediation is not significantly more expensive in terms of practitioner session time than a parent-only approach. Many unseen costs come in supervision and training, and the time taken for multiple professionals to liaise about a shared case prior to joint sessions. A number of services, such as the Family Dispute Resolution program at Relationships Australia, have calculated these costs in real terms. When weighed against the demonstrated gains to families of this intervention, the point seems to be more about distinguishing families who may not require this intervention. Moloney and McIntosh (2004) suggested:

In the end, whether or not child sensitive practices prove to be more costly, the underlying question is whether “dealing children in” and protecting their interests at this critical time in their lives is regarded simply as a cost or as an investment in our future. (p. 83)

Conclusion

This paper has described the emergence of child inclusion as a far-reaching, evidence-based practice for families experiencing separation transition. A model of child inclusion in family law interventions was outlined, and research from its application in two settings—dispute resolution services and the Family Court of Australia—was highlighted. This is a movement that warrants further research, with a focus on longer-term outcomes and applications to settings beyond family law. Emphasis has been given to the crucial need for all services considering child-inclusive interventions to take stock of the real issues involved in staff training, support and potential restructure within services to attract and recruit qualified child mental health practitioners. At a broader level, practice standards need to be developed that respect and support the complexities of the psychological processes involved in the work.

The responsibilities of developing policy and implementing child-inclusive practices are many, and require careful thought, but the potential gains for families remain a strong motivating source. In the right environment, the net result of any child-inclusive process is at least threefold: children’s views are sensitively and appropriately elicited, their experiences and developmental tensions accurately formulated, and their needs translated to parents and other decision-makers involved in their matters. Beyond the aims of the Children’s Convention, their “voices” have not only been heard, but ultimately incorporated into their family’s progress through periods of complex transition.

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Useful websites

Children beyond dispute, has now been published on the Attorney-General's Department website: www.ag.gov.au/www/agd/agd.nsf/Page/Publications_ChildrenBeyondDispute-October2006

The Children in Focus website carries a number of resources and useful links in this area: www.childreninfocus.org