



THE UNIVERSITY OF  
**SYDNEY**

# **Sydney Law School**

Legal Studies Research Paper  
No. 14/53

May 2014

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## Choosing child-inclusive mediation

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### Abstract

*Fourteen parents who had undertaken child-inclusive mediation, and a comparison group of 19 parents who had engaged in mediation without their children being involved, were asked about their views on utilising child-inclusive mediation to assist in the resolution of their disputes concerning parenting arrangements after separation. Most of the comparison group had not been offered the option of child-inclusive mediation either because it was not available in their area, or because the children were too young, or for other reasons, but would have chosen it had it been offered. Parents gave five reasons for wanting child-inclusive mediation. These were: the therapeutic benefit for the children in talking to someone; finding out how the children were feeling; giving the children a voice in the resolution of the dispute; to gain assurance that what the child was saying to that parent is the same as he or she would say to an independent person; and helping the other parent to hear what the child wanted. This research demonstrates the importance of providing clearer explanations to parents about what the purpose of child-inclusive mediation is.*

## Choosing child-inclusive mediation

In the last ten years or so, the practice of child-inclusive mediation as a method of family dispute resolution has grown considerably across Australia. There are several purposes of child-inclusive mediation: to give children a voice in the decisions concerning their parents' separation as it affects them; to "raise their parents' awareness of the impact on their children"<sup>1</sup> of parental conflict and behaviours; and to encourage greater parental cooperation and the resolution of the disputes between them.<sup>2</sup>

Typically, the practice of child-inclusive mediation involves a psychologist or other qualified professional meeting with the child or children separately from the parents, ascertaining their views and perspectives on the family situation, exploring options for the parenting arrangements if appropriate, and then providing feedback to the parents in a subsequent joint mediation session.<sup>3</sup> The child consultant is always a different person from the mediator, and so the

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1 See Bryant D, "Children both seen and heard" (2008) 92 *Reform* 23. The Chief Justice of the Family Court, Diana Bryant, states:

Family consultants 'feedback' this information to parents, to raise awareness of the impact of their conflict on their children and to assist them to refocus on their children's needs.

2 McIntosh J, "Child Inclusion as a Principle and as Evidence-based Practice: Applications to Family Law Services and Related Sectors" (2007) 1 *AFRC Issues* [*Australian Family Relationships Clearinghouse*]. Available online at <http://www.aifs.gov.au/afrc/pubs/issues/issues1/issues1.pdf>.

3 For a full explanation of the process, see McIntosh, n 2. See also Hewlett W, "Accessing the Parental Mind through the Heart: A Case Study in Child-Inclusive Mediation" (2007) 13 *Journal of Family Studies* 94, 94-103. For discussion about the use of child-inclusive mediation in the context of domestic violence cases, see Shea Hart A, "Child-Inclusive Mediation in Cases of Domestic Violence in Australia" (2009) 27 *Conflict Resolution Quarterly* 3. See also Petridis T and Hannan J, "Innovations in Practice: A Safety Assessment Approach to Child-Inclusive Family Dispute Resolution" (2011) 17 *Journal of Family Studies* 36.

mediator's own neutrality is preserved. Child-inclusive mediation relies on the consent of both parents and of the child.

The subject-matter of the discussions will vary from child to child and family to family, but the objective of child-inclusive mediation is not to ascertain the 'wishes' of the children. Rather it is to explore more widely children's perspectives and experiences of the current living and visiting arrangements and the conflict between their parents, as well as their hopes for the future.<sup>4</sup> To date, there has been limited empirical research on child-inclusive mediation. The main study in this area was conducted by McIntosh and Long, who evaluated a program that McIntosh designed,<sup>5</sup> and in which she trained the mediators.<sup>6</sup> That study compared a group of parents who had experienced child-inclusive mediation through Relationships Australia, with a comparison group of parents who had participated in 'child-focused' mediation (that is, family dispute resolution in which the mediator seeks to help the parents focus on what is best for the child, but without involving the child in the process). The research indicated significant benefits of child-inclusive mediation for parental cooperation and for children's emotional well-being.<sup>7</sup>

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4 McIntosh, n 1 at 8.

5 McIntosh J, "A Model of Child Focused Mediation for Australian Family and Child Mediation Services" in Fisher T (ed) *Proceedings of the Fourth National Mediation Conference*. (Melbourne, 1998); McIntosh J E, "Child-inclusive Divorce Mediation: Report on a Qualitative Research Study" (2000) 18 *Mediation Quarterly* 55.

6 McIntosh J and Long C, *Children Beyond Dispute: A Prospective Study of Outcomes from Child Focused and Child-inclusive Post-Separation Family Dispute Resolution* (Final Report to the Attorney-General's Department, 2006) p 32.

7 McIntosh and Long, n 6. The research findings are also summarised in McIntosh, J, Wells Y and Long C, "Child-Focused and Child-Inclusive Family Law Dispute Resolution: One Year Findings from a Prospective Study of Outcomes" (2007) 13 *Journal of Family Studies* 8; McIntosh,

Encouraged by the findings of that study, the practice of child-inclusive mediation has become more widespread in Australia, and there is growing interest in the practice overseas. The context in which it now occurs is, however, different from the period in which the McIntosh study took place. Following the 2006 amendments to the *Family Law Act 1975* (Cth), family dispute resolution has now become mandatory prior to filing an application for parenting orders, unless the case is deemed unsuitable for mediation, or a parent relies on a ground for exemption.<sup>8</sup>

This mandatory dispute resolution prior to filing has been supported by the establishment of Family Relationship Centres (FRC) across the country, providing, for most people, a free mediation service. Many of these FRCs offer child-inclusive mediation. The practice varies depending on the views of the organisation that runs the Centre, and funding and staffing constraints. Child-inclusive mediation may also be offered by mediation providers offering family dispute resolution outside of the FRC network.

The purpose of this research study was to add to the available information about child-inclusive mediation by conducting an independent qualitative study on the use of child-inclusive mediation in the work of an experienced relationship counselling and mediation organisation, UnitingCare Unifam, based in New South Wales. The sites chosen for recruitment of participants allowed the researchers to examine the experience of child-inclusive mediation in a population that has lower educational qualifications and lower incomes

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J, Wells Y, Smyth B and Long C, "Child-Focused and Child-Inclusive Divorce Mediation: Comparative Outcomes from a Prospective Study of Postseparation Adjustment" (2008) 46 *Family Court Review* 105.

<sup>8</sup> *Family Law Act 1975* (Cth) s 60I, as introduced by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth).

than the participants in the McIntosh and Long study. Participants were recruited in the main from parents attending three FRCs run by UnitingCare Unifam. Two Centres, those in Fairfield<sup>9</sup> and Campbelltown,<sup>10</sup> are in metropolitan Sydney. The third is in Wollongong.<sup>11</sup> Each FRC drew from a

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9 Fairfield is a community in outer-Western Sydney with a high concentration of new migrants. The majority of residents were born overseas, and speak a language other than English at home. See Fairfield City profile:

<http://www.fairfieldcity.nsw.gov.au/default.asp?iNavCatID=45&iSubCatID=168> viewed 29 February 2012.

The community has some of the lowest incomes on average, in Sydney. The median household income was \$873 per week in 2006 compared with \$1,027 in Australia in 2006. Data from the Australian Bureau of Statistics: <http://www.censusdata.abs.gov.au> viewed 29 February 2012. The proportion of the population with a university degree or higher is 7.5% See Fairfield City community profile:

<http://profile.id.com.au/Default.aspx?id=356&pg=108&gid=10&type=enum> viewed 29 February 2012. This contrasts with 24% for the Australian population as a whole: Australian Bureau of Statistics, 6227.0 - *Education and Work*, Australia, May 2011.

10 Campbelltown is a large community in the far south-west of Sydney. Over a quarter of the population was born overseas, and nearly 30% speak a language other than English at home. Median individual and household incomes are a little above Australia as a whole, although Campbelltown has fewer high income households than in New South Wales generally. The median household income was \$1059 per week in 2006 compared with \$1,027 in Australia. Nine percent of the population have a university degree or higher. Data from the Australian Bureau of Statistics: <http://www.censusdata.abs.gov.au>. Data from Campbelltown City Council community profile:

<http://profile.id.com.au/Default.aspx?id=208&pg=107&gid=10&type=enum> viewed 29 February 2012.

11 Nearly 22% of Wollongong's population was born overseas, and 14% speak a language other than English at home. Median individual and household incomes are significantly lower than Australia as a whole. The median household income was \$933 per week in 2006 compared with \$1,027 in Australia. Data from the Australian Bureau of Statistics:

<http://www.censusdata.abs.gov.au> viewed 29 February 2012.

catchment area wider than the boundaries of the city in which it was located. Nonetheless, the demographic profile is likely to be relatively similar in neighbouring areas.

In Unifam's Family Dispute Resolution practice, parents typically each undergo a separate intake session<sup>12</sup> followed by joint dispute resolution sessions, which may last 2 to 3 hours.<sup>13</sup> More than one session may take place. If a Unifam practitioner recommends a child consultation and parents and child/ren consent, the child will be separately interviewed by a child consultant, and then feedback given to the parents.

A Unifam brochure describing child-inclusive mediation, states:

*For some children, the opportunity to debrief with an independent professional can be very therapeutic. Furthermore, the consultant may bring any information the child wishes to share to a subsequent dispute resolution session to assist parents and/or families to make decisions.*

This paper explores the attitudes of parents to the participation of their children in child-inclusive mediation, and their expectations for how it might assist them and the children. A subsequent article will report on parents' perspectives on the outcomes of that mediation.

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Nearly 14% of the population has a university degree or higher: Data from Wollongong City Council community profile: <http://profile.id.com.au/Default.aspx?id=302> viewed 29 February 2012.

12 As is common practice in Family Relationship Centres, participants in mediation are usually required to attend a parenting education seminar prior to the intake session.

13 Sessions may be face-to-face, by telephone or in separate rooms (shuttle); Unifam Counselling and Mediation brochure, *Family Dispute Resolution*.

## Method

This qualitative study involved face-to-face interviews with two groups of parents post-mediation. The first group comprised 14 parents who had undertaken a child-inclusive mediation (3 former couples and 8 parents whose former partner was not part of the study (*the child-inclusive group*)).<sup>14</sup> The second included 19 parents who had undertaken a mediation without their children being involved (5 former couples and 9 parents whose former partner was not part of the study) (*the comparison group*). These interviews occurred between 13 September 2010 and 19 April 2011.

Parents who attended the Family Relationship Centre and participated in family dispute resolution were invited to take part in the research study. The research team sought to recruit a group of parents who had consented to child-inclusive mediation and a comparison group of parents who had either been offered the option and one or both had declined it, or who had not been offered the option.

It was possible to recruit a comparison group in which some parents had not been offered child-inclusive mediation, for two reasons. First, the staff-time available to conduct a child consultation was limited and for this reason, it could not be offered to all those involved in family dispute resolution. In Wollongong, particularly, there was a period of time during which resource constraints were such that child-inclusive mediation could not be offered.

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<sup>14</sup> One couple in the child-inclusive group was subsequently excluded because they said they had attended the FRC because they were concerned about the impact of their relationship upon their children, rather than because they were experiencing a disagreement post-separation. They continued to maintain a relationship with one another although they were not living together. This involved having family meals together with their children and staying over at one another's houses, although they maintained separate dwellings.

Another reason why child-inclusive mediation may not have been offered is that the mediator did not consider it to be a suitable option, as, for example, in cases where the children were thought to be too young (eg under 5 years of age).

Clients of the FRC who were proceeding to mediation were given information about the study and, if interested in participating, agreed to be contacted by the research team. Participants were interviewed face-to-face at least 3 months after the mediation had concluded, in order to allow an interval that would help parents gain some perspective on their experience.

### **Demographic characteristics of parents**

The two groups of parents were similar in terms of some demographic characteristics but varied on others. The average age of the mothers was 42 years in the child-inclusive (CI) group, and 39 years in the comparison group, and for fathers, 41 and 40 years respectively.<sup>15</sup> The occupational profile of both groups included semi-professional, clerical, tradespeople and unskilled workers (teachers, police, clerical and bank workers, electricians and factory workers) although there were more professional and managerial workers in the comparison group than in the CI group. The predominant educational qualification was a trade certificate and most had income levels that were below average to average weekly earnings. Although the numbers in the current study are small, only 4 of the 33 parents reported having tertiary qualifications,

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<sup>15</sup> This is similar to the average age of parents in McIntosh and Long's study, n 6 at 21: 38 years (comparison group) and 39 (child-inclusive) years for mothers and 39 years (comparison group) and 42 (child-inclusive) years for fathers.

whereas McIntosh and Long reported that about 40 per cent of their parents had tertiary qualifications.<sup>16</sup>

Most parents in both groups had been married: 11 of 14 in the CI group and 16 of 19 in the comparison group. The average length of the marriage/relationship was very similar (about 8 years for both groups) but those in the CI group had been separated for a significantly longer period than those in the comparison group (76 months compared with 29 months,  $t = 4.1$ ,  $22\ df$ ,  $p = .002$ ).

At the time of the interview, both groups were almost equally split in the children's living arrangements between shared care and the children mostly living with their mother. There was a total of 45 children of the participants involved in the study, with an average of 2.1 children per family for the child-inclusive group and 1.99 for the comparison group. The children ranged in age from 3 to 16 years, with an overall average of 8.8 years ( $SD = 2.8$  years). The children in the child-inclusive group were slightly older (9.5 years) than those in the comparison group (8.2 years), reflecting the longer time since separation in the CI group. There was no significant difference in the reported level of conflict with their former partner at separation and before they started the mediation.<sup>17</sup>

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16 McIntosh and Long, n 6 at 38-39.

17 Parents were asked to rate their level of conflict with their former partner on a 5-point Likert-type scale (1 = 'very little' to 5 = 'a lot of conflict') at three points in time: separation, before they started mediation, and again at the time of the interview post-mediation. They were also asked to complete the Ahrons Acrimony scale (23 items on a 5-point Likert-type scale where 1 = 'never' and 5 = 'always'). It included questions such as "Do you feel friendly toward your former partner?" and "Do you have heated disagreements with your partner?" McIntosh and Long used a similar scale, the *Acrimony scale* (Shaw and Emery, 1987); n 6 at 25.

## Results

### **Opportunity to participate in child-inclusive mediation**

Most parents in the comparison group would have chosen child-inclusive mediation had it been possible. In this group, 14 out of the 19 parents reported they were not offered the option. Another parent explained that she was offered and accepted a child-inclusive mediation but it did not eventuate. Her ex-partner, who also participated in the study, reported that he was not offered a child-inclusive consultation. Only four participants in the comparison group declined an offer of child-inclusive mediation.

Of the 14 parents who were not offered the option of a child-inclusive mediation, three lived in an area where child-inclusive mediation was not offered at that time and a further three thought that their child or children were too young to be included. Two parents thought that their ex-partner had vetoed a child consultation. The remaining six parents did not comment on why they thought the child-inclusive option was not offered to their family.

### **Parents who wanted a child-inclusive mediation**

Nearly all the parents in the child-inclusive group had wanted their children to be involved, although two fathers reported that they had not really had a choice about their children taking part; both expressed concerns about this. Kevin<sup>18</sup> was initially somewhat concerned that his five year old son was too young to participate in child-inclusive mediation and might be upset by the process. George explained that his worry was not so much about his 11 year old daughter, Christina, speaking with a consultant but that she might come under pressure from his ex-partner, Wendy:

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<sup>18</sup> Pseudonyms have been used throughout this paper.

*...my concern in her being involved wasn't necessarily with her being involved, it was more the fact, would there be any pressure to say anything specific from Wendy. But at the same time Wendy can be an absolute bitch and pain in the ass, but I don't think she's – I still think she loves Christina and she wants to do the best thing for Christina. It's just we both have different ideas on what that is. So I don't think she would have done anything to hurt Christina or upset Christina, but that was probably my only concern. (George, child-inclusive group)*

Eight parents in the comparison group reported that they would have accepted a child-inclusive mediation had it been offered.

Regardless of whether their children participated in the child consultation, parents gave similar answers as to why they wanted their children to be involved. There were five main reasons, which related to the benefit for the children and for themselves, although these were not necessarily independent of one another. Some parents voiced more than one of these reasons for wanting a child consultation. The reasons primarily related to the children were:

- the therapeutic benefit for the children in talking to someone;
- finding out how the children were feeling; and
- giving the children a voice in the resolution of the dispute.

The main reasons that primarily related to the benefit for the parents were:

- to gain assurance that what the child was saying to that parent is the same as he or she would say to an independent person; and
- helping the other parent to hear what the child wanted.

### ***Therapeutic benefits for the children***

Seven parents thought that having their children speak to a child consultant would be of therapeutic benefit for the children:

*Yeah, look I was happy to take them to the psychologist anyway, and go through and try and sort out where they were, how they were coping with it and stuff like that. (Phil, child-inclusive group)*

*Just to help them out as much as possible. It's a hard situation for us to deal with, just imagine how they've been torn between their mum and dad, who should they love, who should they not love, or whatever the case is... (Tom, child-inclusive group)*

*I would still like Jemma to talk to a professional in that sense, just for her to vent out, or get the things out or the questions that she might have in her mind that she might want answered from a professional. I think that's very, very important. (Doug, child-inclusive group)*

*She [ex-wife] thought it might help with Annabel [aged 11] not wanting to come and stay overnight and stuff like that...*

Interviewer: And you were happy to go?

*Yes, well I thought it was worth having a go for my daughter, to me it wouldn't be that different to if she needed to see a dentist, if it was going to help her. (Michael, child-inclusive group)*

A participant in the comparison group with two sons, aged 8 and 11, said she didn't feel that they needed to be involved in the mediation because they were already seeing counsellors. However, she could imagine a situation where it might be appropriate:

*I think if it came to the crunch and he [ex-husband] wanted to have shared care of the kids, then yeah, the kids might have to, yeah we might have to do something like that. Ben [aged 11] needed counselling a couple of months ago, he had a big meltdown. Like he's coping really well and one day he had a big meltdown. (Hannah, comparison group)*

Expected therapeutic benefits were also referred to by parents in the comparison group who declined child-inclusive mediation because their children were already receiving counselling.

### ***Finding out how the children were feeling***

Other parents emphasised that in order to help their children, they needed to know how the children were feeling. Kevin was worried that his five year old son might be 'suffering' and felt he needed a person with special expertise to help him understand how his son was coping:

*...I also wanted it done because I wanted to know, because I don't know how to figure out from a child what's affecting them and how's this sitting with you, I needed help for someone to tell me that. (Kevin, child-inclusive group)*

Tony also referred to finding out how his 10 year old son was 'coping with the situation':

*And can you tell me about that [having child consultant speak to child]? How did you feel about that? I thought that was good - I didn't want to see Darcy suffer through this, although I discussed everything with him, so he was fully aware of what was going on and so I didn't leave him out of the picture, so when they said for him to go and see a child psychologist, of course I said yes, because I wanted to see how Darcy was coping with the situation, and he passed with flying colours. (Tony, child-inclusive group)*

Another parent saw the value of a child consultation as being in discerning problems that he did not see for himself:

*I thought it would help. Well Leighton [aged 10] seemed okay with everything, I don't really know how child counsellors work, but I guess it's good for them to get a feel for underlying problems. For all I knew, Leighton could have been more mentally stressed than Annabel [aged 11], he just wasn't showing it as well. (Michael, child-inclusive group)*

Parents recognised that they might be given a filtered view of what the children were thinking and feeling, but were comfortable with this. They accepted that a degree of confidentiality was important:

*I didn't really have an issue with it [confidentiality], I thought it was a good opportunity for Christina to be honest, and if nothing else, I believe, and I think I was right, that at the end of it, even if she didn't tell me exactly what Christina said, you get a feel for it. (George, child-inclusive group)*

*I'd like to know what they're thinking and what they're feeling. Obviously the counsellor can't tell us everything. Like the counsellor will speak to the kids and then just say, what can I talk to dad about? And then she talks to me about whatever it is. (Tom, child-inclusive group)*

Four parents explained that they wanted to know how their children were feeling even if there was a risk that this might involve negative feelings about their own parenting. Although these parents had apprehensions about what they might hear, they rationalised that whatever came out, it was better to know:

*The mediator actually said to me you may hear things you don't want to hear. And I said you know what, that's good, and she went okay, and I said look, if there's things that I'm doing wrong as a parent, or things that upset Jemma [aged 8], I'd like to know. I really would. (Doug, child-inclusive group)*

### ***Giving children a voice***

For other parents, the main purpose of the child consultation was to give children a voice about the issues in dispute. For example, Ross felt that his 8 year old son, Angus, wanted to spend more time with him and that child-inclusive mediation could have helped give voice to that wish:

*Do you think it's appropriate for children to be involved in mediation? I think so, especially in Angus's case. I think he wants somebody to talk to, to get his feelings out. I mean they're people, they're little people, but they're still people, and they've got their little feelings, and they've... it's something that he really wants, and he's trying to push it. (Ross, comparison group)*

Ross's ex-wife Jeannine also thought it would have been beneficial for Angus and his 6 year old brother to have a voice:

*... I think that's very empowering for the children to just be able to lay it on the line, and tell it like it is, and tell everyone how they're feeling. (Jeannine, comparison group)*

Tony thought it made sense that the children should be heard:

*Everyone says it's for the kids, but no one wants to – you don't see kids there, and they're treated as if they're not there, although they say their concern is important - which to me is strange because you're doing things for the sake of the children's benefit, but without having them involved to me doesn't make sense. Are they too young? No, I think they understand what's*

*going on, just depends on how you treat them. They're just like people, it's just they're a bit shorter that's all. (Tony, child-inclusive group)*

Jeannine, and another parent, Gina, also emphasised the need for children to be protected from the conflict while being given a constructive environment in which they could be heard:

*...children don't need to take on the anxiety of who's getting what, who's going where, and what the stipulations are for their care. Children don't need that anxiety, they just need to know that they're loved and they're cared for, and that they're safe, and that they have their basic needs. But, I think it would also be very empowering for them to be brought into a more constructed environment, where they did get to voice their needs and wants. (Jeannine, comparison group)*

*...I just said to them, you can go there and just talk and be yourselves, because other kids are in the same situation that you're in. That was my main reasoning, and I guess to be able to just feel free to talk. That's what I wanted. Because I know they think they might upset me or they might say something, maybe dad's going to get into trouble, and I am guilty of that, saying dad shouldn't have done that or whatever, I didn't want to do that, I just wanted them to feel happy about going and comfortable and safe. (Gina, child-inclusive group)*

### ***Providing parental assurance***

Another reason related more to the parents' need to gain assurance that what the child was saying to that parent is what he or she would say to an independent person. Two parents referred to the possibility that children might tell different things to each parent, but be more honest with a third party:

*Because there are times that they tell us that and they tell their mum something different. But when they're telling a third party the same thing that they're telling me, it reinforces the fact that they are actually telling me the truth. (Jeremy, child-inclusive group)*

*Actually force the children to talk to someone other than myself, and also to set my mind at ease that what they're telling me is what actually happened, it's not really, they're making it up. You know how some people say children play one parent against another. Why would they tell an outsider something that's not true, when they think that I'm not going to hear about it, or their father's not going to hear about it, they would tell them the truth. (Alison, child-inclusive group)*

Another theme in these parents' responses was the importance of the truth coming out from the children free of manipulation by the other parent.

*Look, I was happy, I really was happy, because to involve them, it might not be all I want to hear, but they're certainly being heard a lot more at my end than I felt they are at his end. It gave them a voice and somebody to bat for them. And for what they want without the manipulation. (Eleanor, child-inclusive group)*

*Do you think it's appropriate for children to be involved? Yeah, sometimes, it depends on what's going on. Probably in my case it would be, because dad's saying to them, when he picks them up, oh come and live with me. And Gary's [aged 8] saying mum, I don't want to hurt dad's feelings, so he's just saying okay, and dad thinks that Gary really wants to live with him, but Gary really doesn't. So I think if they had, yeah, if we did have something like that the truth would come out. (Hannah, comparison group)*

Hannah's ex-husband, Kurt, also thought that having a person to speak with the children might protect them from manipulation:

*I think if the children are involved upfront it protects the kids from manipulation behind the scenes to a certain degree. And to have the kids involved I really believe that a child psychologist should be involved for the counsellor to speak to the kids on their own. You know, currently my oldest boy [Ben, aged 11] is undergoing some sort of counselling, with his mum sitting in a room with him, which I don't think is appropriate, because how can you counsel a young boy who's going into teenage years? (Kurt, comparison group)*

### ***Helping the other parent to hear what the child wanted***

Six parents (both mothers and fathers) explained that they hoped the child-inclusive mediation would help their former partner to understand better how the children were feeling and what they wanted. This was a perceived advantage of having a neutral third party:

*If I could get someone apart from me to listen to the girls and tell their mum what they're saying, and that could help, I wanted that. (Jeremy, child-inclusive group)*

Three parents said that they felt their ex-partner did not believe them when they reported what the children wanted or had said:

*I wanted him to hear, because I think Luke thought I made things up. And I wanted him to hear their [sons aged 10 and 12] point of view. I wanted their input in there, because that's the whole reason Luke and I have any contact at all. They need to have a say, they're not mindless lumps sitting in the corner. (Jayne, child-inclusive group)*

*I said everything's coming out of my mouth, and you need to hear it from somebody else, I said 'it's not me Phil, this is how your children [daughters aged 9, 12, and 14] feel, and you need to hear how they feel'. And I said they might have bad things to say about me as well, but we need to know. (Julia, child-inclusive group)*

These parents hoped that issues could be more effectively resolved if a third party conveyed how the children were feeling to the other parent.

### **Parents who did not want a child-inclusive mediation**

The four parents who were offered, but declined, a child-inclusive mediation all felt that it was unnecessary to involve their child or children in the process. Two parents thought that they had worked issues out sufficiently well with their former partner:

*I said 'no' because my relationship with Robert improved... I thought it was unnecessary. (Maria, comparison group)*

*We didn't need to involve him [son aged 10] because we'd already worked it all out. Now if there would have been an argument, like if she said I want 75%, and I said no I want 75%, then the child would have had to have been brought into it. And counselled separately to find out what he wanted. (Graeme, comparison group)*

The two other parents who declined a child-inclusive mediation viewed the process primarily as a therapeutic exercise for children, but one which their own children did not require. This was a similar misunderstanding to that seen with many parents in the child-inclusive group. Josie had previously taken her 11 year old daughter to counselling sessions with another community organisation and so felt that this aspect had already been taken care of:

*So she went for a couple of sessions, but they did tell me if every kid was like her they'd be out of business. So I didn't feel the need for it. It's not because they didn't have the support. (Josie, comparison group)*

Similarly, Darren explained that he had assumed a child consultation would not be necessary unless something was 'wrong with the kids':

*I don't know why you would need your child – there's nothing wrong with the kids, so I'm not sure. Is that part of the reason why they ask that question, because they think there's something wrong with the kids? (Darren, comparison group)*

When the child-inclusive process was explained to him in greater detail, Darren indicated that, in any case, he thought his daughter (then aged four) would have been too young to participate.

Another father, Bruce, was not offered a child-inclusive consultation, but reported that he would also have declined. He reasoned that involvement would expose his children to pressure from their mother, Loretta, although he acknowledged that the presence of an outsider might also shield the children:

*Why not? Because of Loretta...for the simple reason, particularly my eldest daughter, she's in her ear. ... It might have been a good thing to have the kids involved, because she couldn't be in their ear and manipulate their responses or talking to them or whatever, because the counsellor would be there saying 'no, hang on a moment, that's not what your daughter wanted to say, Celeste [aged 12] what is it you wanted to say?' Or Joanna [aged 7] or whatever. But at the same time in my heart I don't think I want to put the kids through that. I don't want them to go through what we're going through. (Bruce, comparison group)*

However, later in the interview, Bruce indicated that if he had had a better understanding of what the child-inclusive program entailed, he would have been more likely to want his children to take part.

## **Beliefs about the appropriateness of child-inclusive mediation**

Parents in the comparison group were asked whether they believed it was appropriate to involve children in mediation as a general proposition, even though their own children had not taken part.

Only one parent expressed strongly that she felt children should *not* be involved in the mediation process at all. She explained that she did not think children should make 'adult' decisions about their lives:

*You start giving them choices, or getting them to make a decision about their mother and father's care, I just think it's going to go all wrong, it's a bad idea. Based on any age of the child, it wouldn't matter if the kid was 15, I'd still say no. And I would say 'no, I'm your mum, and that's your dad, and that's what we know that is best for you'. And hopefully parents would make the right decision, but I don't think the kid should say, 'oh dad's got me five days, and I only want him to have me two days', and the parents need to come to an agreement that hopefully with a mediator is the right decision for the child. But I just don't think giving kids adult rights, or an adult's say in an adult's matter is the way to go. I just think it stuffs with the head. (Fiona, comparison group)*

Another thought the opposite:

*I think you really should include your children because if you exclude them they're too busy wondering about what's been said and who said what, and then they blame themselves, and they think it's their fault, and the more reassurance that they realise it's not their fault, and it's differences between the adults, and it's not the children, and it's never their fault and they don't have to choose, they never have to choose. (Julia, child-inclusive group)*

Six parents believed that it was appropriate to involve children in some circumstances, but not necessarily as a matter of course. The appropriateness was defined by the circumstances and by the age of the children.

*I think it's appropriate for children to be involved where it's appropriate. I think every situation is going to be unique. And the way in which, what people want, what allegations they're making, it is an emotional period, whether you want to drag kids into that emotional mix or not. At the end of the day it's all about the children. Is it to the child's advantage? Is it*

*somehow going to make it better for the child in the long run? (Robert, comparison group)*

*So do you think that it would be appropriate for children to participate, or you're saying it depends on the situation? I think it is appropriate. I mean different parents go through certain things, so they're going to snap anyway, but it's for the kids, it's not about the parents, it's for the best interests of the kids, so yeah definitely. (Geoff, comparison group)*

Five parents mentioned referred to the age of the children as being a relevant consideration that guided participation, although there was not much consensus as regards to the most appropriate age:

*Oh, 10 would be appropriate, 10 up. I just think 10 and under they're too young to go through that process (Loretta, comparison group)*

*Oh it depends on age, if they're old enough and concerned, I think they should be heard. And obviously what parents do in their own world affects the child, I don't know what age it would be. But not for little ones. (Katrina, comparison group)*

*I believe, I think kids of the age of, if kids are old enough to go to kindergarten, I think they're old enough to make a decision. Kindergarten kids know what is right/wrong, developing. (Kurt, comparison group)*

*I think if a child's probably over the age of five, consultation is a very large part of it. (Amanda, comparison group)*

Two fathers stressed that whoever decided that children should be involved would need to be suitably qualified:

*Do you think it's appropriate for children to be involved, or not? I really think it would have to be a case by case, and I think, and I don't know, I'm sure they're more than qualified, but whoever is suggesting that the kids be involved, mediator or whatever, needs to be able to, needs to have the qualifications or the ability to know when it would be good or not good to have the kids involved. More so than just saying to the parents, would you like the kids involved? (Bruce, comparison group)*

*Do you think it's appropriate that children are involved? Yeah I think so, depending on the child. You know after an interview we'd see the child consultant whether they think the child can handle it or whether they think*

*they're mature enough to have some relevant input. I don't think it's relevant in all cases. And I mean obviously there's a lot of poison coming from one side a lot of the time. (Alan, comparison group)*

Rosalind thought that the worse the relationship between the parents was, the more benefit there would be in involving children:

*Do you think it's appropriate for children to be involved in the process? If it's a really bad relationship where kids' parents are always fighting and kids are always getting involved and torn between the two, then I think yes. (Rosalind, comparison group)*

Other parents, however, thought that children should be protected from the parents' conflict, for example:

*Do you think it's appropriate for children to be involved in mediation?*

*Graeme: Well that's a double-edged question. In regards to, depending on whether the parents are getting on or not. If the parents aren't getting on, no –*

*Simone: It's just going to be volatile.*

*Graeme: If they are getting on, yes, there is a purpose that they could be asked to see what they want. But you've got to be careful of one problem not playing off the other parent with the child. (Graeme and new partner Simone, comparison group)*

## **Discussion**

This is a small qualitative study with participants drawn from three Family Relationship Centres in New South Wales. Most participants had income levels that were at average weekly earnings or below. The cohort had few participants with a university education. The findings of this study are therefore not generalizable across the country or to areas with a different socio-economic profile. The study does indicate, nonetheless, how participants in areas with this kind of socio-economic profile view child-inclusive mediation and what they understand its purposes to be.

The research indicates that most parents in this cohort, provided with an

adequate explanation of what child-inclusive mediation involves, are likely to give consent for their children to see a child consultant. The great majority of parents either accepted a child-inclusive mediation or indicated that they would have accepted one had it been offered to them. Only four of the 33 parents reported that they had declined one. None of these four had an objection in principle to child-inclusive mediation. They simply saw no need in their situation. One parent in the comparison group initially indicated he would have declined the option, but later indicated he might have agreed once he had a better understanding of what it entailed. Other parents, all with children under five, thought that their children were too young to be offered a child consultation.

Parents had a range of reasons for seeing child-inclusive mediation as beneficial. Some were directly related to the claimed purposes of giving children a voice and encouraging greater parental awareness, but many were not.

Some parents thought it would be beneficial for children to have a say, consistent with the stated purpose of giving children a voice. Parents used other expressions such as 'empowering', and 'having someone to bat for them'. This is consistent with the findings of Parkinson and Cashmore from an earlier Australian study, that both mothers and fathers were disposed to support children's voices being heard in the resolution of parenting disputes.<sup>19</sup> Support for the involvement of children was nonetheless qualified by reference to the age of the children, and for some parents, the circumstances existing at the time

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19 Parkinson P and Cashmore J, *The Voice of a Child in Family Law Disputes* (Oxford University Press, Oxford, 2008); Cashmore J and Parkinson P, "Children's and Parents' Perceptions of Children's Participation in Decision-making after Parental Separation and Divorce" (2008) 40 *Family Court Review* 90.

for the family. Parents with children under the age of five tended to assume that their children were too young to take part.

Some parents also spoke in terms of wanting to know what the children's true feelings were about the family situation. For some, this was related to their need to know what their children were feeling in order to help them. A few parents stressed that they had been aware they might hear negative things about their own parenting through the child consultation, but that they would still rather know about any issues.

However, the interviews also revealed a range of other motivations for agreeing to child-inclusive mediation. A group of parents seemed to be expecting a therapeutic benefit from counselling for their children, although this is not the purpose of the process (even if there might incidentally be some therapeutic benefit for a child).<sup>20</sup> It may be that this expectation was influenced by the Unifam brochure which refers to a therapeutic benefit for children in debriefing with an independent professional, and by explanations from mediators that refer to such benefits.

A number of parents expressed the view that the primary purpose of involving children in the mediation was to help the children to feel better about the situation between the parents by talking to an appropriately qualified third party. Accordingly, two parents who declined child-inclusive mediation did so because they thought their children did not need therapeutic intervention. Parents who accepted the child-inclusive mediation for this reason used

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<sup>20</sup> An aim is to influence and assist the parents in their relationships with the children.

McIntosh n 2 at 5 states, for example, that the "primary aim is to assist parents to re-establish or consolidate a secure emotional base for their children after separation".

expressions such as the need for their children to 'vent', 'get things off their chest' or 'sort out where they were'.

In the minds of other parents in the child-inclusive group, the purpose of child-inclusive mediation was to persuade *the other parent* of what the children really wanted. They believed that they were advocating for their children's wishes and hoped that hearing the voice of the child through the child consultation would result in the other parent understanding (and agreeing to) what the child wanted to happen. Several parents in the comparison group also thought that if their children had been involved, what the children wanted would have come out to a greater extent. Some parents thought that their ex-partner did not believe them when they attempted to describe or explain how the children were feeling and that hearing the message from an independent person could change that.

In a similar vein, some parents were concerned that the children were being manipulated by the other parent and expected that the children would be able to be more open and truthful if they could talk with someone independent of the family.

Perhaps it doesn't matter all that much whether parents consent to child-inclusive mediation because they think it will help to resolve the dispute, or because they expect that in some way it will help the children in a therapeutic sense, as long as it is beneficial to the child. McIntosh and Long found that parents in the child-inclusive group were likely to consent anyway, based on their perception that their children would benefit from speaking about their experiences.<sup>21</sup> Indeed, that was the case, since 86% of the 60 children who were

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21 McIntosh and Long, n 6 at 31.

interviewed reported that the process was good, great or helpful. Only 6 out of the 60 (10%) did not find it helpful.<sup>22</sup>

Nonetheless, good practice in this area ought to involve trying to make as clear as possible to parents that the child consultant is not engaged in counselling or therapy, even though the children may well find it helpful to talk to him or her about the situation in the family. There are also certain negative outcomes to be considered, including the possibility of retaliation against the child if the parent does not like what they hear, greater exposure of the child to the parental conflict, or that the child's views will be ignored by a parent, and the child will feel angry or frustrated as a consequence.<sup>23</sup>

### **Conclusion**

Child-inclusive mediation is a practice in its infancy. In this cohort of participants, there was a great deal of support for the idea of child-inclusive mediation, and the majority of parents even in the comparison group who had not had a child consultation, supported the idea in principle.

However, there were numerous different understandings of the purpose for which the child consultation is used. Many of those who consented to the involvement of their children did so for reasons which were not closely related to its primary purposes, although they were nonetheless borne out of a concern for their children's wellbeing. This research demonstrates the importance of providing clearer explanations to parents, at least in some population groups, about what the purpose of child-inclusive mediation is. What is said may not always be what is heard. Parents involved in child-inclusive mediation ought to

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<sup>22</sup> McIntosh and Long, n 6 at 94-95.

<sup>23</sup> Parkinson and Cashmore, n 19.

understand the purposes of the mediation and give an informed consent to their children's participation.

### **Acknowledgments**

The authors are very grateful to Uniting Care Unifam for funding this study and co-operating in the recruitment of participants.