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## The importance of listening to children's voices in family law: A framework for practice

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### Abstract

This commentary explores the critical importance of listening to children's voices within the family law context and proposes a framework for practice designed to enhance children's participation in decisions that affect their lives. Drawing on the United Nations Convention on the Rights of the Child and Lundy's model of participation, the framework identifies key principles and practices for professionals working with children and families. It highlights how child-centred approaches can improve decision-making processes, strengthen children's rights and support their wellbeing. This commentary argues that incorporating meaningful participation within family law requires systemic change, practitioner training and safeguards to ensure children's voices are heard.

### Keywords:

child-centred practice, children's participation, children's rights, family law, Lundy's model.

### Introduction

Despite growing recognition of children's rights, their voices remain significantly underrepresented in Australia's family law system. Under the United Nations Convention on the Rights of the Child (UNCRC; United Nations, 1989), children have a fundamental right to express their views in all matters affecting them. However, within the current legal framework governed by the *Family Law Act 1975* (Cth), children's views are considered only to the extent that they are deemed sufficiently mature (Australian Government,

1975). This limited approach not only restricts genuine participation but also undermines the intent of Article 12 of the UNCRC (United Nations, 1989), which calls for meaningful engagement with children's perspectives. This commentary proposes a framework for practice to strengthen children's participation in family law proceedings.

Drawing on Lundy's (2007) model, which conceptualises participation through four key elements (space, voice, audience and influence), the framework for practice is underpinned by four

guiding principles: child centricity, respect for autonomy, emotional safety and transparency. It is further supported by four key practices: developmentally appropriate communication, trauma-informed approaches, interdisciplinary collaboration and cultural sensitivity. Together, these principles and practices aim to move beyond tokenistic engagement and, by incorporating Roger Hart's Ladder of Participation (Hart, 1992), foster a family law system where children are genuinely heard and their views actively shape decisions that affect their lives. Wood et al. (1976)'s concept of scaffolding could be explored to complement the idea of adults supporting children as a sociocultural theory of childhood development. Central to this participation is a broad and inclusive understanding of children's voices, one that recognises the diversity of children's perspectives and emphasises not only the responsibility to listen, but to engage with their feelings, beliefs, thoughts and preferences (Murray, 2019). This framework of practice has the potential to uphold children's rights and promote their emotional wellbeing, supporting children to thrive.

## Children's rights and the legal context

Family law scholars have been challenged for over 20 years about how to ensure children's voices are best incorporated in family law decision making (Dimopoulos, 2023; Fehlberg et al., 2023). The UNCRC recognises that children have an inherent right to participate in matters affecting them, requiring that their perspectives be heard and considered with their age and maturity (United Nations, 1989). This right is clearly articulated in Articles 3(1), 5, 12(1–2), 13(1) and 36. Within the Australian family law context, the *Family Law Act 1975* reflects these principles, requiring courts to consider 'any views expressed by the child' as part of determining the child's best interests, which are framed as 'the paramount consideration' (ss 60A, 60CA, 60CC(2)(b)) (Australian Government, 1975). Currently, the Act provides that greater weight is given to children's views with increased maturity, and it does not define a specific age threshold for determining maturity. This lack of clarity contributes to inconsistencies in how children's voices are interpreted and acted upon in practice. It is not suggested that a hard and fast rule about the age or maturity needs to be incorporated into legislation, rather the need for flexibility when considering children's ages and maturity levels. In the Australian family law system, the principle of the best interests of the child guides all decision making. However, the inconsistent inclusion of children's voices remains a barrier. Judicial interviews with children are rarely conducted, and Independent Children's Lawyers (ICLs) are usually only appointed in high-conflict cases, particularly those involving domestic violence or mental health concerns.

Section 60CD of the *Family Law Act 1975* outlines how a child's views may be presented to the court, including through the involvement of an ICL (Australian Government, 1975). The court may appoint an ICL under section 68L. ICLs are responsible for representing the best interests of the child, not the child's best wishes and, therefore, are not obligated to advocate for what the child says they want (s 68LA(4); Australian Government, 1975).

*An Independent Children's Lawyer is appointed to a case by the legal aid commission ... who can be appointed to this role after completing a period of specialised training* (Australian Law Reform Commission, 2019: p. 372).

ICLs have three key roles, including 'facilitating a child's participation' in family law proceedings, 'gather[ing] evidence relevant to the child's best interest' and 'litation management' (Australian Law Reform Commission, 2019: p. 372). While the Act requires that ICLs provide children with an opportunity to express their views (s 68LA(5A)), there are exceptions. ICLs are not required to meet with the child if less than 5 years old, unwilling to participate or if exceptional circumstances apply (s 69LA(5B), (5C)). As a result, children under 5 years of age are often excluded from participation. Yet research suggests that even children as young as 3 years of age can meaningfully engage in conversations about their families (Aubrey & Dahl, 2006; Karle & Gathmann, 2016). This highlights a tension between legislative intent and practice.

Another common approach involves a Family Consultant, such as a psychologist or child expert, being appointed to prepare a family report where the 'welfare and development of the child is relevant' (Australian Law Reform Commission, 2019: p. 366; Dimopoulos et al., 2025). Under section 62G(3A), the child's views must be included in this report. However, section 62G(3B) allows those views to be excluded if the consultant deems the child too young or immature, which can result in the silencing of younger children. Article 12 of the UNCRC (United Nations, 1989), and scholars such as Walker and Misca (2019), warn against tokenistic approaches that deny children meaningful opportunities to express their views. Children's rights must be upheld in both policy and practice, ensuring their participation is not symbolic but substantive.

In Australia, a small portion, approximately 3% of separated parents make use of the family law court, and an estimated 16% opt for family dispute resolution or use the services of lawyers (Kaspiew & Carson, 2019). The *Family Law Act 1975* (s 60I) stipulates that parents should attempt to resolve disputes through the family dispute resolution process before an application for a parenting order may be made in the family law court and the matter proceeds to a trial (Dimopoulos et al., 2025). The mechanisms adapted in the family law court for hearing children's voices do not apply within family dispute resolution, resulting in a further barrier to including children's voices, as there is no guidance on this matter. Although research demonstrates that children want their voices heard during family dispute resolution (Barlow et al., 2017; Bel et al., 2013), their opportunities to participate, when safe to do so, remain limited. As noted by Dimopoulos et al. (2024), children's involvement in family dispute resolution requires parental consent, which can present significant risks and challenges, particularly in situations involving family violence or high conflict between parents.

Following more than two decades since the *Family Law Act 1975* came into existence, the *Family Law Amendment Act 2023* (Cth) is a landmark reform in Australian family law. One of the most significant amendments is that shared parental responsibility is now based on the child's best interest and not a default assumption of joint responsibility. Further amendments include the requirement for ICLs to meet with children who are typically over the age of 5 years; however, there are exceptions to this rule, such as if the child does not wish to meet with the ICL, or if there is risk of harm (s 68L(1)). ICLs are now also appointed in international child abduction cases under the Hague Convention. Amendments

to the Act seek to 'ensure the best interests of the children are placed at its centre' (Parliament of Australia, 2023). However, challenges remain and, despite this shift, empirical research is lacking in defining what 'participation' truly means and entails for children within the context of Australian family law settings (Dimopoulos et al., 2025). Systemic barriers such as inconsistencies in practice, the undervaluing of children's voices and reliance on adult interpretations continue to marginalise children in legal proceedings. Children frequently report feeling excluded, confused and misunderstood in family law settings (Birnbaum, 2017; Carson et al., 2018; Cashmore, 2011). As noted by Carson et al. (2018, p. 68), children are asking for 'a bigger voice more of the time', yet their voices remain silenced in many circumstances.

While the *Family Law Act* does allow for children's views to be heard through 'such other means as the court thinks appropriate' (s 60CD(2)(c)), clearer legislative guidance is needed. Scholars have long advocated for more consistent use of judicial interviews to strengthen children's participation (Fernando, 2012; Parkinson & Cashmore, 2007). To uphold the principles of the UNCRC (United Nations, 1989) and meet the evolving needs of children within family law, it is crucial for the Australian Family Law System to continue to reform and refine its legal practices to ensure children's voices are not only heard but valued in decisions that shape their lives and future.

Recognising children in family law decision making requires a deeper sense of consciousness and awareness of how adults (parents, family law professionals, practitioners) engage and respond to children throughout the process. Participation is an ongoing process that is essential for not only effective decision making but also for supporting children's overall wellbeing. Fitzgerald (2009) demonstrated that these conversations are not only a process of listening to children's view, desires, experiences and uncertainties, but also create meaningful spaces where children can explore and shape their identity. It is important for recognition of respect if children choose to be involved in the family law process, otherwise the process may feel less like support and more like an interrogation (Neale, 2004). Without this conscious engagement, family law risks silencing children's voices and compromising outcomes that genuinely reflect their best interests. Conscious engagement should be a foundational skill that all family law professionals are equipped with.

## Family violence

Existing literature demonstrates that children who are exposed to family violence are often silenced (McCann et al., 2023), and only minimal research has been conducted directly with children who have been subjected to family violence (Cossar et al., 2019; Dragiewicz et al., 2020; Fitz-Gibbon, 2025; Warrington et al., 2017), particularly in Australia (Robinson et al., 2023). Given that children involved in family law proceedings, particularly in high-conflict cases, may have been exposed to family violence, it is critical that professionals and systems are equipped to engage with them directly in ways that genuinely listen to, hear and understand their needs and perspectives (Dimopoulos et al., 2024). Each child's experience of family violence is shaped by a range of unique factors (Family Safety Victoria, 2020), which can increase the barriers they face in accessing appropriate support and having

their needs met. Literature demonstrates that children often want to share their points of view and experiences of family violence, because this ultimately affects their safety, overall wellbeing and future (Moore et al., 2021; Noble-Carr et al., 2020). It is timely that the family law system and professionals supporting children are equipped to respond with insight, sensitivity and care.

## Lundy's model

Lundy's (2007) four-step model, which conceptualises Article 12 of the UNCRC (United Nations, 1989), provides an effective foundation for a framework of practice that can be used in family law circumstances. Lundy's model has not been evaluated in Australian family law contexts. The model outlines four key elements (space, voice, audience and influence), that are essential to acknowledging children's rights to be heard in decision-making processes (Lundy, 2007). This is particularly important in family law. This model is imperative as a baseline foundation for all family law professionals to consider and incorporate during all stages of family law proceedings.

The first element, space, emphasises the importance of providing children with a safe, inclusive environment where they feel comfortable expressing their thoughts and feelings (Dimopoulos et al., 2025). As demonstrated in *Karamalis v Karamalis* (2018), it is clear responsibility of decision makers to meaningfully consider children's views. Creating such spaces not only supports children's emotional wellbeing but also helps build trust and rapport between them and the professionals involved (Cossar et al., 2019). The second element, voice, highlights the need to actively facilitate children's free expression. Too often, children's voices are subdued under a protectionist framework that perceives them as too vulnerable to participate in decision affecting them (Kosher & Ben-Arieh, 2020; van Bijleveld et al., 2019). Adults often aim to protect children by shielding them from decision making, driven by a desire to avoid causing further trauma (Coyne & Harder, 2011). This silencing creates power imbalances and can exclude children from meaningful participation (Le Borgne & Tisdall, 2017). Additionally, when children are not heard, there are serious implications, such as missed opportunities to disclose abuse or violence, or even mental health risks (Carnevale et al., 2015; Lansdown, 2011). The third element, audience, refers to the responsibility of practitioners and decision makers to actively listen and give serious consideration to what children communicate. Children's experiences within the legal system can be significantly shaped, positively or negatively, by whether they feel listened to (Dimopoulos et al., 2025). Listening should go beyond hearing words; it involves interpreting meaning, providing validation and ensuring that children feel acknowledged and supported throughout the family law process. The fourth element, influence, addresses the need for children's views to be genuinely considered and acted upon where appropriate. Children frequently report feeling frustrated or confused when their input is not acknowledged, or when they receive little to no feedback about how their views were considered (Dimopoulos et al., 2025). Misinterpretation or dismissal of their perspectives can have lasting impacts on their sense of agency and future wellbeing.

Practitioners and decision makers play a crucial role in ensuring children's narratives are heard and considered in decision making (Waniganayake et al. 2012). When children feel that their perspectives are acknowledged by practitioners, they are recognised as knowledgeable agents of their lives, which fosters feeling valued within their family (Waniganayake et al. 2012). Both Lundy's (2007) model and Article 12 of the UNCRC (United Nations, 1989) establish that while children may not always have the final say, they have a fundamental right to express their views, and those views must be given due weight in accordance with their age and maturity.

## Key principles guiding the framework

The practice framework is grounded in four key principles: child centricity, respect for children's autonomy, emotional safety and transparency. Together, these principles provide the foundation for meaningful engagement with children in family law proceedings. Each principle is discussed in more detail.

### Child centricity

Child centricity is a foundational principle that includes Lundy's model, which places the needs, rights and perspectives of all children at the heart of family law proceedings (Henderson-Dekort et al., 2022; Orr et al., 2023). This paper challenges that the tenor of the *Family Law Act* is absolute in its current status as child centric. It contests traditional legal paradigms that historically prioritised parental rights over children's experiences, instead advocating for legal processes that are shaped around the child's best interests. As highlighted by the past Chief Justice Nicholson of the Australian Family Court:

*... the determination of criminal and civil cases a number of centuries ago is not an appropriate method for determination of family law disputes concerning children in the 21<sup>st</sup> century. It places undue focus on the rights of parents and too little focus on the rights of children* (Nicholson, 2013: p. 15).

His quote highlights the urgent need to reconceptualise family law through a child-centric lens. When children are acknowledged as central participants in these processes, they are more likely to feel valued, respected and included (Hale, 2006). The principle of child centricity supports the development of self-esteem (Shier, 2001), promotes personal development (Lansdown, 2011), strengthens accountability (Lansdown, 2011), enhances problem-solving abilities (Erwin et al., 2016) and fosters a sense of citizenship by recognising children as equal members of society (Hakli et al., 2018), all of which are integral to their overall wellbeing. Practitioners and family law professionals should 'watch, listen, reflect and engage in conversation; seek to enter the child's world in just a small way' (Greenfield, 2004: p. 4). This approach involves humility, empathy and openness to understand the unique ways children communicate their needs and experiences.

Placing the child at 'a central position in the decision-making process, right from the start' (van Bijleveld et al., 2015: p. 137) ensures that their agency is sustained throughout the legal journey. When children are engaged in each stage of the process and understand how their input is considered, they are more likely

to feel a sense of ownership over the outcome, even when the final decision is not what they had hoped for (Kennan et al., 2018). Tailoring supports and services to meet children's individual needs, abilities, cultural backgrounds and preferences can significantly enhance their experience of not just being heard but understood and supported. Creating the conditions for such meaningful participation requires family law professionals to engage a dialogical process where child-adult conversations occur through a 'culture of listening' (Moss, 2006: p. 21), where these conversations are grounded in mutual respect and a shared intent to co-construct meaning through the family law process. Meaning making is a core component of subjective wellbeing (Organisation for Economic Cooperation and Development, 2018), and the ability to make sense of one's experiences, particularly during times of change, can profoundly influence a child's emotional and psychological wellbeing.

### Respecting children's autonomy

Respecting children's autonomy in family law proceedings is a key principle. It is critical to acknowledge children as active social agents and experts in their own lives (James, 2007).

*Parents and others cannot be considered an entirely reliable source of information on the child's experience of divorce ... in this sense children are not only relevant and competent witnesses to the processes of their parents' divorce, they are also often the only reliable witness of their own experience* (Butler et al., 2003, p.12).

Feeling heard and valued forms the foundation of empowerment, supporting children's agency and self-determination while nurturing their self-worth and confidence (Adkins et al., 2012; Erwin et al., 2016; Stafford et al., 2021). Family law professionals should facilitate children in making choices and developing evaluative capacity as part of their self-determination process (Ballet et al., 2011; Fegter & Richter, 2014). As described by Fattore et al. (2017: p. 63), agency is an important 'expression of the moral self' where children may actively look for opportunities to engage in and shape situations that may influence their wellbeing.

Although in most cases children do not want to choose between parents, they do want to participate and exercise their agency in decisions that affect them (Fattore et al., 2017; Smart & Neale, 2005; Walker & Misca, 2019). Lansdown's (2005) concept of 'opportunity structures' further highlights the need for family law professionals to provide conditions that enable children to exercise this autonomy. However, when children's autonomy is suppressed through protectionist approaches, they are often excluded from meaningful participation on the grounds that they need shielding from adult conversations (Walker & Misca, 2019). This marginalisation undermines their rights and reduces their capacity to influence decisions that directly affect them (Le Borgne & Tisdall, 2017; van Bijleveld et al., 2019). Children often perceive situations differently from adults, expressing that their parents are unreliable sources when articulating their feelings and wishes; therefore, children seek autonomy to express their views, so they are not misrepresented (Walker & Misca, 2019). Protectionism, in this context, diminishes children's autonomy and disregards their potential to contribute meaningfully to the legal process (Erwin et al., 2016). Failing to acknowledge children's unique perspectives

not only risks distorting the realities of their lived experiences but undermines the integrity of decisions made on their behalf. Practitioners must shift from viewing children as lacking maturity to recognising them as capable social beings who can engage in decisions about their lives. By doing so, children's autonomy can be meaningfully upheld and supported throughout the family law process (Grace et al., 2019; Woodman et al., 2018). This recognition of autonomy is important to support children to thrive.

## Emotional safety

Emotional safety is a fundamental principle in creating a child-friendly environment where children can feel secure and safe enough to express their thoughts, feelings and views about family law proceedings, without fear of judgement or repercussions (Casley, 2024; Hart, 2013). Safety and contentment are positively linked to wellbeing (Gilbert et al., 2007) and 'true safety does not exist without emotional safety' (Veale et al., 2023: p. 65). It is important for children to feel safe in a court room or around judicial professionals who they can talk to. As highlighted by Veale et al. (2023), safeness is the presence of positive supports and absence of stimuli that may trigger any threat responses. Emotional safety is a foundational element where children may feel safe to talk about important issues through open and honest communication, develop trust and build confidence to explore and confide in professionals about issues that they may find difficulty talking about (Veale et al., 2023). Prioritising emotional safety fosters open communication and supports children in making sense of their experiences and social worlds. To uphold emotional safety, it is essential to embrace a dialogical approach, one that values mutual exchange and shared understanding between the child and practitioners or decision makers (De Mol et al., 2018). This collaborative process helps ensure that children feel heard. It also means that they feel respected and supported throughout their involvement in legal matters.

## Transparency

The fourth key principle focuses on the importance of transparency throughout family law proceedings. Keeping children informed about the processes they are involved in, using clear age-appropriate language, not only respects their right to information but also supports their understanding and emotional security. This aligns with Article 13 of the UNCRC (United Nations, 1989), which asserts children's rights to receive and impart information relevant to their lives. Using child-friendly tools and resources such as visual aids and storytelling techniques to explain outcomes can help make complex legal concepts more accessible, while also fostering a sense of inclusion and trust (Bala et al., 2013; Orr et al., 2023). Transparency with children during the family law process ensures that children are not left confused or anxious due to lack of information but instead feel included and respected as individuals with a legitimate interest in the outcomes that affect their lives.

Transparency and trust are deeply interconnected. Building trust with children throughout the court process is crucial to supporting their meaningful participation.

*Trust can only be nurtured gradually and carefully.  
Building strong relationships takes time and is a joint*

*process, requiring both parties to trust the other person and to be trusted by him or her. Placing trust in children, in their competence and responsibility, can be an empowering experience for them, not only strengthening the relationship but also enhancing their self-confidence (Eichsteller & Holthoff, 2011: p. 43).*

When trust is established, children are more likely to engage openly and meaningfully, allowing for more authentic insights into their needs and ensuring decisions are made with them, rather than only for them.

In practice, transparency enables children to anticipate what will happen next, reducing their fears and confusion, and allows them to feel a sense of safety (Parkinson & Cashmore, 2007). Transparency also ensures an important safeguard against feelings of exclusion, which children frequently report when they are not adequately informed about decisions that impact their lives (Bala et al., 2013). As family law proceedings are an ongoing process, rather than a one-off event, it is essential that practitioners keep children informed at every stage about what is happening (Murch, 2018). Children can cope better when they have appropriate information about the situation at hand and are helped to understand the changes that are taking place throughout the family law process (Davis & Hill, 2006; Taylor, 2006). When children cope, they are less vulnerable to adverse feelings that impact their wellbeing. Transparency in these processes also promotes accountability among family law professionals. When adults engage in open and respectful dialogue with children, they are better positioned to identify differing values, resolve issues collaboratively and work towards shared agreements (Graham, 2004). This is in the best interests of children.

## Key practices underpinning the framework

The key practices within this framework are grounded in Bronfenbrenner's Ecological Systems Theory (Bronfenbrenner, 1979), which highlights the dynamic and reciprocal relationships between individuals and environments. This theory supports the idea that children and adults grow and develop in interconnected systems, reinforcing the value of person-centred and child-focused approaches. By acknowledging the many influences on a child's life, such as family, community and broader societal structures, this perspective allows practitioners to better understand and respond to children's views within the context of their lived experiences. Building on this foundation, this framework is underpinned by four key practices: developmentally appropriate communication, trauma-informed approaches, interdisciplinary perspectives and cultural sensitivity. Together, these practices promote ethical, inclusive and responsive engagement with children in family law, ensuring their voices are heard and meaningfully considered in decisions that affect their lives.

### Developmentally appropriate communication

The first key practice in this framework is developmentally appropriate communication. Professionals working with children in family law should use simplified, age-appropriate legal language to ensure children can understand and engage in a meaningful way during the family law process (Parkinson & Cashmore, 2020). Developmental psychology research shows that children as young

as 3 years old can share their views and perspectives (Einarsdottir et al., 2009). Communication strategies must also make consideration for children with mental health challenges, disabilities and those who are non-verbal, adapting accordingly to each child's unique needs.

Depending on the child's age, abilities and preferences, a range of tools can be used to support expression. These include art and drawing materials, which allow for non-verbal communication (Bala et al., 2013; Henderson-Dekort et al., 2022), and narrative approaches such as storytelling for older children. Young children may communicate in various modes such as oral, kinaesthetic, visual, linguistic and spatial (Phillips, 2014). To build rapport with young children, practitioners should become familiar with skills in playing with children, which can help to recognise children's ways of communicating such as symbols, songs and gestures (Phillips, 2014). It is important for practitioners to understand that communication is not limited to spoken words.

Young children may express themselves through actions like laughter, crying, touching, pointing or other gestures (Murray, 2017, 2019). To truly engage with children, decision makers and professionals should adopt a pedagogy of listening (Rinaldi, 2006) and practice an ethics of care (Fielding & Moss, 2011), which involve being attuned and responsive to the child's forms of expression. As highlighted by Roberts (2008: p. 264), 'listening to children is central to recognising and respecting their worth as human beings'. Without recognising these diverse modes of communication, there is a risk that young children's voices will go unheard, silencing their perspectives and excluding them from decisions that shape their lives.

From a traditional developmental perspective, children are often viewed as being shaped by their environment and assessed according to age-related competencies, such as stages of cognitive development (Malik & Marwaha, 2023). This perspective suggests that children only reach their full potential when they are adults and implies a predictable stage-like trajectory along a 'developmental pathway' (Misca & Unwin, 2017). However, focusing solely on age-related competencies overlooks the subjective meaning children give to their lives, implying children 'not knowing' what is the best outcomes for their own lives (Misca & Unwin, 2017). In contrast, a social constructionist view of childhood highlights the value of the child's lived experience through a subjective-meaning perspective (Pufall et al., 2003) and recognises that children's ability to understand cannot be predicted by their ages or developmental stages, but rather children's capacities are shaped by interactions and experiences in which they grow (Walker & Misca, 2019). Adopting this perspective compels family law professionals to move beyond rigid developmental benchmarks and instead engage with children as capable, meaning-making individuals who can contribute to achieving responsive outcomes for their lives.

## Trauma-informed approaches

The integration of trauma-informed approaches is a critical principle within this practice framework. Children involved in family law proceedings often experience high stress levels and may have a prior history of trauma, such as exposure to family violence,

abuse, neglect or fractured relationships (Dimopoulos et al., 2024). These traumatic experiences can be compounded by the adversarial nature of legal processes, making the family law setting itself potentially re-traumatising (Cashmore & Parkinson, 2009). Trauma must be understood holistically and contextually to guide practice. The Substance Abuse and Mental Health Services Administration (SAMHSA) provides a comprehensive definition of trauma:

*Individual trauma results from an event, series of events or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual wellbeing (SAMHSA, 2014: p. 7).*

For children, such trauma can have lasting developmental consequences, including impaired cognitive and emotional regulation, attachment disorders and heightened anxiety (Cook et al., 2007). As noted by Randall and Haskell (2013: p. 503), 'trauma and law ... are interconnected', particularly for vulnerable populations such as children navigating the uncertainty of family law proceedings.

Given children's potential for vulnerability, it is essential that practitioners have an ethical and professional responsibility to prioritise non-maleficence, the principle of 'do no harm' when working with children (Kezelman & Stavropoulos, 2016). To support this, practitioners should adopt strategies such as active listening, emotional validation and sensitivity to potential triggers that may re-traumatise the child (Kezelman & Stavropoulos, 2012). A trauma-informed approach supports interactions that are safe, respectful and mindful of the child's emotional state throughout the legal proceedings. This approach should be grounded in six core trauma-informed principles, including: safety; trustworthiness and transparency; peer support; collaboration and mutuality; empowerment, voice and choice; and cultural, historical and gender issues (SAMHSA, 2014). By embedding these principles into practice, professionals can foster a supportive environment that encourages trust, while upholding children's rights and wellbeing in the family law process. It is imperative for trauma-informed approaches to align with broader child-safe and child-rights-based frameworks, including Australia's *National Principles for Child Safe Organisations* (Australian Human Rights Commission, 2018), which emphasise the need to create environments where children feel safe, supported and involved in decision-making processes that affect them.

## Interdisciplinary perspectives

An essential principle of the proposed framework is the adoption of an interdisciplinary perspective. To understand children's views holistically, it is crucial to draw on insights from multiple professional domains, including psychology, law, social work and child advocacy. This includes the input of Family Consultants, Independent Children's Lawyers, social workers and psychologists (Coenraad, 2014; Marrus et al., 2022). Integrating these diverse professional perspectives enables judges to make more informed and balanced decisions after genuinely listening to children's voices (Henderson-Dekort et al., 2022). It is imperative that practitioners are equipped with training in child development,

trauma-informed care and family dynamics. These practitioners should undergo training to understand the levels of cognitive and developmental competency of children. It is also important for practitioners and judges to understand the impact of domestic violence and manipulation of parents and how this might affect what is being communicated by children, and how it can be disentangled. Fitzgerald and Graham (2011) suggested that practitioners should develop a new set of skills in meaningful and authentic dialogue with children, regardless of how simple or complex the situation may be. This interdisciplinary understanding supports the development of trust with the child and reinforces the legitimacy and fairness of the legal process in the eyes of both the child and the court (Marrus et al., 2022). Embedding interdisciplinary collaboration allows for a more nuanced, child-centred approach that strengthens the credibility of family law decisions.

## Cultural sensitivity

The fourth key practice focuses on cultural sensitivity. Throughout family law proceedings, it is crucial that decision makers acknowledge and respect children's cultural backgrounds. This includes using culturally appropriate language, techniques and modes of communication when engaging with children. As highlighted by Kha and Ratnam (2022), the Australian Law Reform Commission has identified ongoing concerns that the *Family Law Act* fails to uphold cultural safety for Indigenous children, thereby neglecting legal protections under Article 30 of the UNCRC (United Nations, 1989). The United Nations Declaration on the Rights of Indigenous Peoples further reinforces that Indigenous children have the right to maintain and strengthen their cultural identity, traditions and relationships with their communities, placing a clear obligation on states to safeguard these rights within all legal processes (United Nations, 2007). To address this, the inclusion of Indigenous family liaison officers (IFLOs) can provide deeper insight into a child's cultural context and support culturally informed decision making. There would need to be a sufficient number of IFLOs to accommodate the needs of children, noting that there are already challenges to employing enough IFLOs who can speak with adults at present. Judicial officers should also request cultural reports that are written through the Lundy framing that focus on the child's voice and reflect an understanding of Indigenous worldviews and practices (Australian Law Reform Commission, 2019). Respecting and understanding a child's cultural identity promotes cultural safety and supports their overall wellbeing (McVicar & White, 2024). Practitioners can further enhance communication with children from culturally and linguistically diverse backgrounds by including storytelling, art and other culturally relevant forms of self-expression (Spencer & Petersen, 2020). These methods can help children communicate their thoughts and experiences more comfortably.

## Evaluating the effectiveness of the framework

To determine the effectiveness of the proposed practice framework, it is essential to critically engage with the complexities involved in assessing children's participation in family law. A central challenge lies in the interpretation of Article 12 of the UNCRC (United Nations, 1989), which highlights a child's right to express their views freely in all matters affecting them but does not

provide specific guidance on how to assess a child's capacity or maturity to do so. The *Family Law Act* similarly lacks a clear standard or defined age of maturity, leaving interpretation to the discretion of legal professionals (Tisdall, 2016). As such, age alone is an unreliable indicator of a child's ability to participate meaningfully in family law proceedings, given the variation in children's developmental stages (Rap, 2016). Given these challenges, a qualitative approach is well-suited to evaluate the framework. Qualitative methods allow for rich, contextual insights into children's lived experiences (Teherani et al., 2015), especially in emotionally complex environments such as family law proceedings. Practitioners can adopt methods such as interviews with children to gain insight into their experiences of being heard during family law processes, and the effects on their wellbeing before, during and after proceedings (Brinkmann & Kvale, 2014). Child-inclusive practice should remain flexible and adaptive to children's changing needs, requiring commitment to ongoing evaluation and responsiveness.

Gaining children's feedback post-proceedings can help refine this framework's approaches, practices and principles for future use. To fully understand the long-term impact of children's participation in family law, longitudinal and retrospective exploratory research is recommended (Spencer et al., 2016). Such research would offer valuable insights into how children perceive their involvement over time and inform continuous improvement of child-focused practices in the legal system. Evaluating the proposed practice framework requires a comprehensive, multi-layered approach that privileges children's voices while also considering broader professional and systemic contexts.

## Outcomes of using the framework

The outcomes of the practice framework cements that children are experts on their own lives (Mason & Danby, 2011). This perspective shifts the focus from viewing children as passive recipients of adult decision making to acknowledging children as active, insightful individuals with lived experiences that matter. It reflects an important evolution in family law practice, one that captures the idea that children are not merely subjects to be protected, but social agents with agency and a right to be heard. Children are not only confident and capable communicators, but also active social participants who can influence the processes and structures around them (Campbell, 2013; Youth Affairs Council Victoria, 2024). Viewing children through this lens encourages the development of a participatory culture in family law, one where children's voices are genuinely respected and their perspectives considered at every stage of the decision-making process.

Children have the capacity to participate meaningfully in matters that affect them, and this capability should be acknowledged and respected within the family law context (Campbell, 2013). As noted by Cashmore and Parkinson (2009), whose research is based on empirical data, when children are meaningfully engaged in family law processes, their sense of agency is strengthened, contributing to improved emotional wellbeing and a sense of control over their lives (Cashmore & Parkinson, 2009). By contrast, when children's voices and views are neglected, it can result in lasting emotional harm, feelings of powerlessness, diminished trust in adults and the legal system, as well as being detrimental to their health and

wellbeing (Walker & Misca, 2019). Adopting the framework also supports the development of more child-focused and reflexive decision-making processes. It encourages family law professionals, practitioners and judges to adapt communication styles, language and settings to align with the developmental stage, cultural backgrounds and emotional needs of each child.

The use of the practice framework may include the use of child-friendly spaces, visual aids and the inclusion of trained professionals. The training of professionals should include an additional 3 years of training for judges to best understand the mental health complexities of children, inclusive of domestic violence training. This will enable judges to grasp a clearer understanding of the psychological and emotional factors that children are challenged with during family law proceedings. Any less training time could result in risk of harm to children through the decision-making process. Other professionals, such as ICLs, lawyers and allied health specialists, should undergo introductory courses about mental health complexities, as well as attend courses outlining impacts of domestic violence on children. Both judges and other professionals should adopt Lundy's model throughout family law proceedings stages. These adaptations not only support inclusive participation but also help create psychological safety, making it easier for children to express their views without fear. Meaningful inclusion can result in greater acceptance of final decisions. When children feel that their voices were genuinely heard and considered, they are more likely to view the outcomes in a welcoming manner, even if the decisions do not align with their preferences. The perception of fairness may contribute to reduced conflict, improved post-hearing adjustment and greater trust in the legal system. Trust and transparency between professionals and children may be enhanced, laying the groundwork for more respectful relationships that may positively influence children's interactions with institutions over time.

Importantly, the practice framework aligns closely with Articles of the UNCRC (United Nations, 1989), reinforcing Australia's obligations under international law to uphold children's rights to express their views and have those views considered. The

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- framework also demonstrates participation not only as a developmental benefit, but as a fundamental human right (Lundy, 2007). When implemented effectively, this practice framework does more than meet legal obligations, it fosters children's identity formation, enhances their decision-making skills and supports a sense of belonging and worth. As highlighted by Sutherland (2014), when children are included in family decision making, their wellbeing may be improved through a greater sense of mastery and control. Implementing this framework into practice can contribute to more equitable, responsive and sustainable family law practices that prioritise children's best interests, not only as interpreted by adults, but as informed by the children themselves in the family law court.

## Conclusion

Meaningfully incorporating children's voices in family law is not only a legal obligation under by the UNCRC (United Nations, 1989), but an ethical imperative. It should be guided by Lundy's model and underpinned by the principles of child centricity, autonomy, emotional safety and transparency. The proposed framework promotes developmentally appropriate, trauma-informed, interdisciplinary and culturally sensitive practices. This framework not only strengthens children's rights but fosters their emotional and psychological wellbeing, providing a more just, responsive and child-focused family law system in Australia. Extending this commitment requires investment in policy reform, professional development and systemic change. Implementing this framework for practice requires collaboration across legal, social and psychological services to ensure practitioners are equipped to listen, understand and act upon children's views in family law. It also necessitates mechanisms for accountability, ongoing evaluations and inclusive feedback from children to refine practices. Embracing children as active participants rather than passive subjects in family law reflects a cultural shift towards respecting their dignity and agency. Only when children's voices are not merely heard but deeply heeded, can family law become a truly rights-based system that protects children's futures with justice and care.



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