

Special Issue Editorial

Associate Professor Nicola Taylor

Director, Centre for Research on Children and Families University of Otago, New Zealand

It is a real pleasure to be the Guest Editor for this Special Issue of *Children Australia* that focuses on international child and family law topics. Planning for the Issue began in mid-2012 and we have been most fortunate to attract nine high-quality articles from authors spanning three different countries – Australia, New Zealand and England. Each country has recently faced, or is currently facing, major reviews of its family justice system and so this Issue is particularly timely as it addresses some of the key themes pertinent to both family members and professionals engaged in dispute resolution processes. These include international child abduction, relocation, family violence, care and protection, forced marriage, the ascertainment of children's views, children's post-separation contact and the effectiveness of Family Relationship Centres. Australia is world-renowned for its innovative approach to family law and many countries, including my own, have benefited enormously from the legislative and practice initiatives developed and evaluated here. The forthcoming implementation of new proposals reforming the family justice systems of England/Wales and New Zealand is being undertaken with a careful eye on what has been learnt from the Australian reforms of 2006 and beyond. This cross-border sharing of experiences at the highest political, judicial and legal levels is mirrored somewhat in this Special Issue, in which an interdisciplinary mix of academics, researchers and practitioners from three common law jurisdictions inform the *Children Australia* readership about current issues lying at the heart of parental/family disputes over children – often with profound and, at times, traumatic consequences.

The first set of articles in the journal is concerned with international family mobility issues. My own contribution, *Relocation Following Parental Separation*, addresses one of the most difficult and controversial areas in family law internationally. Should a resident (or shared care) parent be allowed to relocate with the children when that move will have a significant impact on the children's future contact, and relationship, with their left-behind parent? Jurisdictions take quite different approaches to this vexed question, with the Australian and New Zealand courts being more likely than the English ones to refuse the resident parent's application and to order that the children remain in close

proximity to, ideally, both parents. Efforts are currently underway to seek a more consistent approach to relocation disputes in common law jurisdictions. My article reviews this international legal policy context, as well as the law governing relocation disputes in New Zealand and the social science research evidence on the impact of parental separation and relocation on children. Key findings from my recent study interviewing 100 New Zealand families (114 parents and 44 children) about their perspectives on relocation disputes within the Family and Appeal Courts are also presented.

Professor Marilyn Freeman, from the Centre for Family Law and Practice at London Metropolitan University, draws on her considerable empirical research experience within both the relocation and international child abduction fields to consider the connections between these two emotive family situations. She explores the similarities in the circumstances of relocated and abducted children, while noting that the former involves a lawful shift to a new location, while the latter is usually a secretive (and often hasty) removal of the child without the other parent's knowledge or consent. Abductions can trigger legal proceedings under the *1980 Hague Convention on the Civil Aspects of International Parental Child Abduction*, to which Australia, England/Wales and New Zealand are all parties. This international treaty aims to ensure that children who are abducted, or wrongfully kept, by a parent will be returned as quickly as possible to their country of habitual residence so that issues of parental responsibility, care and



contact can be resolved by the courts there. The focus is thus on the issue of jurisdiction, rather than on the child's welfare and best interests, unless the parent who objects to the application for return establishes one of the five defences (for example, grave risk to the child of physical or psychological harm if returned; the child objects to being returned). Marilyn concludes her article by considering whether abduction and relocation cases are amenable to specialist mediation as a means of assisting parents to resolve their issues earlier and avoid recourse to the often costly and wounding experience of litigation in the courts.

Helen Freris, National Services Manager for International Social Service (ISS), Australia's International Parental Child Abduction service, focuses on the benefits of social work practice and mediation-based services within the context of the 1980 Hague Convention. Parallel with any legal steps the parent may be taking, Helen explains the Convention and the role of ISS in supporting families prior to or following abduction, or post-return of the child. A case-study enables various social work interventions (including crisis counselling, collaborative problem-solving) to be explored whilst the Hague return order, visa and consulate matters are attended to as well. The article concludes with an argument for extending social work services to include an advocacy response to assist both individual abduction cases and the longer-term policy debate, particularly in light of the gendered dimensions pertaining to international child abduction.

The article by Sandrine Alexandre-Hughes, a Sydney-based barrister, shifts our attention onto the later *1996 Hague Convention on the International Protection of Children*. This establishes a protection framework for children in a broad range of international situations ranging from relocation to transborder placement. It helps ensure the effectiveness of children's rights, whether as refugees, those in need of a placement or children affected by the breakdown of their parents' relationship. Sandrine's former experience as a Legal Officer at the Hague Conference on Private Law, in the Netherlands, means she is well-placed to explain the applicability of this Convention, particularly since Australia is a Contracting State. While currently less well-known than the 1980 Convention, the 1996 Convention offers significant potential for lawyers, social workers and family members given the wide range of international parenting and child protection matters falling within its ambit.

The next grouping of papers within this Special Issue is concerned with family violence issues. Professor Renate Klein, London Metropolitan University, introduces us to the little-talked-about topic of forced marriage where one or both people do not (or in the case of some people with learning or physical disabilities, cannot) consent to the marriage and pressure or abuse is used – including physical (threats, physical/sexual violence), psychological (for example, when someone is made to feel like they are bringing shame on their family) or financial (taking away wages or not providing any money). Renate notes that sexual as-

sault, domestic violence and forced marriage are prevalent among 16–24-year-old young women, coinciding with the same age-bracket of students attending college or university. Drawing on her pilot research in two British universities she therefore examines to what extent post-secondary institutions are prepared or willing to take on the responsibility of recognising and responding to violence against students that is shaped by gender and culture.

Karen Barker contributes a practice-based perspective to the journal by using her experience in Anglicare WA to comment on her concerns about children's safety when navigating post-separation contact arrangements in the context of family violence. She raises many pertinent issues regarding the responsiveness of the family justice system, the existence of a 'pro-contact' culture, how the child's voice is heard amongst those of the experts, and the role of supervised contact centres in supporting children/parents and assisting the courts to make protective decisions.

Amanda Shea Hart, well-known for her work to promote child-inclusive practice in family dispute resolution in Australia, examines how best to centralise children's needs when they are exposed to family violence and thus face a distinctive predicament in their own adjustment, recovery and future relationships with their parents. While there is ample research evidence on the impact of family violence on children, Amanda notes the significant gap in research on child-inclusive practice in family violence cases. However, with the recent growth in family dispute resolution it is essential that this process evolves to implement child-inclusion in such cases. The inherent challenges and opportunities in doing so are teased out – including the skilled and resource-intensive nature of this work with families with multiple and complex needs.

The eighth article on children's views is by Dr Alan Campbell, a Family Dispute Resolution Consultant at Anglicare WA. He explores the difference between children's 'wishes' and 'views' in family law matters, arguing that the latter are far more encompassing than the former and can improve the quality of decision-making about children's futures. A number of jurisdictions, including my own, have reformed their law to make the statutory wording regarding the ascertainment of children's views consistent with use of the word 'views' in Article 12 of the UNCRC and reflective of the very arguments Alan mounts for why a more expansive approach is desirable. He offers some valuable insights as to how family justice workers can best achieve this.

Dr Alan Campbell and Professor Thea Brown report on an online survey of parents' and children's experiences of the service they received at two Family Relationship Centres (FRCs) in Perth between 2010 and 2012. While there was significant satisfaction with the two-hour group session introducing the work of the FRC, parents were reluctant to allow their own children to be involved in the FRC process, even though they agreed with the principle of child participation. As Alan and Thea note, this new finding raises important questions about whether

alternative approaches are needed – for which they offer some suggestions.

Finally, Dr Jennifer Lehmann reviews a newly-published resource developed by St Luke's Innovative Resources, in partnership with the Anglicare Diocese of Sydney, that has considerable relevance to those working with children (and parents) who experience the range of post-separation issues traversed in this very journal. *Two Worlds: When relationships end and parents separate* comprises a text-free card set of 48 evocative images that can assist children to identify and communicate their feelings and reactions in response to the changes occurring within their families. Human service workers will also benefit from the thoughtful advice provided about how best to use this innovative resource.

This Special Issue touches on many of the contemporary issues facing the families and practitioners involved in the family justice system. What the contributing authors and I have tried to achieve is an intermingling of research, policy and practice in both domestic and international contexts. Clearly, different jurisdictions grapple with similar challenges – and as economic and social changes enhance

globalisation processes, the internationalisation of family life and the need for robust cross-jurisdictional responses will become even more evident. Sharing our professional experiences from interdisciplinary perspectives *and* incorporating feedback from the parents and children whose future relationships are profoundly affected by the quality of our family dispute resolution processes – whether these involve counselling, social work, mediation, legal negotiation and representation, arbitration or litigation – is vital. I hope that this journal issue opens up some of the possibilities that can fire your imagination!

This year has seen more changes to *Children Australia* with additional Editorial Consultants being appointed, some very wide-ranging topics being discussed and further planning for Special and Themed Issues in 2014. As the 2013 year draws to a close and we think about Christmas, New Year and holidays, I would like to wish you all a safe and peaceful Festive Season on behalf of the Co-editors, Jennifer Lehmann and Rachael Sanders, and the production team. We look forward to your contributions in the coming year.