**Family Relationship Centres:**

**A key and (mainly) successful part of Australia’s family law system**

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Good afternoon; and thank you for this invitation to come to London. The theme for today is ‘innovative practice’ and my main focus in this regard will be the 65 Family Relationship Centres (FRCs) that were set up as the centerpiece of Australia’s family law reforms in 2006. However I want to set the scene for this presentation by first providing two or three minutes of historical context.

During the optimistic ‘we can do anything’ period from roughly the mid 1960s and through much of the 1970s, many Western democracies dreamed of and indeed implemented more liberal divorce laws. Australia’s dream was led by a colourful Attorney General, Lionel Murphy who amongst other things, wanted to move beyond what he thought was our addiction to ‘the old ecclesiastical garbage’ of fault-focused divorce.[[1]](#footnote-1)

When I recently examined the parliamentary debates into divorce law reform in the early 1970s (see Moloney 2014), it became clear that like many other divorce law reformers at the time, Murphy believed that not only was fault in marriage an outmoded concept, but that most post separation disputes over children at that time were *caused* by adversarial processes that were in turn, the law’s default methodology for determining which parent was the more blameworthy.

Though they had no data to support their beliefs Murphy and many of his supporters argued that if we took fault out of the equation, there would be a significant reduction in – perhaps even an elimination of separation-related conflict – especially conflict over children. There isn’t time today to tease out this argument. It has been well covered by my old friend and colleague, Henry Finlay (see Finlay 2005). In any case, the press release from the Attorney General’s Department at the launching of the Family Court of Australia in 1975 captured the prevailing zeitgeist when it spoke of the new legislation as:

sweeping away the laws and procedures of the past and providing a new era of calmness and rationality, presided over by specialist judges assisted by experts and which would introduce speedy, less expensive and less formal procedures. (cited in Fogarty, 2006, p. 4).

In retrospect, we can see that our parliamentary debates on the need for divorce reform in the early 1970s sprang more from hope and ideology than from any empirically-based knowledge of what was really going on in families at the time.

But how close did Murphy come to reading the tea leaves? And what do we know now that we didn’t know then about the profile of separated Australians and which Australians need what services to help them manage disputes over children?

**Slide 3**

Courtesy of a generously funded research and evaluation package that was linked to the 2006 Australian Family Law reforms (this slide shows the scope of the initial evaulation), we know a considerable amount about separated parents in Australia. We know about the quality of their relationships with each other, what parenting arrangements they make, what pathways they use to make those arrangements, how frequently they change arrangements and so on.

As noted, I’ll be suggesting that the 65 Family Relationship Centres that were set up as a central part of Australia’s 2006 family law reforms are a good example of innovative practice. The Centres have been formally audited by Australia’s Auditor General (see Auditor General 2011). There were a few criticisms but the evaluation was generally positive. At the end of this presentation you will find the full reference to that evaluation. You will also find references to an empirical evaluation of FRCs five years on (Moloney, Qu, Weston & Hand 2013); to an account of how Lionel Murphy’s ‘helping court’ concept in 1975 eventually morphed into increasing emphasis on community based services, which in turn culminated in FRCs (Moloney 2013); and to another historical/conceptual piece on FRCs by Parkinson (2013)

**Slide 4**

Today I’m going to consider the place of FRCs in terms of *some* of the things we know (there isn’t time for a comprehensive presentation) about post separation relationships and dispute management pathways. To do this, I’ll be drawing mainly on the highlighted studies in this slide that formed part of our 2009 evaluation of the 2006 family law reforms, as well as two follow up waves of the study of 10,000 separated parents – known as the Longitudinal Study of Separated Parents (LSSF)

**Slide 5**

We know from the LSSF that about two thirds of both mothers and fathers said they had a friendly or cooperative relationship with each other some 15 months after separating (that’s the Wave 1 data in this figure). We can also see at Wave 1 that a little under a fifth of mothers and fathers describe their relationship as distant; and about one in seven say they are having lots of conflict. In addition, almost one in 15 mothers and roughly one in 30 fathers (a statistically significant difference) describe their relationship as fearful.

Now this seems a reasonably hopeful outcome. And intuitively you might predict that the percentage of poor relationships might diminish over time. But as we can see, at Wave 2, which is roughly two years after separation and at Wave 3, roughly 4 years after separation, things have not really got better.

**Slide 6**

We don’t have time to tease out these figures, but in this Table I’d just invite you to focus on the cell that says, ‘Negative in all three waves”. What this analysis tells us is that although at each Wave, a bit under a fifth of parents are highly conflicted or fearful, they are not the same parents at each wave. Indeed only 4% remained in this highly conflicted or fearful (that’s what we mean by ‘negative’) over the 4-year period we examined. This by the way is why it’s important to invest in longitudinal studies.

In another longitudinal study – this time of ‘high conflict’ cases at 6 months, 12 months and 15 months, Neff and Cooper (2004: 99) estimated that 10% of cases took up 90% of the family courts’ and community professionals’ time. I suspect that the 4% that we see in this Table are the families that we seriously agonise over, the families that take up a significantly disproportionate amount of our time as both legal and family relationship practitioners. Though they are the families that present with what Janet Johnston and others have called enduring high conflict, I wonder if high conflict is the primary consideration here? Rather, I suspect that these are the families in which one or both parents are likely to have seriously dysfunctional profiles. They almost certainly need more help than mediators or legal negotiators can provide. Some will probably even defy judicial interventions because they live in a world that is outside normally acceptable conventions. So let’s just briefly look at this group a little further

**Slide 7**

One of the findings that correlate strongly with this persistently highly conflicted and fearful group of parents is the expression of safety concerns. You can see in this slide that a similar percentage of parents have safety concerns in all three waves as reported negative relationships in all three waves in the previous slide.

Safety concerns are a more sensitive measure than reports of family violence. Indeed we found in the LSSF, that the *majority* of our 10000 parents reported the experience of either physical or emotional violence sometime before of during the separation. In the LSSF, reports of violence had a definite impact on parental capacity to resolve disputes over children. And those who reported violence were much more likely to make use of services than those who did not. But that said, it was also the case that many parents who had reported violence at some point, had managed to forge cooperative or friendly relationships with each other after separation. And many who had reported violence at some time before or during separation (though not as many as those who reported “no violence”) also reported that their main pathway l eading to resolution of parenting issues, was not services or courts, but “discussions between themselves”.

The recognition of separation-related violence remains an important issue for family law service providers. Indeed evidence from the evaluation of the 2006 family law reforms showed that the majority of those attending FRCs had experienced either physical of emotional violence or both. This was contrary to what many had expected. At the time FRCs were thought about, there was a general assumption that cases in which violence had occurred would not be suitable for mediation. The truth however is that if all cases in which violence had occurred were screened out, FRCs would have little mediation work to do. The key issue that needs careful assessment in FRCs is whether or not both parents are capable of representing themselves and their children without fear. Quite a few can can. And there is evidence that many would prefer to have their situation resolved through facilitated processes such as mediation, even when violence had occurred.

**Slide 8**

While not wanting to minimise how difficult facilitated processes can be for these families, it’s also clear that we needed more sensitive markers to help us focus on those families in really serious trouble.

This slide summarises the sorts of problems are reported by those with safety concerns. Not surprisingly perhaps, they are the usual suspects of dangerousness, mental health issues, substance abuse and addictions.

**Slide 9**

And here is what is happening on the *relationship* front for those who reported safety concerns at Wave 3. You can see that where there are no concerns, friendliness and cooperation is high, while high conflict is low. And the reverse is true were there *are* safety concerns. My working hypothesis, which probably has its origins in my training as a therapist, is that quality of relationships are the key variable in sorting out post separation disputes – especially disputes over children.

**Slide 10**

Moving from this highly problematic group, to a focus on the majority of separating parents, this was one of the conclusions we came in our Wave 3 report.

*The evidence [from the three waves] suggested that most separated parents were relating to each other fairly well. Data on service use and main pathways towards sorting out arrangements for their children suggest that, at most, these parents needed only modest assistance from facilitative, therapeutic or advisory services (including of a legal nature).*

So where did doing research from a longitudinal perspective lead us? It confirmed a hypothesis that there is a strong correlation between quality of relationships and capacity to resolve disputes over children. But it also confirmed that only a relatively small percentage of parents remain stuck in seriously dysfunctional relationships. The fact that at each wave, almost one in five parents have lots of conflict or are fearful is an important finding. The evidence that most don’t remain in this state however, might suggest that parents are more likely to be reacting to external stressors such as new relationships, having to move house, financial problems etc.

For these families therefore, the evidence suggests that these things tend to settle with time. During the times when it all seems too much and when relationships temporarily unravel, some stabalising orders and/or some legal or other advocacy may be appropriate. Inevitably however, legal orders and advocacy on behalf of a client are blunt instruments. For those parents who need help to heal relationships or at least get to a point where they can live with their differences, the FRCs were an acknowledgment that what was needed was a recognisable place where they could be supported to talk with each other (directly or indirectly), or talk to somebody individually if necessary.

**Slide 11**

As a central part of the 2006 reforms, Family Relationship Centres were meant to “represent a generational change in family law” and to bring about a “cultural shift” in the management of parental separation “away from litigation and towards cooperative parenting”. [[2]](#footnote-2)

Promoted by Government (Commonwealth of Australia 2005 p. 1) as “the biggest investment in Australian family law ever”, the most significant part of that investment was increased funding for new and expanded community-based family relationship services. There were quite a number of those[[3]](#footnote-3) and we don’t have time to look at them individually. But central to these services and a centrepiece of the reforms, was the establishment of 65 Family FRCs.[[4]](#footnote-4)

FRCs would be a space for family members, but especially parents, to talk (directly or via a ‘warm referral’) about what was needed for themselves, what was needed for the children, and how to continue to be good or at least adequate parents or good supports (for example in the case of grandparents) to children and the parenting process.

The FRCs were designed to be highly visible and accessible. They were strategically placed and generally close to public transport. Managing and staffing FRCs was awarded to NGOs after a competitive tendering process. But importantly, no matter which organisation was successful, all FRCs carried the same logo that in time became increasingly recognisable as the ‘go to’ point if you were separated and in dispute about your children.

There isn’t time to explain how Family Relationship Centres came about in Australia. If you are keen to follow this up, you could do worse than read the article by Patrick Parkinson in the list of references. Basically, Patrick sold the idea to the Prime Minister after the Prime Minister had (probably astutely) rejected a recommendation from a joint parliamentary inquiry (House of Representatives Standing Committee on Family and Community Affairs 2003) that in children’s matters, the court be replaced by multi- disciplinary tribunal (Australian Government 2005). Like Lionel Murphy 30 years earlier, the parliamentarians in this enquiry had been highly critical of legal adversarial processes. Their report had more or less assumed if you removed lawyers from the scene or at least diminished their influence, for most families, all would be well.

Our Prime Minister did not buy the argument. At the same time however, he was astute enough to recognize that more of the same was not an acceptable outcome from what had been an extensive parliamentary inquiry.

I think the creation of these FRCs in strategic locations around Australia was an act of genius. Although just like Lionel Murphy we had very little empirical evidence, I think it had been intuitively recognized by the committee of inquiry that many of the disputes that had been hanging around the edges of courts and being batted back and forward between lawyers were at their heart, being driven by interpersonal problems between parents. It’s perhaps an oversimplification to put it this way. But basically, our focus needed to move away from primarily legal processes and legal solutions, towards processes and solutions that acknowledged and worked with difficulties in relationships and through that, came to solutions for children.

**Slide 12**

I also think that in the mind of many, the main function of FRCs would be to pluck the relatively ‘low hanging fruit’ – those cases that were spilling over into litigation and litigation processes when they didn’t need to. This happened to some extent, but the Evaluation also suggests that the story is a little more complicated. It had been generally thought that mandatory mediation would be inappropriate if there had been violence in the relationship. But as this slide shows, it quickly became apparent that if you took this idea literally, the FRCs would have had very little mediation work to do. Our evaluation contained a number of surprises, some of which were in tension with each other. For example as I said, we found that a majority of separated parents said they had experienced some form of violence before, during or after separation. But as we have also seen, within just over a year from separation, a considerable majority was also reporting friendly or cooperative relationships.

Another surprise was that when it came to describing their main pathway to resolution of their dispute, a large majority said that it came about through direct discussions between themselves or that ‘it just happened”. Parents who said that their main resolution pathway was courts, lawyers or relationship services - including mediation - were very much in a minority. Though they were considerably more likely to have experienced family violence, violence was not *necessarily* a barrier to eventual good relationships or successful direct negotiations.

**Slide 13**

You will remember that in the original evaluation (see Slide 4) we surveyed lawyers prior to and after the 2006 reforms. We found that at these points in time, many lawyers were skeptical about the potential usefulness of FRCs. Some thought that non-lawyers had no business being in this area of work. Some thought FRCs would be used mainly by those who would have settled their disputes anyhow. But as we can see from this slide (the ‘combined courts’ top line is what matters here), we found there was a considerable drop in litigation over children after the 2006 reforms - and that the biggest drop coincided with the completion of the roll out of all 65 FRCs in 2008.

**Slide 14**

And as this slide shows, we were also able to demonstrate at the time that FRCs were doing the bulk of the mediations (FDR). Indeed the slide shows that FRCs have accounted for an increasing proportion of the FDR work over time.

**Slide 15**

Now going back to the previous slide, when the first lot of court data were released in 2009, some people were quite understandably skeptical about the sustainability of this drop off in the proportion of children’s cases ending up in court. Maybe what we were seeing was a blip – perhaps a Hawthorne Effect associated with all the publicity associated with the reforms; or perhaps a one-off response from those who had been waiting for the 2006 reforms.

**Slide 16**

That’s why longer-term data have again been important. In this slide, the first study is the one we just looked at, which only takes us to 2009. The other two studies are longer term. I could talk about why I think there might be discrepancies in these figures, but I think the overall connection between mandatory mediation, FRCs and a significant drop in court hearings over children is now firmly established.

I’m pleased to report that FRCs have also become broadly accepted by family lawyers. For example, when Government provided a very modest amount of money for FRCs and legal services to form local partnerships with each other on a voluntary basis, 64 out of 65 took up the offer. The AIFS evaluation (Moloney Kaspiew, De Maio & Deblaquiere 2013) found high levels of enthusiasm for the project amongst all but four of the partnerships – a huge advance from the sceptical days prior to and shortly after the 2006 reforms.

I think the rule of thumb here is that if you challenge the status quo - not just for the sake of it but because you sense that you are offering something more appropriate – and if you do it reasonably well over time, you have a good chance of bringing the doubters with you. That said, it is also true that law and the social sciences will always remain in some (hopefully constructive) tension with each other because there will always be differences in their starting points and their methodologies.

**Slide 17**

For example, here are the results of a question put to three categories of family law professionals about how well recent reforms – the 2012 family violence amendments - support the twin aims of encouraging meaningful relationships between children and their parents, while offering protection to children and parents in cases of violence and abuse.[[5]](#footnote-5) Interestingly, lawyers are closer to family relationship practitioners in their responses than they are to the judges. At the same time, this slide represents a pattern of responses that show that family relationship practitioners tend to have less faith than their legal colleagues in the capacity of legislation to influence behaviour.

**Slide 18**

Before finishing, let me just mention two practices I thought were innovative at the time and that have dovetailed nicely with the work of the FRCs. And then in conclusion I’ll briefly return to the question of the roughly 4-5% of cases that appear to take up so much of our time with seemingly little impact.

Australia is a huge country and gaps in service delivery due to distances will always be a problem. Since 2001, the Attorney General’s Department has been sponsoring what are known as Pathways Networks that consist of professionals operating within the family law system. Typically there is only one professional in a particular region paid on a par time basis. The primary role of the pathways coordinator is to focus on information-sharing and networking opportunities in a local area; and to develop and maintain cross-sector training to help build stronger working relationships across the family law system. This relatively inexpensive initiative produced considerably greater dividends when the FRCs came on line between 2006 and 2008. It meant that the coordinators were less isolated and more able to leverage off the FRCs’ locally based mediation and other services.

While on the subject of mediation, I should mention the considerable support that Australia’s Attorney General’s Department gave to the establishment if child focused and child inclusive practices. Once developed, the Department funded my colleague Jenn McIntosh and I, with support from another colleague, Tom Fisher, to train newly appointed FRC staff around Australia in child sensitive practices. Child oriented ways of mediating, in which former partners’ real difficulties with each other are empathically acknowledged, while the children’s needs are simultaneously kept front and center of the discussions (see for example Moloney & McIntosh 2006), has I think been a quiet revolution in Australian practice.

**Slide 19**

In terms of *future* innovations, it’s worth noting that Australia’s Family Law Council is currently considering how best to deal with what it calls ‘complex cases’. It is not for me to pre-empt Council’s recommendations, which are due to be presented to the Attorney General in the first part of next year. But I strongly suspect that it will include some form of reporting function for those Family Dispute Resolution Practitioners (mediators) who in the course of their work become privy to information that falls short of being formally notifiable, but would nonetheless be of great assistance to a judicial officer grappling with making the best decision possible at an interim hearing.

Of course making mediation potentially reportable has many ramifications – and we could devote a whole seminar to this topic. But for now, let me just say that one of the lesser known changes that came with the 2006 reforms was the ‘rebadging’ of the original family court counselors into family consultants. The main task of these consultants is to work with families who have already entered the court system to see if they can assist them to resolve their dispute even at this relatively late stage in proceedings. Court counsellors have always had such a role but until 2006, deliberations with clients were confidential. Now the opposite is the case. That is, clients are told at the outset that the family consultant will do his or her best to assist family members to resolve their dispute – but that in the event that this proves impossible, the family consultant will report his or her observations and possibly recommendations to the court.

Finally, let’s briefly return to the 4-5% of seemingly intractable cases I spoke about at the outset. When you look at the characteristics of these families – fearful individuals with safety concerns attached to serious problems like dangerous behaviours, addictions and mental health issues, you come to appreciate that their disputes over their children represent but one component of a set of problematic dynamics.

It’s become increasingly clear that many cases that get as far as court hearings are on the edge of or fall outside the principles upon which private law has largely developed. Amongst other things, these ‘complex cases’ require that we pay particular attention not just to the idea of cooperation, but to the *mechanisms* of cooperation between the major players in disputes over children – decision makers, mediators, counsellors, lawyers, independent child legal representatives and so on. As Hilary Rodham Clinton once famously said, “It takes a village to raise a child.”

I think that many judges in the (so called) private family law field probably need to be braver in demanding that in certain cases, permitting ongoing relationships with children needs to come with conditions. But for these demands to be realistic, judges also need the support of family law professionals. And those professionals in turn need to have the humility to work with and at times defer to the skills that can be brought to the table by others who are experts in areas such as mental health, addiction and of course, the problem of seriously controlling violence.

Recently, the Australian Psychological Society called for funding to set up ‘family centres’ to address the more serious problems that effect family functioning. I would argue that we already have the structures in place in the form of Family Relationship Centres. Better to build on them than to re-invent the wheel! Indeed many FRCs have (often quietly) moved beyond their family law brief and have formed strong links with other community based services including legal services. The 4-5% will remain a challenge and will continue to chew up a disproportionate percentage of our resources. The question is less one of how *much* we spend on these families but how *well* we spend it.

There are no easy answers but one way forward is to ensure that families get consistency from professionals who are firmly located in the community and in community-based solutions but who are not afraid to interact with the courts when this is required. So let me conclude with one example of a link between a family court and professional services in a case of a father’s controlling violence. It’s from that wonderful book, *In the name of the child*, by Janet Johnston and her colleagues. (By the way I’m proud to say that Janet who has lived in the USA most of her life, is originally an Aussie)

**Slide 20**

Mr R, what you have done to your wife is a criminal act under the laws of this state, regardless of what you say she did or said to provoke you, and there are consequences that the Court is bound to impose. What you did is also very harmful to your children, whether they actually witnessed the event or not. Living in a violent home is bad for children. Mr R I hear you when you say that you love your wife and children, that you are sorry for what you did and that you have promised not to do that again. The Court is going to help you keep that promise by doing three things: first, by providing your family with protection until it can be sure that you are no longer a danger, and that you can show you are no longer a danger; secondly by providing you an opportunity to manage your anger better and to resolve conflict in a non-violent way; and third, by providing you and your children a safe place to visit together, where they will not be afraid, and you will be given an opportunity to show that you have a loving relationship with your son and daughter. (p. 27).

Relationships, law, empathy, persuasion, sanctions, cooperation, as well as the gathering of data to inform us what is really happening rather than what we simply believe is happening. It’s a heady mix of variables that make family law so fascinating and will continue to keep us all on our toes

**Final Slide**

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1. See Swain (2012) p.12 [↑](#footnote-ref-1)
2. Family Law Amendment (Shared Parental Responsibility) Bill 2005, Explanatory Memorandum, p. 1. [↑](#footnote-ref-2)
3. In addition to the Family Relationship Centres, these services included at the time of the reforms: The Family Relationship Advice Line; The Telephone Dispute Resolution Service; the Online Family Dispute Resolution Service; Family Relationships Online; Urban and Regional Family Dispute Resolution Services; Children’s Contact Services; Parenting Orders Programs; Family Relationship Counselling services; Mensline Australia; Men and Family Relationships Services; Specialised Family Violence Services; Family Relationship Education and Skills Training. See Kaspiew et al (2009 pp 4-5) for a description of each service. [↑](#footnote-ref-3)
4. In the 2005–06 Budget, A$397 million was provided over four years for the implementation of the new family law system. Of this A$199 was allocated to the establishment and support of the 65 FRCs. (Australian Government 2005-06 pp 294-298) [↑](#footnote-ref-4)
5. I am grateful to my colleague Dr Rae Kaspiew for providing this slide. [↑](#footnote-ref-5)