FAMILY RELATIONSHIP CENTRES: A NEW APPROACH TO RESOLVING CONFLICTS ABOUT PARENTING
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Introduction

On 29th July 2004, the Prime Minister, the Rt. Hon. John Howard MP, announced the Government’s response\(^1\) to the Report of the Family and Community Affairs Committee...
of the House of Representatives on joint custody.\textsuperscript{2} Central to the Government’s response was the creation of a network of Family Relationship Centres all over the country. 65 such centres are to be established in total. In addition, the Government announced it would implement a number of other recommendations of the Committee, including amendments to Part VII of the Family Law Act to provide new emphasis on the idea that parents should have equal responsibility for their children after separation.\textsuperscript{3} It also announced a significant expansion of mediation and other counselling services, as recommended by the Committee.

The purpose of this paper is to explain how the proposal for Family Relationship Centres emerged as the centrepiece of the Government’s response to the Parliamentary Inquiry, and what the functions of these Family Relationship Centres (hereafter, FRCs) are intended to be. The Government indicated in its announcement that it would release a discussion paper on the implementation of the proposed reforms and would seek input from the community on how they should be taken forward. The Discussion Paper was released on November 10\textsuperscript{th} 2004,\textsuperscript{4} and a consultation process then followed. The final form of the FRCs, and their precise roles and modes of operating, have yet to be announced, but the Government has announced a very significant budgetary allocation to the Centres over the next three years. The plan is to create 15 centres in 2005-06, 25 in 2006-07 and the remaining 25 in 2007-08.

This paper cannot therefore offer a description of how exactly FRCs will operate and what their roles will be, for this has still to be finally determined. What it does seek to do is to explain the proposals which were made to the Government concerning these Centres, and which were accepted in principle subject to this further process of consultation concerning implementation.

**What are Family Relationship Centres?**

The idea of Family Relationship Centres is a new one, however it is more evolutionary than revolutionary. The proposed FRCs build upon more than 25 years of experience of having a court-based counselling service in the Family Court of Australia, thirty years of federally funded relationship counselling programs, and in recent years, the development of a range of community-based mediation services to assist separated parents.


FRCs will be established in major population centres and regions. The provision of 65 such Centres across the country equates to approximately one centre for every 300,000 people in the population. The Centres will be funded by the Government and will operate in accordance with guidelines set by the Government. However, they will actually be run by non-government organisations with experience in counselling and mediation, selected on a tender basis, and staffed by professional counsellors and mediators. Many of these organisations have developed great experience in the relationships counselling area, are already funded by the Federal Government under the Family Relationship Services Program (FRSP), and meet stringent quality assurance standards. Although actually run by different service providers in different localities, the FRCs will have a common identity and badging to the public.

The proposed FRCs will have many roles. First and foremost, they are an early intervention initiative to help parents work out post-separation parenting arrangements in the aftermath of separation, managing the very difficult transition from parenting together to parenting apart. They will provide an educational, support and counselling role to parents going through separation with the goal of helping parents to understand and focus upon children’s needs, to provide initial information to them about such matters as child support and Centrelink benefits, and to negotiate workable agreements about parenting after separation. They will also be available to help resolve ongoing conflicts and difficulties as circumstances change. They will not only be a resource for parents but for grandparents as well.

The FRCs will not only have a role in helping parents after separation. They will also play a role in strengthening intact relationships by offering an accessible source for information and referral on marriage and parenting issues, providing a gateway to other government and non-government services to support families.

The FRC in a given locality, whichever organisation runs it, will need to work closely with other relationship counselling and mediation organisations in the area. One way of understanding its role is to see it as a trustee acting on behalf of all those organisations. It would refer people to the range of organisations as needed, publicise the programs and courses of those organisations, and act as a focal point for co-operation in service delivery in the locality. That trustee role for all the services in the locality makes it essential in most cases that FRCs are established in new premises which are clearly differentiated from the premises in which the organisation running the FRC carries out its usual activities.

“Like the Job Network, [the FRCs] will be run by a variety of non-government organisations but will be badged as a national service and will provide similar help to families across the country. It is likely that service providers such as Centacare, Relationships Australia and members of Family Services Australia, such as Anglicare, will be among the organisations that deliver these services. The network of centres will be supported by a free telephone advice line for those who are unable to access a Family Relationship Centre in person.” Commonwealth of Australia, Framework Statement On Reforms to the Family Law System at <www.pm.gov.au/news/media_releases/media_Release1030.html>.
The development of FRCs, taken together with a significant expansion of other mediation and counselling services for families recommended by the Parliamentary Committee\(^6\) and announced by the Government,\(^7\) represents an important strategy for supporting families, especially those going through the turmoil of separation. The Government’s announcement amounts to a major new investment in the health of family relationships in Australia.

### The Context: The Concern about Fatherless Families

The proposal for the establishment of FRCs cannot be understood without reference to a prime motivating factor for reform - the problem of the disappearance of fathers from their children’s lives in the aftermath of separation and divorce.

In one study of a nationally representative sample of separated parents,\(^8\) interviewed in 2001, it was found that 36% of children had not seen their non-resident father in the last 12 months.\(^9\) A further 17% had day-only contact. Three-quarters of the non-resident fathers indicated dissatisfaction with the amount of contact they had. 57% of fathers indicated that they had nowhere near enough time with their children and a further 18% said they did not have quite enough time with their children.\(^10\) Other studies have also demonstrated a great deal of unhappiness with levels of father-child contact and a desire by fathers for much greater involvement in post-separation parenting.\(^11\)

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\(^6\) The House of Representatives’ Committee recommended that there should be a substantial increase in the funding of a range of post-separation counselling, mediation and support services: Every Picture Tells a Story, above n.2, Ch. 3.

\(^7\) “The new approach will require significant expansion of pre-marriage education, early intervention services for families, dispute resolution counselling, mediation and similar services. Some of these resources will be available for the Family Relationship Centres to provide further services. The government will also be expanding the successful Contact Orders Program, children's contact services, Mensline and the Men and Family Relationships Program.” Commonwealth of Australia, Framework Statement, above, n.5.

\(^8\) Patrick Parkinson & Bruce Smyth, “Satisfaction and Dissatisfaction with Father-Child Contact Arrangements in Australia”, (2004) 16 Child & Fam. LQ 289. The greatest levels of satisfaction for both mothers and fathers were with shared parenting arrangements. The data came from the Household Income and Labour Dynamics in Australia survey (HILDA). Interviews were conducted with 13,969 members of 7,682 households.

\(^9\) The methodology required respondents to focus on the youngest natural or adopted child. The figure of 36% is exactly the same as that reached by the Australian Bureau of Statistics in 1997: Australian Bureau of Statistics, Family Characteristics Survey 1997, Cat No. 4442.0 AGPS, Canberra, 1998. It should be noted that the ABS survey was based on resident parents’ (mostly mothers) reports only.

\(^10\) Parkinson & Smyth, n.8 above. It is not only fathers who want more time with their children. Mothers also want to see more contact between the children and their fathers. In this study, although the majority of resident mothers expressed satisfaction with the contact arrangements, 25% reported that they thought there was nowhere near enough father-child contact taking place, and a further 15% said there was not quite enough contact. Only 5% thought that there was too much contact. The greatest levels of satisfaction for both mothers and fathers were with shared parenting arrangements.

\(^11\) In one study, 41% of fathers contacted in a random telephone survey of divorced parents in 1997 indicated that they were dissatisfied with the residence arrangements for the children. Two-thirds of this group said that they wanted to be the primary residence parent, the remaining third wanted to have equal time with their children. On average this was about five years after the divorce. The study also
The issue of non-resident fathers’ contact with children was also a matter of great concern to members of parliament, who had constant complaints from constituents about family law matters. In the light of this, and given the pressures of fathers’ groups for change, the Prime Minister indicated in June 2003 that he wanted a Parliamentary Committee to explore the option of a rebuttable presumption of “joint custody”. He expressed concern that many boys growing up in single parent families lack male role models both at home and in school until their teenage years. By joint custody, in this context, what was meant was a rebuttable presumption that children will spend equal time with each parent.

The Report of the Parliamentary Inquiry

The Family and Community Affairs Committee of the House of Representatives was asked to examine whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted. It was also asked to consider grandparents’ rights to contact and whether changes should be made to the formula for calculating child support liabilities.

The Committee reported at the end of 2003 after one of the largest and most intensive public inquiries ever conducted by a parliamentary committee. It received more than 1700 submissions and took evidence all over the country. The issues also generated a great deal of discussion in the media.

Despite the difficulty of the issues involved, the Committee’s report was bipartisan and unanimous. On the issue of ‘joint custody’ it did not recommend a presumption in favour of equal time. Instead, it recommended in favour of equal parental responsibility.

indicated a very high level of dissatisfaction with levels of contact: Bruce Smyth, Grania Sheehan, & Belinda Fehlberg, “Patterns of Parenting After Divorce: A Pre-Reform Act Benchmark Study”, (2001) 15 AJFL 114.

The Government utilized the traditional language of “custody” despite the removal of the language of custody by the Family Law Reform Act, 1995. This Act adopted reforms on similar lines to the Children Act, 1989 in England and Wales with the terms “custody” and “access” being replaced by “residence” and “contact”, and the rhetoric of “parental responsibility” driving out notions of parental rights.


For a commentary on the issues raised by the terms of reference see Patrick Parkinson, “Custody Battle”, (2003) 18 About The House 16.

The Committee wrote: “the goal for the majority of families should be one of equality of care and responsibility along with substantially shared parenting time”. Above, note 2, at 30. The Committee gave a number of reasons for considering that there should not be a presumption in favour of equal time for each parent (at 31):

“Two aspects of an equal time template have been highlighted. First, there are dangers in a one size fits all approach to the diversity of family situations and the changing needs of children. Secondly, there are many practical hurdles for the majority of families to have to overcome if they are to equally share residence of children. Many have pointed to the increased risk of exposure of children to ongoing conflicted parental relationships and the instability that constant changing would create for children. Family friendly workplaces are rare, as are the financial resources necessary to support two
recommended that the legislation should be amended to remove the language of “residence” and “contact” in making orders between the parents and to replace it with “family friendly” terms such as “parenting time.”\(^{16}\) It made a range of other recommendations in response to its terms of reference, including the establishment of a Taskforce to conduct a thorough review of the child support formulae in the light of the available evidence concerning the costs of raising children.

The Committee also proposed radical changes to the family law system in Australia. Most publicity was given to a recommendation that the Government should establish a multi-disciplinary Families Tribunal, which, it was expected, would deal with most disputes between parents that require an adjudication. In the Committee’s view, lawyers should not normally be allowed to appear before the Tribunal. It would thus have a different character from litigation in the Family Court or Federal Magistrates Court on parenting disputes. The Committee also proposed shopfront centres where people could go to get help after separation and which would endeavour to resolve cases without the need for a tribunal hearing.

### The Debate about a Tribunal

There was a great deal of potential merit in the concept of a tribunal. If the tribunal could have been made sufficiently user-friendly that lawyers were not needed, it would have allowed disputes to be resolved without the enormous expense associated with cases involving lawyers on both sides. Freed also from the requirement to act ‘judicially’ as this is understood in case law in Australia, the tribunal might have been more able than the courts to depart from the normal requirements of the adversarial process while still applying the principles of procedural fairness. A multi-disciplinary tribunal could also have taken advantage of the expertise of child psychologists and other appropriate professionals as decision-makers rather than just as expert witnesses.

Nonetheless, there were also many drawbacks to a Tribunal. One issue was constitutional. Although the Committee had received oral advice from a senior constitutional expert within the Government that the tribunal could make enforceable orders, the matter was not at all beyond doubt. Even if it could make enforceable orders in most cases, the constitutional advice made it clear that there where it would be necessary to make an order for sole parental responsibility to one parent, for example in cases involving proven violence or child abuse, then such an order could only be made by comparable households. Some parents lack the necessary child caring capabilities. Distance between households creates problems for transport and for schooling. Second families can also bring complications. Indigenous families’ approach to parenting does not fit with the expectations of equal time.

Some have talked about the factors that support successful equal sharing, such as cooperative relationships, geographical proximity, prior sharing of parental care, good communication, agreement about matters relevant to the child’s day to day care, parental commitment to the arrangement and to a focus on the child’s interests. The more these characteristics exist, the more likely a shared arrangement will be workable and positive for the child.”

\(^{16}\) Above, n. 2, at 42 (recommendation 4).
a court established under Chapter III of the Federal Constitution. Thus many of the most
difficult and hotly contested cases would still need to be dealt with by the courts. As a
consequence, the establishment of the Families Tribunal would need to be additional to
the existing infrastructure of courts.

There was also the obvious question whether a Tribunal would end up making decisions
that were substantially different from those made by the courts. If not, then the anger
experienced by disappointed litigants would be no different than in relation to orders
made by the Family Court or Federal Magistrates Court.

There were also issues raised about the particular model of a tribunal proposed by the
Committee. In particular, the idea of a tribunal in which lawyers would not normally be
permitted to appear was one that caused concern. It was pointed out that some people feel
much more comfortable having an advocate rather than having to negotiate a tribunal
hearing without anyone to speak on their behalf. There might be advantages overall in a
lawyer-free tribunal, but there would be disadvantages also.

An initiative of the Family Court also influenced the debate. At the end of March 2004, a
pilot project commenced in Sydney, NSW, known as the Children’s Cases Program. This pilot program relies upon the informed consent of the parties. They agree to waive
most of the rules of evidence and to accept a process that involves the judge in trying to
resolve the dispute and to determine which evidence will need to be adduced if the matter
proceeds to a hearing. The Children’s Cases Program utilises many of the features which
might be seen as desirable in a tribunal, such as introductory questionnaires to gain a lot
of the basic information about the case, an investigatory rather than adversarial process,
and simplification of the rules for providing evidence to the decision-maker. The
argument was made that if this pilot project was successful, then the argument for
establishing a Tribunal would not be as strong as it might be otherwise.

As was reported in the media during this time, the differences of view about the tribunal
were reflected within the Government. While the proposal had its advocates within
Cabinet, the Prime Minister made it clear that he had misgivings about the idea. Other
members of Cabinet were unpersuaded about the proposal also. After some considerable
debate in Cabinet, it became clear that it was unlikely to reach an agreement to
implement the recommendation for a Tribunal. At the same time, given the level of
support for the Tribunal from the Committee and the backbench, there was a reluctance
to do nothing by way of a response to the Committee’s recommendations.

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The Need for a Third Way

The idea of FRCs emerged as a compromise proposal. While FRCs may seem to be a quite different concept from the idea of a tribunal, it was put forward as another way of achieving the same objectives that the Committee sought to advance, building on another of its key recommendations, that there should be a shop-front service to help people reach agreement on parenting arrangements in the aftermath of separation. FRCs respond to three central objectives of the Committee, firstly, to try to assist more non-resident parents (and particularly fathers) to remain involved in their children’s lives, secondly to reduce the reliance upon lawyers in resolving post-separation conflicts, and thirdly, to reduce the debilitating effect of conflict on children.

Certainly, the strategy for reducing the reliance on lawyers is a different one from that proposed by the Committee. While the establishment of a tribunal would have involved more resources being made available for adjudication, the development of the FRCs will involve substantial new resources going into education and dispute resolution to seek to avoid the need for adjudication. A tribunal, as envisaged by the Committee, would have removed lawyers from representing parents in the hearing of a dispute, but lawyers would still have been allowed to advise and assist parents up to the door of the hearing room. The FRCs seek to offer a different pathway for people to sort out parenting arrangements after separation. That pathway will make it easier for people to access advice, information about post-separation parenting and free mediation without going to a lawyer or having to file legal proceedings.

One of the aims of the FRCs is therefore to achieve a long-term cultural change in the pathways people take to resolve disputes about parenting arrangements after separation. The need for cultural change is because at present, lawyers are understood to be the professionals to whom one must turn in the event of such conflicts. When people experience acute and serious illness or suffer a significant injury, they know they can go to the emergency room of their local hospital. If they are unemployed, they know they have the option of going to a centre in the Job Network to help them find suitable employment. If they fall victim to a crime, they know they can go to the police. These are all publicly funded services to meet people at a time of need. Currently, if they are in dispute about parenting arrangements after separation, most people know only that they can go to a lawyer. But private lawyers are expensive for people on relatively low incomes who cannot access legal aid or community legal centres. A substantial proportion of separated parents, both mothers and fathers, are on very low incomes. Separation in itself, is often a time of great financial stress for one or both parents. Many

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18 The author was consulted by the Prime Minister’s Office at a time when it was clear that Cabinet was unlikely to agree on the establishment of a Families Tribunal. The idea of Family Relationship Centres emerged from these discussions as a way forward.

19 In one major British study, 81% of people experiencing family or relationship difficulties chose to visit a solicitor: Genn H et al, Paths to Justice: What People Do and Think About Going to Law (Hart, Oxford, 1999). See also Gillian Douglas and Richard Moorhead, “Providing Advice for Lone Parents: From Parent to Citizen” (2005) 17 Child and Fam. LQ 55.
people do not go to lawyers until the dispute has significantly worsened because of fears of the cost.

The goal then, is to change the cultural understanding that if there is a disagreement about the structuring of post-separation parenting arrangements, then one or both parents need legal advice in the first instance. Post-separation parenting should not be seen in the first place as a legal issue. It may become a legal issue, particularly if both parents want to be the primary caregivers of the children and have a realistic case for an order in their favour, but it should not be framed as a legal issue from the beginning. When parents are having difficulty agreeing on the post-separation parenting arrangements, they have a relationship problem. If no other solution can be found, it may need to go to an adjudication by someone who can make a binding decision; but it should not be seen as a legal issue from the beginning.

The Importance of an Early Intervention Strategy

Family Relationship Centres offer an early intervention strategy to assist parents going through separation at a time when most of them have not embarked down an adversarial path and have not begun legal proceedings.

The first few weeks and months after separation are a particularly important period. The House of Representatives’ Committee recognised this in its recommendation for a shopfront centre where people could get help. So too did the Family Law Pathways Advisory Group.20

One of the most common problems experienced by people in the aftermath of separation is where to find appropriate help, advice and support. As the Family Law Pathways Advisory Group wrote:21

“It is always difficult when families split up. Parents, children and other family members have to grapple with complex practical, legal and emotional issues; everyone has to adjust to change and loss. Helpful and relevant information and support often aren’t easily available and services are hard to find, sometimes leading to ill-informed choices and unexpected outcomes. Stress and grief can make it hard to reach sensible decisions and some families experience a lot of conflict. The children of families in conflict suffer the most.”

Furthermore, people going through separation usually don’t just have problems about the parenting arrangements. They may need to have advice on a range of issues, such as benefit entitlements and housing needs.22 Divorce and separation is also traumatic for

20 The Family Law Pathways Advisory Group, which was established by the then Attorney-General, The Hon Daryl Williams QC, to advise the Government on how best to ensure that people choose the most appropriate pathway in reorganising parenting arrangements in the event of family separation. The Pathways Group reported in 2001: Family Law Pathways Advisory Group, Out of the Maze: Pathways to the Future for Families Experiencing Separation (Commonwealth of Australia, 2001).

21 Family Law Pathways Advisory Group, above n.20, executive summary (ES1).

22 For evidence from an English study, see Douglas and Moorhead, above n. 19.
many people emotionally, and some may need appropriate advice and support in relation to depression and suicidal ideation.

Currently there are numerous services available to assist people going through separation if only they knew about them. Most are already supported through the Family Relationships Services Program (FRSP) of the Commonwealth Government. An evaluation of the FRSP conducted in the second half of 2003 and commissioned by the Government found a very high level of client satisfaction indeed. However, one of the biggest problems identified in the evaluation was a lack of awareness of the services. When told by the researchers about these services, most non-users of these services indicated that they wished they had known about them.

A core aim of the FRCs is to fulfil this need for a readily available and easily accessible source of advice and assistance. In order to be effective as a first port of call in the public mind, it is essential that these Centres are highly visible and accessible to the public. This requires that they are located in the main business district of the localities in which they are established, just like Centrelink offices, Job Network offices and other major federal Government services.

This is not the cheapest option, of course; but many government service initiatives fail to achieve sufficient impact because low-cost options are taken for their delivery. If FRCs are established in the places where many of the existing non-government mediation services have their facilities, then they will not achieve their objective, because it is frequently the case that these facilities are some distance from the major shopping and business thoroughfares of the local population. Efficient service delivery sometimes means additional upfront investment, particularly on well located service access points.

The FRSP Review report released in February 2004 found:

- 94% of users find services funded under the Program beneficial with the benefits including more effective family relationships, improved parenting skills and better approaches to dealing with conflict.
- Up to 70% of counselling clients are in intact relationships and are seeking counselling services to address relationship issues. Around 70% of these clients are still in their relationship 6 months after counselling.
- Men make up around 47% of FRSP clients and in particular are seeking extra support around parenting skills.
- Agreement is reached in around 70% of mediations and users find these services cheaper and less stressful than going to court.


Colmar Brunton Social Research. above n.23.

For example, telephone services are cheaper than face to face services, the more so if they can be centralised in a call centre. Websites are cheaper than booklets. The trouble with such modern cost-efficient communication strategies is that they are much better communication tools in theory than in practice. Websites, booklets and telephone advice services are certainly useful to make people who access them aware of other options, but they have little cultural impact. They can easily just add to the range of hidden government and non-government services rather than acting as a gateway to those services.
How will these centres be different to existing community-based resources? Their accessibility, national organisation and promotion by Government through an education campaign\(^\text{26}\) will all be significant factors in marking this out as a major new national initiative. Secondly, their role will be as an initial point of information, advice and assistance, from which referrals can be made to the range of existing community-based services as appropriate. FRCs will therefore act both as the emergency room and the triage unit for family breakdown. An FRC will not be able to resolve all the needs of those coming to it, but by dealing with some of those needs and identifying what further help parents need to deal with the issues arising from separation, people will be informed about and directed to government and non-government services appropriate to their situation.

### The Roles of Family Relationship Centres

The FRCs will have four major roles:

- Information, advice and referral to services which can strengthen relationships
- The provision of seminars on the needs of children when parents separate
- Basic individual advice on services which can meet a parent’s needs
- Free mediation.

\(^{26}\) “The Committee recommended a wide-ranging, long term and multi-level community education strategy to support legislative changes and to promote shared parenting. The government will implement on-going community education to explain the changes to the law, encourage a non-adversarial approach to family separation and to encourage parents to get early help.” Commonwealth of Australia, *Framework Statement*, above, n.5.
a) A Role in Supporting Intact Relationships

While the primary role of the FRCs will be in helping parents and grandparents deal with issues of post-separation parenting, the Centres will also have a role in supporting people entering into relationships or experiencing problems within intact relationships. While this aspect of the Centres’ work will not be resource-intensive, it is integral to the vision for these Centres.

Given the obvious economic costs of broken relationships, not least for the health system, and other costs in terms of people’s sense of life satisfaction, it is an appropriate investment of resources to increase the visibility and availability of services to help people in their family relationships and parenting. Perhaps at one time, churches and other faith communities offered such support. However, their reach has greatly diminished over the last fifty years. New, population-wide services are needed to complement them.

One of the major tasks of FRCs initially will be to develop a positive identity within local communities as one of the places where people can get information about, and resources to support them in their family life. If the Centres are merely seen as divorce centres, they will miss some of their potential for a supportive and preventive role in strengthening family life and in helping people whose relationships are beginning to experience significant difficulties.
One way in which FRCs could fulfil this role would be by selling or distributing videos and booklets developed by government agencies and the partner non-government organisations involved in relationship counselling. Many excellent resources already exist. FRCs could also publicise the availability of marriage preparation courses and programs for strengthening marriages run by organisations in the area, as well as courses and programs designed to support parents. This would be an aspect of its trustee role for all relationship counselling organisations in the area. For example, the FRC might place an advertisement in the local newspapers and on local radio once a month, advertising the availability of marriage preparation courses or parenting courses. It could also sponsor a local education campaign on a different theme each year promoting some aspect of positive relationships.

The centres could also assist people whose relationships are in difficulties, mainly by referral to relationship counselling organisations and other sources of help such as drug and alcohol or gambling addiction services and financial counselling organisations. They could also offer assistance to parents having problems in relation to their parenting role, providing referral e.g. to organisations such as Tresillian, family support services and parent-adolescent mediation services. Promoting services to assist people whose relationships are in difficulties would also be an important aspect of the community outreach of these centres.

The centres could also be places in which different non-government organisations funded under the Family Relationship Services Program could present an evening seminar on relationship and parenting issues which could then act as a conduit to other programs run by those agencies in their own premises.

FRCs ought to have a presence, on behalf of or together with their partner non-government agencies, at community events, for example, having a stall at festivals and other such gatherings, as a means of distributing books and videos on positive family relationships, and promoting awareness of the ways they can help families.

FRCs, while a Federal Government initiative, ought to involve a partnership with state and territory governments, so that they provide information about all relevant services and available resources.

*b) A Role in Supporting Parents Living Apart*

The Centres will have a major role in the education, support and counselling of parents going through separation. The goals of these interventions should be:

- To help parents understand and focus upon children’s needs
- To provide initial information to them about such matters as child support and income support benefits
- To help to negotiate workable agreements about parenting after separation
• To assist in resolving ongoing disputes about post-separation parenting arrangements
• To help grandparents maintain a satisfactory relationship with their grandchildren despite the parents’ separation.

(i) Parenting After Separation Seminars

The centres should run seminars for parents experiencing separation. Attendance at such a session should be a prerequisite to accessing mediation at the centre. Parenting after separation seminars, required by courts, are an established feature of the landscape in the United States. Typically, such seminars last four hours and are mandatory before a final order can be made.27 The FRC seminars could draw upon such resources and also on the Family Court’s experience over the years in running information sessions for people who file applications for parenting orders. The difference is that this service would be provided outside the framework of litigation, and at an earlier stage than the Court can do.

Information would cover such issues as the way people deal with separation emotionally; the need to separate the parents’ conflicts from issues about the children; the value of a parenting plan; what helps children get through the divorce process; what harms them; how parenting arrangements need to take account of the needs of children at different developmental stages; options for structuring post-separation parenting arrangements; shared parenting, and when shared parenting is contra-indicated; the importance of children’s participation in decision-making about arrangements; sources of help to deal with domestic violence and child protection issues; and comparing primary dispute resolution and litigation as options for dealing with disputes about the children.

(ii) Providing initial advice on sources of assistance – personal interview

Parents inquiring at the FRC, or phoning up, should be able to access written information about parenting after separation if that is all they need. They should also be given the option of having an individual session with an adviser to receive initial, basic advice about options and sources of help for dealing with the problems arising out of separation.

The variety of government agencies and non-government services which may be relevant to a person going through separation can be very confusing for the uninitiated. The kinds of issues which might be covered include information about relationship counselling; about mediation; initial advice about how to apply for income support payments if needed; initial advice on applying for child support or seeking departure from an administrative assessment; how to get an interpreter to help if the person has language difficulties; and referral to sources of support for people with personal safety concerns. Of course the relevant agencies would remain the most appropriate source of detailed advice on such matters as child support or welfare benefits.

The role of the initial personal interview would be to help people access the services and agencies they need. It is important that this service be a personal one. It would be a lot cheaper to provide free booklets from an information stand, or to put all the relevant information people want to know in a ‘frequently asked questions’ section on a website, but this is not what people need at times of great difficulty in their lives. They need individual attention and a personal, listening ear, to begin to move forward in addressing their difficulties. Some people will need assistance by making telephone calls on their behalf to set up appointments.

The kind of person who would be recruited to this role need not be an expert on the variety of different government benefits and services. Nor need he or she be a professional counsellor. The goal of the interview is to provide people with quite basic information and advice about relevant services, options and pathways, not to provide personal counselling about the relationship and the problems of separation. Nonetheless, advisers involved in this work will need to be able to keep confidences and to respond empathetically to people at a time of crisis.

(iii) Negotiating a Parenting Plan

The FRCs will also provide initial assistance to try to develop a parenting plan as the Committee recommended should be the role of shopfront centres in its Report. There is ample evidence from the history of pre-filing court counselling in Australia and the experience of other jurisdictions, that the earlier parents can be involved in negotiating a compromise to their disputes, the more likely it is that the dispute will be resolved.

The FRCs will provide an early intervention strategy at the point at which a dispute arises about the post-separation parenting arrangements. That may or may not be in the immediate aftermath of separation. It is not uncommonly the case that parents who have separated have informal and unstructured contact arrangements with the non-resident parent, or, even if they have structured arrangements, reach them without the need for anyone else’s assistance. However, such arrangements may subsequently break down because of conflicts between the parents about other issues or because one sees the need for more structure and consistency in the contact arrangements than the other is willing to have.

How the provision of free mediation is to be done is a matter that will no doubt be worked out in detail in the implementation phase, as the Government consults the services with most expertise in the area. What was envisaged in the proposal for FRCs is that the Centre would provide parents with the option of seeing a parenting advisor first on an individual basis to try to help the client work out a way forward in the dispute with the other parent. In the course of talking to the parent, the parenting advisor would also seek to identify other problems such as domestic violence issues, housing needs, depression or suicidal ideation. The advisor may do no more than to let a person know

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28 Above n.2, pp. 91-2.
about domestic violence services in the area and how they might be able to help, or to suggest to a person that they ought to discuss symptoms of depression with the family doctor. Such encouragement at the right time to get professional help may play an important role in assisting people to cope with the transition to separation, and in avoiding the tragedies which too frequently occur when people’s need for protection or mental health support go unidentif ied. Where safety issues require urgent action, the parent who needs the protection of a relevant court order would be referred to the police, Legal Aid, a community legal centre or given a list of private family lawyers in the area, to take the necessary legal action.

After an initial interview with the parent coming into the FRC, it was envisaged that the centre would then write to the other parent, followed up if possible with a phone call, inviting that parent to a parenting seminar and to have a personal session with a parenting advisor if it was thought appropriate to do so at that stage. After such a meeting with each parent, the parenting advisor could invite the parents to participate in a joint session where safety issues allow, with a view to reaching an agreement. The work of the parenting advisor should build upon what has been learned over many years in the Family Court Counselling Service and in Legal Aid conferences about this kind of conciliation work.

If agreement is not possible in the limited time available, the parents could be referred to a mediation service for more intensive mediation, or the parties may choose to take their dispute to court. In some cases, another pathway will need to be taken before the parents are in a position to agree on longer-term arrangements about the parenting. This might include participation in a course on parenting skills after separation, participation in a group to address issues of violence in the relationship, or drug and alcohol counselling.

The Government has indicated that parents could receive up to 3 hours’ free mediation through the Centres. While in many cases, this may not be sufficient to enable the parties to reach an agreement, it may nonetheless be possible at least to get a temporary agreement in place that allows both parents to remain involved in caring for the children. One option is that parties in high conflict will be offered sample parenting plans appropriate to their situation with the advice just to try one out for a few weeks or months, while continuing to try to negotiate a longer term set of arrangements.

Good liaison with the mediation providers in the area will be important for the success of the FRCs in helping parents to continue on a non-adversarial pathway. One possible model is that agencies in the area will staff the mediation and counselling services at the FRC on a roster basis. This ensures that all accredited organisations are stakeholders in the Centre and that referrals to continue mediation or to access other relevant services from the non-government relationship counselling sector will be as seamless as possible.

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30 “Through the Centres, separating parents will have free access to information, advice and up to three hours of dispute resolution sessions with a parenting advisor to help resolve disputes and reach agreement on parenting plans.” Prime Minister John Howard, “Reforms to the Family Law System” above n.1.
(iv) Assisting in resolving ongoing disputes about post-separation parenting arrangements

The Family Relationship Centres will also play a role in resolving disputes after initial post-separation parenting arrangements have been put in place. Parenting plans and court orders reflect the circumstances of the family at a particular moment in time. As the circumstances of either parent or the children changes, so arrangements that were once workable need to be changed also.

The Government announcement envisages that Family Relationship Centres will have a particular role to play in the resolution of disputes about alleged contraventions: 31

“A major cause of conflict between separating parents is the breach of parenting agreements or court orders. The centres will have an important role in helping to deal with such breaches rather than relying on enforcement orders from the courts that often do not resolve the problem. Where a parent contacts a Family Relationship Centre over a breach of an agreement or order, a parenting adviser would contact the other parent and, where practical, set up a meeting with both parents to try to resolve the issue. (In some cases the level of conflict might mean the adviser will need to talk to the parents separately or by telephone only.) Where the efforts of the adviser do not resolve the dispute, the parents could be referred to a service such as the Contact Orders Program that has had significant success in working with families experiencing high conflict that is affecting parenting arrangements. The government proposes to increase significantly the resources of these programs.”

In such high conflict cases, it would be desirable for any meeting with the parents to involve another counsellor as well in a gender-balanced team. At such a meeting, both parents would be able to give their perspectives on what the problems are, and the counsellor, using conciliatory processes, could seek to assist the parties to reach an agreement, or to refer the parties out to other services. If the dispute cannot be resolved, then the matter would need to proceed as a contravention application to the courts.

Experience in the courts has shown that at least some contravention disputes are problems which arise from contact orders, frequently made by consent, which are either unworkable or which have become unworkable as circumstances have changed. The FRCs offer an option to triage these cases and to work out which cases can be resolved by negotiating variations in arrangements or by allowing parents to resolve their disputes by agreement, before going down the track of filing a contravention application.

(v) Help for grandparents

It is anticipated that grandparents will also be able to use these centres to deal with problems in maintaining a satisfactory relationship with their grandchildren. As the Government’s announcement explained:

31 Commonwealth of Australia, Framework Statement, above, n.5.
“Grandparents play an essential role in children's lives but can feel cut off and helpless when families separate...Grandparents already have the right to apply for a residence or contact order under the Family Law Act but often are not aware of their rights or simply want to have a role in their grandchildren's lives without taking the matter to court...Through a community education campaign, grandparents will be encouraged to use the Family Relationship Centres, dispute resolution services and the new national advice line to obtain information and assistance.”

Grandparents, in particular, are little assisted by providing formal rights to make court applications. Ultimately, their contact with grandchildren depends on the relationship with the parent of the children who is the primary caregiver. Litigating is understandably not something that the great majority of grandparents would want to do because of its impact upon the relationship with that parent.

(vi) Help in resolving child support issues

The FRCs have an important role in providing initial information and advice to people who have little understanding of the range of services available to them to assist them in the transition to post-separation parenting. One such issue is child support. It is not envisaged, of course, that FRCs will provide detailed information on this in the parenting seminars, or detailed advice in a personal interview. They may nonetheless play an important role in explaining in basic terms what child support is, how to apply for it, how assessments can be varied as income changes and other such matters, so that people going through separation have a better understanding of the Scheme.

In August 2004, the Government established a Ministerial Taskforce on Child Support to review aspects of the Scheme. One of its terms of reference was to consider the role of FRCs in helping people deal with child support issues. The Taskforce, which reported in May 2005, saw an important role for the FRCs. It proposed that the information sessions and other educational programs of the FRCs should explain in outline about the Child Support Scheme, the basis on which child support obligations have been calculated and the way in which regular contact and shared care are dealt with in the formula.

The Taskforce also recommended that child support issues, and other financial issues, be among the topics for discussion and negotiation in the mediation sessions conducted under the auspices of the FRCs, as these are often matters that get in the way of reaching agreement about parenting issues.

The Taskforce considered that a better understanding of the Scheme, and in particular, its flexibility and responsiveness to many individual circumstances, may reduce the level of frustration expressed to members of parliament about child support. One way in which that information may be conveyed is for Child Support Agency staff to conduct

workshops at the FRC or to have rostered sessions to provide information and advice to individuals. Other agencies might also provide information and advice sessions on the premises.33

**Family Relationship Centres as Gateways**

The FRC is not a one-stop shop. It is a gateway. Certainly, FRCs will provide all that many people need in making the difficult adjustment to separation as parents. Many such people will receive the information they need to work out their own parenting plan, or will benefit sufficiently from the availability of free mediation.

However, it is unrealistic to think that any one service can provide all that people need. For some people, the issue will be timing. There will be those who simply are not ready, early on in the separation, to reach a long-term agreement about post-separation parenting because they are still working through the emotional response to the other parent’s decision to leave; there will be other people who feel the need to “have their day in court” and will not be ready to settle arrangements until they realise that litigation may not be in their best interests or the interests of the children. There will be others still who need to go to court because there are serious issues about domestic violence or child abuse.

In these kinds of cases, the FRCs may help the parties on the road towards an agreement, or will give them a much better understanding of what they need to do to resolve the issues, but will not be a one-stop shop for the parents. It is to be hoped that many, once they have begun to negotiate parenting arrangements with the help of the FRC, will see the value in continuing down this path rather than litigating. The FRC, by giving parents an experience of what mediation is, and informing parents of other available counselling and mediation services with which they can continue, will act as a gateway to these other services.

The FRCs will also act as a gateway to other kinds of services. There will be those who, after attending a post-separation parenting seminar, or attempting mediation, may want to attempt reconciliation with the assistance of relationship counselling services; others who will join a program for perpetrators of domestic violence or for gambling addiction, if either of these have been a major reason for the separation; others still who will want to access other kinds of services, for example support programs for separated fathers. The FRCs are thus about much more than organising post-separation parenting. They may be the gateway also to services which will heal relationships, allowing marriages and cohabiting relationships to survive, or to services which will help people deal with the grief associated with relationship breakdown.

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33 Recommendation 19.5 of the Taskforce report (above n. 32) states: “Organisations selected to run Family Relationship Centres should be encouraged to invite the Child Support Agency, Centrelink, Legal Aid and community legal centres to conduct regular advice and information sessions on the premises of the Centre.”
It will not in any sense be a failure of the FRCs if for some people, the next step in the process is to consult a lawyer or to file a court application. That will be necessary in many cases and it is appropriate that people should feel free to seek advice from any professional they choose to consult and to seek court orders if they choose to do so. The FRCs will be a success if they assist people who don’t need to make court applications to resolve their disputes in a different way, while assisting people who need protective orders or for whom court ordered residence and contact orders are a necessary security, to be more informed about the available options and to resolve at least some issues without the need for litigation.

Before Going to Court

The proposals accepted by the Government involve a requirement that people should have attempted to resolve parenting issues before filing legal proceedings. It would not be in any sense compulsory to attend a Family Relationship Centre as a precondition to filing a court application. People could still choose to take their problems directly to a family lawyer who would refer them on to a dispute resolution service, or to go directly to a mediation service of their choice.

However, the carrot to attend such a service initially is that it would be a free service. The ‘stick’ would need to be provided by the courts. Under new Family Law Rules introduced in March 2004, it is now mandatory for people to make a bona fide attempt at dispute resolution before filing a court application. This new approach has not been adopted at this stage by the Federal Magistrates Court, but it is likely that the Government will legislate a requirement that people should attempt to resolve a matter through negotiation before initiating family law proceedings, except in cases where concerns about violence or abuse make it inappropriate to do so.

As a consequence, if a parent refuses to participate in a session with the FRC, or to propose an alternative process such as mediation with a preferred relationship-counselling organisation, then a lack of willingness without good reason to attempt to resolve the dispute without litigation would reflect adversely upon them in subsequent legal proceedings. They could not initiate court action without having first attempted to resolve the dispute without litigation, and as a respondent to such legal action, a perceived unwillingness to engage with the issues in the absence of violence or personal safety concerns, could well raise questions about their capacity to focus on the children’s needs.

34 The Committee also recommended that, except in certain circumstances, parents be required to attempt alternative forms of dispute resolution such as counselling, mediation or conciliation before they can go to court over a parenting matter. The government agrees. Parents will need to attend a dispute resolution process aimed at completing a parenting plan, either at a Family Relationship Centre or elsewhere, before they will be able to file a parenting matter in the courts. Cases involving violence or child abuse will not have to meet this requirement.” Framework Statement, above, n.5.
How this will be implemented is an important matter for the consultation process. It is well understood amongst family law professionals that where there are serious concerns about violence or abuse, mediation is contra-indicated, and that any attempts to conciliate disputes must ensure the safety of all participants. The Family Court mediators and Legal Aid organisations have long experience in seeking to reach agreements between parents where safety concerns exist. That experience will need to inform the development of any rules that require an attempt to negotiate a resolution prior to filing an application for parenting orders.

Drafting agreements

One issue that will need to be resolved in the consultation phase is the role of FRCs in helping parents to draft agreements. It is not envisaged that the FRCs will be staffed by lawyers. It may be highly desirable that parenting advisers have access to legal advice when they need it, perhaps centrally located within an organisation that has oversight and support of the FRCs. However, the Centres should not offer legal advice to clients.

The issue then arises of how agreements between the parents should best be reduced to writing. If the dispute can be resolved by agreement, then it would be desirable if the FRCs had the capacity also to help the parents draft agreements. The use of template agreements or parenting plans on computers would make it relatively straightforward for a person without legal training to produce a plain English account of what parents have agreed. It would be up to the parents to decide whether and how to give their agreement legal effect in accordance with the normal processes for making parenting plans and consent orders. The parties should be encouraged to get their own legal advice before assenting to the plan or filing consent orders.

Conclusion

FRCs are a significant new initiative. The development of these Centres represents a major investment in family life, and in particular, in promoting better arrangements for children with less conflict than at present. The Centres should also have many benefits for the Courts in removing much of their lower-conflict workload. Many cases that now settle at the case assessment conference or in court-ordered mediation may well settle without the need for filing. The Centres may also impact upon the volume of the courts’ high conflict workload to the extent that this early intervention strategy is successful in helping parents avoid adversarial conflicts.

The success of the Centres will nonetheless depend upon a great deal of cooperation and goodwill amongst professionals working in the family law system. In Australia at least, family law professionals and the Courts have a long history of such successful cooperation. Their success will also depend on adequate levels of resourcing, a consistent national approach, and a national education campaign. The central place these Centres
have been given by the Prime Minister as a strategy for helping separated parents and strengthening intact relationships, indicates the priority which will be attached to their funding and development.