

Family Relationship Centres: Why We Don't Need Them

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EXECUTIVE SUMMARY

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The Australian government is proposing a substantial package of reforms to the family law system. It hopes to bring about a substantial shift in the way relationship breakdowns are viewed and dealt with, particularly in cases where children are involved. Significantly, there is a push to reduce separating couples' reliance on lawyers.

To facilitate this, the Government intends to establish a network of 65 Family Relationship Centres (FRCs) across the country. At a cost of \$200 million, these Centres are being designed to address the needs of couples, with particular emphasis on those who are separating or wanting to commence divorce proceedings. Further, the Centres will have a dispute resolution component whose resources will be used help divorcing couples with children develop parenting plans. Trained counsellors and mediators will engage in three mandatory and free hours of dispute resolution with every couple before they enter a court room. But the policy objectives seem confused: are they hoping to salvage marriages or make the process easier?

Establishing this national network of 65 FRCs also duplicates the existing government and publicly-funded community sector that already provides access to family relationship services. Approximately 100 community organisations currently receive funding for a program that has been running since the 1960s.

There are some fundamental problems with the setting up of the FRCs. Like the Job Network, there is an obvious concern that the FRCs will "park the hard cases". Despite funding being tied to performance indicators, there is a strong possibility that the FRCs will make their money processing the simple cases. Moreover, trials of a similar program undertaken in Britain led to the scheme being abandoned. The Australian government has decided against a trial period.

The proposal to establish Family Relationship Centres should be scrapped. They are an example of symbolic politics; in reality they will be no improvement at all. The Government's proposed family law reforms in relation to divorce are well-intentioned but a closer look at the proposed changes reveals that good outcomes are highly doubtful.

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Family Law Reforms: What is the Government doing?

The Australian Government has committed \$397.2 million over four years to a package of reforms of the family law system, aimed at enhancing family relationships and helping separating families. These reforms are the most significant since the introduction of no-fault divorce in 1975. They are designed to avoid litigation as the means of arriving at arrangements for the parenting of children after separation.¹

The *Every Picture Tells A Story* Report, prepared by the House of Representatives Standing Committee on Family and Community Affairs ('the Committee') in December 2003, provides the framework for the proposed reforms. In all, 29 recommendations were made by the Committee after six months of public hearings and written submissions.²

Some of the recommendations generated by the Committee were:

- that the *Family Law Act 1975* be amended to require that separating parents to undertake compulsory mediation or other forms of dispute resolution before applying for a parenting order (with some exceptions);
- that funding be increased for the Family Relationships Services Program ('FRSP')³; and
- that a single entry point be established into the broader family law system, which is connected to an existing Commonwealth body (the Committee was pushing for the establishment of a national, statute based Families Tribunal which would have had the power to decide disputes about shared parenting responsibility with respect to future parenting arrangements that are in the best interests of the child or children).⁴

Based on the findings of the Committee, the findings of a Federal Joint Select Committee, the Family Law Council, the Australian Law Reform Commission and other bodies from the past 10 years, the Government's two main objectives—consistent with the above themes and 'in the best interest of the child'—are as follows:

- a) to help non-separating families with their family relationships and parenting; and
- b) to help separating families achieve agreement for workable parenting arrangements outside the court system.⁵

The Present System

With the exception of Western Australia, which reserved its family law prerogatives, the *Family Law Act 1975* ('the Act') introduced uniform national laws in 1975 governing the dissolution of marriage. It made several key changes to the way divorce was dealt with:

- It introduced no fault divorce, whereby all that was required to substantiate a claim for irremediable breakdown of marriage was proof that the parties had lived 'separate and apart' for not less than one year. As a result, 'fault' was no longer to be considered by the Court in justifying divorce and influencing decisions on child custody and maintenance;
- It created the Family Court of Australia;
- It highlighted the importance of counselling to assist couples who were in the process of separation and divorce and attached this service to the Court; and
- It declared the welfare of children to be a paramount consideration.⁶

Presently, the Act and its administration are complex and adversarial. Under the Act, separating parents who cannot reach agreement regarding the arrangements for their children apply to the Court to make orders about parental prerogative and responsibilities. These are called parenting orders. The current legislation does not stipulate compulsory dispute resolution for all separating parents prior to applying for a Parenting Order under Part VII of the Act, nor does it require the presentation of a parenting plan (or a certified attempt to prepare one).⁷

In its *Every Picture Tells A Story* report, the Committee presents a detailed picture of the adversarial nature of the judicial process undertaken by separating couples, particularly those with children.

It found that adversarial legal proceedings create great animosity between separated parents, making it much more difficult for litigation and other processes to focus on reaching agreements that are in the best interests of the child. Also, people often feel unable to contribute actively to the decision making process.⁸

The *Family Law Amendment (Shared Parental Responsibility) Bill 2005* ('the Bill'), introduced to Federal Parliament in December last year, seeks to rectify these problems. To improve the legal process where children are involved the Bill prioritises the interests of children following family breakdown by effecting a shift 'away from litigation ... towards cooperative parenting.' The Government also believes that the Bill advances its '... longstanding policy of encouraging people to take responsibility for resolving disputes themselves, in a non-adversarial manner.'⁹

Parenting Plans, Compulsory Dispute Resolution and Family Relationship Centres

A significant change proposed in the Bill is to make it compulsory for divorcing couples with parenting disputes to attend dispute resolution. The purpose of attending dispute resolution is to develop a parenting plan that considers and reflects the best interests of the child and involves both parents.¹⁰ The key provision is a new subsection 601(7), which sets out that, subject to certain exceptions, a court may not hear an application under Part VII¹¹ unless the applicant files a certificate stating that the applicant had attended, or attempted to attend, dispute resolution.

However the Bill asserts that all couples will be strongly encouraged when applying for a divorce to engage in dispute resolution to attempt to repair the relationship and prevent divorce.¹² There appears to be some confusion here as to whether the government is trying to prevent relationship breakdowns, or make them easier by making the process less adversarial.

To implement its planned legislative changes, the Government proposes to establish a new 'community-based' network of 65 Family Relationship Centres (FRCs) to be established over three years. The centres have been designed to provide a range of information and referral to services that can help prevent family separation or help deal with separation. They are also designed to provide advice about the family law system and about developing parenting plans, and to help parents reach an agreement on parenting arrangements after separation. They have primarily been designed to support the compulsory requirement in the Bill.¹³

The Attorney-General has likened the new network of Family Relationship Centres to "aircraft control centres" that will help and guide people through all the different stages of their relationships.¹⁴

Who is affected?

According to the Australian Bureau of Statistics, 95% of family law matters are resolved without court orders,¹⁵ and according to the Child Support Agency, in 90% of cases where parents agree by themselves on issues of residence and contact, it involves a decision that the child will be in the sole principal care of one parent (usually the mother).¹⁶

As is obvious, in an overwhelming number of cases, separating parents have resolved custody issues independently. Only a very small proportion of divorce cases find themselves having to go to court to resolve conflict over children. The new legislation requiring people to try dispute resolution is to be welcomed. However, it is unclear why there is the need for an entirely new system of government-run services to cater for this 5%. The Government's response seems disproportionately large compared to the problem.

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This does not mean that dispute resolution should not be encouraged. The Court does not always have the best solution to parenting disputes, and in situations where this is the case, couples should be made aware of the services that are available to them, if these wish to seek help.

In reality, the Government's hope is that the legislation will do more than take relationships out of the court system. It wants FRCs to be used not only by quarrelsome couples but also by separating couples who have already reached agreement, and indeed by couples who haven't even separated.

The centrepiece of the reforms is the proposed establishment of 65 FRCs located throughout the country to provide "information, advice and dispute resolution to help parents reach agreement."¹⁷ The Government wants couples to access the centres as early as possible in the separation process, to prevent conflict and disputes from developing and worsening, and perhaps to bring about reconciliation to avoid divorce. They will also provide accredited family counsellors to administer the compulsory dispute resolution requirement. But the centres are being marketed to prevent separation as much as they are to facilitate it. The Government envisages that the centres will also become a reference point for couples who want to start their relationships as solidly as possible or to help those who are undergoing relationship difficulties.¹⁸

The Government's objectives seem confused. Are they hoping to salvage marriages, or are they trying to make it easier for people to separate? When a couple steps into a dispute resolution session, should they expect to be working on repairing their relationship, or ending it amicably? Are these objectives even compatible with each other?

Why We Don't Need FRCs

Establishing this national network of 65 FRCs will be costly. One hundred and ninety-nine million dollars has been set aside in the 2005-06 Budget to cover the next four years, in addition to the \$137 million allocated in the same budget to maintain the increased funding (provided in the 2004-05 Budget) of the already established Family Relationships Services Program. Another \$62 million will be used to expand other existing services. In all, the proposed family law reforms will cost the taxpayer close to \$400 million.²⁰

'Nationalising' the voluntary sector: the duplication of an existing system

In Australia there is already a large government and publicly-funded community sector involved in the provision of relationship services. Many of these organisations are not-for-profit, and offer free services to individuals, couples, children and the elderly.

Organisations such as Relationships Australia, Anglicare, Centacare and Lifeline provide a range of relationships services including counselling and mediation for both couples and children. Many offer help lines and internet assistance for those that are unable to physically access their centres.

There is also the Family Relationships Services Program ('FRSP'), which is a government-funded program that has been running since the early 1960s. While it was initially established to focus on marriage guidance services, its current aims are:

- to enable children, young people and adults to develop and sustain safe, supportive and nurturing family relationships; and
- to minimise the emotional, social and economic costs associated with disruption to family relationships.²¹

Approximately 100 community organisations currently receive funding under the program to provide family relationship services through about 350 outlets across Australia. In 2004-05, these organisations received periodic payments totalling approximately \$49 million. In 2002-03, over 130,000 individuals sought and used FRSP services, with the Family Relationships Counselling component accounting for over half of all the clients of the FRSP that year. This has been the pattern since the FRSP's establishment.²²

The following organisations are recognised as accredited mediation and/or counselling organisations²³:

- | | |
|---|---|
| • Agencies for South West Accommodation | • Mackay Children's Contact Services |
| • Anglican Community Care | • Mackillop Family Services |
| • Anglican Counselling Services | • Mallee Family Care |
| • Anglicare | • Manning Support Services |
| • Australian Greek Welfare Society | • Men's Outreach |
| • Berry Street Victoria | • Marriage Education Programme |
| • Bethany Family Support Inc | • Marymead Child and Family Centre |
| • Broken Hill and District Support Services | • Men's Information and Support Association |
| • Brotherhood of St Laurence | • Mercy Family Services |
| • Burnside | • Migrant Resource centre |
| • The Cairnmilliar Institute | • Newcastle Family Support Services |
| • Catholic Marriage Education Services | • Ngala |
| • Centacare | • Port Pirie Central Mission |
| • Central West Contact Service | • Positive Solutions: Mediation, Counselling, Training |
| • Child and Family Services Ballarat Inc | • Queensland Program of Assistance to Survivors of Torture and Trauma |
| • Children's Protection Society | • Relationships Australia |
| • City of Greater Geelong | • RESOLVE |
| • CLAN | • South East Migrant Resource Centre |
| • Community Care Inc | • Southern Family Life Service Association |
| • Community Connections | • Stepfamily association of Victoria |
| • Community West | • Sunshine Coast Family Contact Care Centre Association |
| • Family Mediation Centre | • The Family Centre Community Project Inc |
| • Family Relationships Institute | • The Salvation Army |
| • Gordon Care for Children | • Toowoomba Children's Contact Centre |
| • Interrelate (Family Life Movement of Australia) | • UNIFAM Counselling and Mediation |
| • Kinnections | • Uniting Care |
| • Kyabra Community Association | • Upper Hume Community Health Services |
| • Latrobe City Council | • Upper Murray Family Care Inc |
| • Life Care Family and Counselling Services | • Whyalla Counselling Service |
| • Lifeline | • Youth and Family Service |
| • Lifeworks | |
| • Lutheran Community Care | |

Through this program, all of these organisations receive periodic payments from the Government, in exchange for which they are expected to meet government standards in training and service provision. This enables the Government to recommend these organisations to individuals who are seeking help.

With such an extensive network already in place, FRCs appear to be duplicating an existing system merely to increase Government control. The danger is that this policy will end up destroying the community sector's independence, wasting taxpayer's money and hindering rather than helping couples who need assistance with the divorce process.

Evaluating Effectiveness

In a national media release dated 29 July 2004, The Prime Minister said 'like the Job Network, [Family Relationship Centres] 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.'

The Job Network was established by the Government in 1998 to replace the Commonwealth Employment Service. It was intended to introduce '... individually tailored services for the unemployed, leading to greatly improved outcomes.' Under this incentives-based system, the Government determines which services will be provided as well as which 'customers' will access these services.²⁴

After several years of operation, the Productivity Commission released a report evaluating the Job Network and the principles of its system, and concluded that while

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the Job Network was generally a feasible system, one of the weaknesses of its design was its tendency to 'park hard cases.'²⁵

A core problem identified by the Productivity Commission is that 'an incentive-based system like the Job Network is perfectly designed to provide statistical outcomes at minimum cost.'²⁶ That is, to ensure funding, service providers have strong incentives to focus their resources on straightforward and speedy cases and to implement strategies that satisfy the outcomes required by the Government rather than those that fulfil the needs of their clients.

There is an obvious concern that the FRCs will operate in much the same way. Family Relationship Centres are being established as a government-administered and funded network, which will be expected to satisfy statistical standards in order to guarantee levels of funding. In the revised edition of its Family Relationship Centres Information Paper (dated 22 December 2005), the Government states that funding will be subject to performance assessment based on a number of Key Performance Indicators ('KPIs').

The Key Performance Indicators:

- The percentage of people in the catchment area who receive assistance from the Family Relationship Centre.
- The percentage of families using the Centre who take up appropriate referrals to:
 - pre-marriage education programs;
 - programs that help them stay together;
 - programs that help them with parenting; and
 - programs that help them deal with other issues that impact on their family relationships (eg treatment for gambling or drug problems).
- The percentage of intact families who found the Centre's assistance to be useful.
- The percentage of separating parents attending the Centre who agree on parenting arrangements without a court determination of a dispute (including those who have been to court previously who do not require further court determination).
- The percentage of separating parents attending the Centre who acknowledge an improvement in communicating with the other parent about post-separating parenting.
- The percentage of separating parents attending the Centre who take up appropriate referrals to programs to help them to stay together.
- The percentage of separating parents attending the Centre who take up the appropriate referrals to programs to help them deal with:
 - entrenched conflict; or
 - other issues that impact on their relationship.
- The percentage of parenting arrangements still workable after one year, including those amended to meet changing circumstances.
- The percentage of separating parents using the Centre whose situation involves family violence, who found the Centre's assistance to be helpful.
- The average waiting time for separating parents to attend advice or dispute resolution sessions (taking into account adjustments for service loadings).²⁷

The obvious danger that FRCs will make their money processing the easy cases but will have little impact at the sharp end where the problem is greatest. Like the Job Network, the organisations could become preoccupied with meeting targets to secure funding.

The model needs to be trialled

The Government has announced that there will be no trial period for the proposed FRCs. Rather, an implementation review of the Centres will be undertaken after one year. Given that almost \$200 million is being spent on establishing a national system, it would be prudent to consider trialling the centres, and to reduce the number of centres to be established initially, so that their effectiveness and cost-efficiency can be measured.

The compulsory dispute resolution to be provided by FRCs has been attempted overseas in various forms. Between 1996–2000, Britain trialled a system similar to that being proposed in Australia, with the primary aim of reducing reliance on lawyers and the use of the court system.

The introduction of the UK *Family Law Act 1996* brought sweeping changes to British divorce laws. The aims of the reforms were similar to the Australian Government's current objectives:

- to focus on saving saveable marriages;
- where marriages break down, to conclude them with minimum distress to the parties and children involved; and
- to help them avoid become embroiled in an adversarial court proceeding.²⁷

Part II of the Bill that preceded the *Family Law Act* was to introduce compulsory Information Meetings. These were trialled and eventually scrapped before the Bill was passed. Under the trials, Information Meetings were made compulsory if one spouse opposed the divorce or if there were disputes over children or finance. The Information Meetings were on a one to one to basis and were free to all parties. After attending at least one Information Meeting, a couple was required to wait a minimum of three months before filing for divorce.²⁸

After assessing the results from various trials, the Information Meetings were abandoned. One of the core problems was the cost involved. It became clear within months that the Information Meetings were economically unsustainable.²⁹

The results also showed that while 99% of the participants found the Information Meetings useful, ultimately they were ineffectual. Only 7% of Information Meeting attendees opted to pursue mediation before reverting to the courts, and 39% indicated that they were more likely to see a solicitor. Research found that the meetings tended to strengthen people's view that they needed to seek legal advice and consult a lawyer.³⁰ Respondents to the trials found that the information provided to them was standardised and did not cater for the individual nature of relationship breakdowns.

The trial period for these Information Meetings was critical in determining the likely success or failure of the British Government's family law reforms, and though they may have been costly, the scrapping of much of the legislation in the long term prevented even more taxpayers' money being wasted.

Relationship Breakdowns: How They Should Be Handled

That separating parents and couples should give due consideration to the welfare of their children is not in question. Regardless of age, type of relationship or financial circumstance, all decisions made by couples to separate should have the best interests and welfare of the child as their paramount concern, particularly in cases where children are less than 18 years of age. Making parenting plans compulsory is an excellent way of ensuring this, and the Family Court should expect that all parents seeking a divorce should do so only after they have reached an agreement regarding children, or have exhaustively attempted to do so.

Couples should be encouraged to resolve these issues independently and between themselves, if possible. If a particular relationships service is required, then, as

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discussed in this paper, there is already a well established private and community sector providing an extensive range of services that couples can access. Many of these organisations have been accredited under the existing Family Relationships Services Program. There are many trained, government-funded individuals available to assist couples and their children. Establishing 65 new centres to do what can already be done is unnecessary.

Only couples who cannot reach agreement should be required to undergo compulsory dispute resolution—and this should be paid for by the couple themselves, not by the taxpayer.

Conclusion

The Government's proposal to require separating couples to prepare parenting plans before proceeding to the Court is sound. This will ensure that the best interests of children are considered, and that parents acknowledge their responsibilities to their child or children.

How parents develop these plans can be left to them. The great majority of parents already manage to sort out their affairs without the Court becoming involved. This is how things should remain. Encouraging couples to use dispute resolution services is also a positive measure.

However the proposal to establish FRCs should be scrapped. By attempting to duplicate the existing system, the Government seems confused about whether these centres should give priority to prevention of relationship breakdowns, or to make ending a relationship easier and less adversarial. These two objectives are incompatible.

FRCs are an example of symbolic politics—they are being established so that the Government is seen to be doing something about the divorce process, but in reality, these centres will do nothing at all to improve the system. They also represent the incorporation of private, voluntary and community services into intrusive bureaucracy. They will be costly to run, and if they fail, it will be a costly failure. Taxpayers will end up footing the bill for redundant policy and community sector organisations, having lost their independence, would struggle to re-establish it.

While the Government's proposed family law reforms in relation to divorce are the product of good intentions, a closer look at the changes being proposed reveals that good outcomes are highly doubtful.

Endnotes

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