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Preparing for Family Dispute Resolution in Regional Australia: Exploring the
Experiences of Parents, Family Dispute Resolution Practitioners and Lawyers

Rhonda Maree Emonson

BHSc, MSW, MCR, AMHSW

Family Dispute Resolution Practitioner (Attorney-General's Department)

Thesis submitted for the degree of

Doctor of Philosophy (Law Research)

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College of Business, Law and Governance

James Cook University

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Certificate of Authorship

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person nor material that to a substantial extent has been accepted for the award of any other degree or diploma at James Cook University or any other educational institution, except where due acknowledgement is made in the thesis. Any contribution made to the research by colleagues with whom I have worked at James Cook University or elsewhere during my candidature is fully acknowledged.

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Statement of the Contribution of Others

Nature of Assistance	Contribution	Names, Titles and Affiliations of Co-Contributors
Intellectual support	Editorial assistance	Elite Editing
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Abstract

Family dispute resolution (FDR) assists in keeping parenting conflicts out of court and gives parents the opportunity to negotiate freely and to make choices about post-separation arrangements for their children. Many parents can reach agreements amicably. However, those who use the family law system may be experiencing family violence, mental health issues or substance abuse and may, therefore, require additional assessment and support to effectively prepare for FDR.

This research project had three objectives: first, to understand the current process from the perspectives of parents, practitioners and lawyers; second, to explore what (if any) aspect of the process is difficult for parents; and third, to explore how well parents are prepared for FDR from the perspectives of parents, practitioners and lawyers.

The study adopted a qualitative methodology from an interpretivist phenomenological perspective. Using in-depth interviews, data were collected from three regional locations in New South Wales (Location 1), Queensland (Location 2) and Victoria (Location 3). I conducted 52 purposeful interviews with parents and practitioners engaged in FDR at Family Relationship Centres and lawyers, either in private practice or community legal services, with an interest in FDR.

As a result of the study, I identified three main findings. The first highlights the additional assistance required by parents, practitioners and lawyers in preparing parents adequately for FDR. This additional assistance particularly relates to establishing realistic expectations about outcomes, understanding the purpose of education sessions, increasing the availability of legal advice for parents and supporting the psychosocial needs of parents. The second finding reveals the unrecognised aspects of preparing parents for FDR, including the management of psychological distress, the inclusion of

legal advice, the management of family violence and lengthy suspensions on waiting lists. The third finding highlights the divergent and disjointed perspectives among parents, practitioners and lawyers of the preparation of parents for FDR. However, practitioners and lawyers both agreed that a percentage of parents face significant challenges in being adequately prepared and that the amount of time parents are suspended on waiting lists should be addressed. While practitioners recommend the provision of conflict coaching, counselling and child-inclusive practice to effectively prepare parents, lawyers recommend the inclusion of legal advice. The legitimacy of screening for psychological distress and the ability to refer parents for intervention in a timely manner to effectively prepare them for FDR is a key recommendation from this research.

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List of Abbreviations

AGD	Attorney-General's Department
ALRC	Australian Law Reform Commission
ANAO	Australian National Audit Office
CSU	Charles Sturt University
DOORS	Detection of Overall Risk Screen
FRC	Family Relationship Centres
FDR	Family dispute resolution
NSW	New South Wales

Chapter 1: Introduction

There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things.

—Niccolo Machiavelli, *The Prince*, 1513

Family law is constantly changing. A recent legislative change came about with the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth), which represented the most substantial step taken by the Australian Government towards intervention in family matters, particularly in post-separation parenting arrangements for children. This amendment has changed how parents manage disputes involving post-separation parenting arrangements for their children in the Australian context.

According to Smyth and Chisholm (2017), ‘The intention [of the legislative changes] has always been to assist people to resolve their disputes rather than have them adjudicated’ (p. 590). According to the *Operational Framework for Family Relationship Centres* (Attorney-General’s Department [AGD], 2019), ‘The government wants separating parents to sit down, focus on their children and agree on parenting arrangements rather than going to court’ (p. 42). Additionally, the government seeks to change the culture of family breakdown so that it is seen as a relational rather than a legal issue, without compromising the safety of children (p. 42). Kamenicka-Usova, (2016) posit that, ‘mediation holds the promise of cost-efficient and faster dispute resolution compared with other methods therefore, parties might opt for mediation because they expect mediation to be quicker and cheaper than court proceedings’ (p. 2). Henry and Hamilton (2011) state that mandatory family dispute resolution (FDR) was introduced to encourage parents to have a meaningful involvement in their child’s upbringing following separation (p. 105). Robertson and Pryor (2011) suggest that ‘a

relatively inexpensive intervention [such as FDR] will reduce the need for parents to use judicial processes, resulting in agreements based on children's "best interests" (p. 24).

There is some evidence that the 'introduction of mandatory mediation in 2006, in tandem with the expansion of dispute resolution services, was associated with a 25% reduction in court filings over children's matters' (Smyth & Chisholm, 2017, p. 590). However, according to the Australian Law Reform Commission (ALRC) *Final Report* (2019), the court received over 17,000 applications for final orders in 2017/2018, with 51% pertaining to parenting orders (p. 80).

FDR offers 'distinct advantages over litigation by focusing on self-dependence and capacity building and thereby increasing rather than diminishing resilience. As a process focused upon communication, co-operation, attitudinal change, and strength building, FDR has clear benefits over litigation' (Harman, 2019, p. 13). However, it can be 'extremely challenging for clinicians and other professionals who work with these parents and children to make sense [of what is] parents' extreme behaviour' (Target, Hertzmann, Midgley, Casey, & Lassri, 2017, p. 240).

Many separated parents are capable of dealing with disputes over children's matters with little evidence of acrimony (Moloney, Smyth, Richardson, & Capper, 2016). However, according to the ALRC *Final Report* (2019), for those parents unable to reach agreement about post-separation arrangements for their children,

it is evident that the family law system is delivering services to many families at a time of heightened vulnerability. On this basis, interaction with the family law system offers a critical opportunity for intervention with families that can potentially reduce the factors that might compromise a child's wellbeing. (p. 62)

According to Target et al. (2017), 'entrenched high-conflict post-separation relationships between parents can cause substantial emotional risks to children as well

as impacting severely on parents' mental health' (p. 218). Hastings, Mondy, Austin and Ramirez (2013) state that 'conflicted parents engage in frequent arguments and undermine each other in their parental role. Insults, threats and abuse, refusal to communicate, and arguments about the children are frequently witnessed by children' (p. 87). According to Smyth and Moloney (2019),

Ongoing unresolved parental conflict tends to significantly diminish parenting capacity ... Depressed, distracted, or traumatised parents are often unable to remain attuned to the emotional needs of the child. This in turn can adversely impact on parent-child relationships and lead to poorer adjustment outcomes for children. (p. 76)

Parents in entrenched conflict are 'resource heavy and their children are known to be damaged by these ongoing disputes. However, there is a paucity of therapeutic services available, especially those which treat both parents together' (Target et al., 2017, p. 241).

Separated families with the poorest adjustment are often characterised by interparental conflict, with about a quarter of separated parents reporting substantial co-parenting conflict that often does not improve with time (Halford & Sweeper, 2013). The nature of the underlying problems of family disputes has changed. As shown by the ALRC *Final Report* (2019), 'the overwhelming nature of contemporary family disputes that require court adjudication is that they are overshadowed by family violence, child abuse, drug and alcohol issues and serious mental health issues' (p. 135), with the family law system increasingly dealing with families with complex needs, including those that represent a risk to the child's safety. According to Harman (2019), 'the reality is that about a third of separated families probably require repair and assistance in adjusting to their new reality, their new family structure' (p. 10). The ALRC *Final*

Report (2019) into family law in Australia highlights that ‘the current legislative regime does not meet the contemporary needs of those who must resort to the family law system, either with or without the assistance of lawyers’ (p. 30). Harman (2019) also suggests that

parents and families need first aid, scaffolding, and support in changing and adapting to the new configuration of family, together with education to learn, perhaps for the first time, how to create a co-parenting dynamic and allow it to work. (p. 10)

As a result of support and ‘better management of the separation by parents, they are more likely to mitigate many of the negative effects of separation on children’ (Robertson & Pryor, 2011, p. 24). The ALRC (2019) agrees that the ‘notion of complex needs in family law is not intrinsically linked to legal complexity and that funnelling families with co-occurring psycho-social needs into the courts is a failure to respond properly to the needs of the family’ (p. 64).

With the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth), the Australian Government assumed that, with the assistance of formal structures such as FDR and support from professionals, disputing parents would achieve satisfactory outcomes regarding post-separation parenting. However, according to Parkinson (2018),

lawyers are frustrated, litigants are frustrated; judges are overburdened, [and] there is no end to the trail of misery queuing outside the doors of courtrooms; chronic underfunding of the family law system has resulted in lengthy delays and safety risks for litigants in regional areas, which has called for more judges to be flown from cities to resolve parenting and property disputes. (p. 6)

The current government funding model of subsidised sessions for FDR cannot accommodate parents in high conflict who require more extensive forms of intervention over longer periods (Boyhan & Gerner, 2007).

According to Kamenecka-Usova (2016), mediation is ‘constructive and involves the chance for personal development and social growth for the parties of the conflict. The principle of voluntariness and the development of the solution by the parties themselves carry with them the expectation of substantive justice’ (p. 1). The family mediation system in Australia currently focuses on a brief intervention that is offered in a similar form to all separated parents with parenting disputes (Maldonado, 2014), although the appropriateness and effectiveness of a government mechanism to assist in FDR, particularly for those parents presenting with complex needs, is questionable. Relationships Australia Queensland (2014) reports that the majority of parents who engage with agencies that provide mediation fail to complete the process.

Even so, Harman (2019) asserts that FDR keeps people out of court by providing access to a means of dispute resolution that has the ‘fundamental benefits of malleability, adaptability, and self-determination, leaving courts for those who refuse to engage or who require the protection that the court process offers’ (p. 20). For parents residing in regional Australia, ‘one of the most important avenues for intervention to ameliorate the impact of chronic rural disadvantage is to provide effective support to children, young people and adults so they can develop and sustain safe, supportive and nurturing relationships’ (Roufeil & Battye, 2010).

Family structures are changing, as are societal views on relationships and parenting. In 2017, the Attorney-General instigated a review of the current family law system and suggested that ‘it is difficult to avoid the conclusion that, in 2019, the existing courts are unsuitable and ill-equipped to deal with the particular contemporary

problems of family disputes’ (ALRC, 2019, p. 136). An inquiry conducted by the ALRC (2019) into family law in Australia also identified structural and systemic difficulties within the current Australian family law system:

There has been a raft of inquiries, reviews and reports which have made recommendations to the Government about improving the family law system ... they have all identified substantially the same fundamental issues and have all made substantially the same suite of recommendations over ... almost two decades. (p. 111)

Research offers ‘an opportunity to open a window to the practice context, to allow exploration of the conditions, challenges, processes and outcomes’ (Goel, Hudson, & Cowie, 2018, p. 1030). Research into many aspects of FDR has occurred prior to and since the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth), with the most significant overview of the family law system presenting its findings as recently as April 2019. However, research on the lived experiences of parents embroiled in decision-making about post-separation arrangements for their children and the perspectives of FDR practitioners and lawyers who prepare them for FDR is lacking. Since the reforms to the family law system that saw the introduction of FDR, the ‘voices’ and subjective experiences of parents, FDR practitioners and lawyers when preparing for FDR has not yet been explored.

To date, no research has been conducted on the experiences of parents, FDR practitioners and lawyers as they prepare for FDR in regional settings in the Australian context. However, Henry and Hamilton (2011) suggest that future research might consider the following questions: ‘Under what circumstances is FDR effective? Do outcomes change according to the population of interest? How does the client experience the process?’ (p. 210). As suggested by Natalier and Dunk-West (2019),

‘socio-legal research has established the importance of a “good” post-separation parental relationship; however, there is little work addressing the definitions and experiences of parents themselves’ (p. 1).

1.1 Motivation for the Research Topic

I am familiar with the process of FDR and currently work in a regional setting as an FDR practitioner. Pain (2011) suggests that becoming involved in or conducting research has a positive influence on professional practice, particularly for practitioners in regional areas. By undertaking this research, I seek to represent the complex world of parents, FDR practitioners and lawyers in a ‘holistic, on-the-ground manner’ (Patton, 2012, p. 3).

Given that FDR occurs in a context characterised by rapid change, ‘it is difficult to know if an event under study is a “one time” and very local event or if it reflects something more stable in that context or something more universal within human experience’ (Kacen & Chaitlin, 2006). For parents seeking assistance, ‘conflict is a complex multidimensional construct’ (Smyth & Moloney, 2019, p. 74). For those engaging in FDR, Harman (2019) suggests:

FDR has a much better prospect of assisting families with and through these conflicts. This is especially so of [Family Relationship Centres] and community-based services with the ability to offer multi-disciplinary and longitudinal therapeutic services to families—both parents and children. (p. 17)

The nature of my inquiry aligns with the ontological view that ‘there are multiple realities and many truths to be discovered, and that the researcher will gather the truth on the day from the participants’ (Booth et al., 2019, p. 235). I undertook this research project to ‘explore the behaviour, perspectives, feelings, and experiences of people, and what lies at the core of their lives’ (Mohajan, 2018, p. 29) as they prepare

for FDR. First, study participants could provide insights into how a given person in a given situation makes sense of their experience of preparing for FDR. Second, this approach matches the epistemological position assumed in this research—that only the parents, FDR practitioners and lawyers experiencing the phenomenon of preparing for FDR are best able to understand their experiences. Although there are multiple ways of interpreting the same experience, interpretative phenomenology focuses on understanding participants' experiences through their own lenses; thus, parents, FDR practitioners and lawyers can infer their own meaning. How participants perceive things to be, regardless of their interpretation of their experiences, is assumed to be their reality.

At the start of my career in dispute resolution, alternative dispute resolution approaches were increasing in popularity. There was a shift away from parents using judicial processes to settle post-separation arrangements. Traditionally, FDR advocates maintained that parties in mediation had to be voluntarily present and be equally cooperative for disputes to be resolved. Henry and Hamilton (2011) argue that the transition to mandatory FDR has 'clearly placed an added burden on the role of practitioners who must mediate between the parties and maintain distinctly differing levels of motivation of parents reaching an agreement' (p. 105).

Those of us who were involved during the transition were on a crusade, possessing a passion and energy to embrace a process promoted as the answer to an adversarial approach when settling post-separation parenting disputes. As an FDR practitioner, I became interested in the issue of uncertain and changing contexts both from personal interest and for professional reasons. As suggested by Sergi and Hallin (2011), 'the personal experiences of the researcher performing research are far from trivial or mundane' (p. 193).

An adversarial approach is regarded as undesirable and detrimental to all involved. As an FDR practitioner since the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth), I have sought further opportunities to understand the preparation of parents for FDR and have been interested in ‘capturing some aspect of the social or psychological world of participants’ (Braun & Clarke, 2013, p. 20). In its exploration of the current family law system in Australia, the ALRC (2019) invited people who had recently experienced the family law system to confidentially share their experiences via their website. Although there were ‘close to 800 contributions’ (ALRC, 2019, p. 33), the ALRC did not seek to explore or understand the experiences of parents, FDR practitioners and lawyers as they prepared for FDR.

Wolcott (2010), suggests that ‘readers of our work want to know what prompted our interest in the topics we investigate, to whom we are reporting and what we personally stand to gain from our study’ (p. 36). Similar to Mohajan (2018), I was interested in a ‘phenomenon that had not been studied before; to understand a social phenomenon from the perspective of the actors involved, rather than explaining it from the outside’ (p. 29). As the researcher, I wanted to allow parent, FDR practitioner and lawyer experiences to be revealed through a method of questioning rather than have them respond to predetermined conclusions (Dowling 2007). As suggested by Sutton and Austin (2015),

When being reflexive, researchers should not ignore or avoid their own biases; instead, reflexivity requires researchers to reflect upon and clearly articulate their position and subjectivities so that readers can better understand the filters through which questions were asked, data were gathered and analyses and findings reported. From this perspective, bias and subjectivity are not inherently

negative but they are available; as a result, it is best that they are articulated up front in a manner that is clear and coherent for readers. (p. 227)

Historically, many FDR practitioners in regional settings were mentored in the skills of mediation by more experienced mediators, who ‘shepherded’ in new practitioners. In my early days as a mediator, I co-facilitated with a family lawyer in private practice who had adopted a non-adversarial process. As the field of alternative dispute resolution and family law evolved, I attended training and participated in regular professional supervision at Relationships Australia. On each occasion, it was necessary for me to travel from my home in a regional area to Melbourne.

I formalised my education by completing a Master of Conflict Resolution at La Trobe University in Melbourne and a Graduate Certificate of Dispute Resolution at Charles Sturt University (CSU) in Wagga Wagga, as well as undertaking specialised training through Relationships Australia (which was mostly related to property mediation) and training in child-inclusive practice. I also completed a Master of Social Work.

I am grateful for the ‘apprentice-style’ training I received from Upper Murray Family Care in Albury and my challenging and rapid learning curves in the early days of FDR. Over several years, I gained the necessary skills and competency to co-facilitate with others. During this time, I would take the lead role and others would gain experience. I had progressed from needing to be mentored to that of being the mentor. How I (and others) reached ‘the summit’, or the ability to mentor rather than being mentored, is difficult to determine. It was a new field, particularly in regional centres, and we had no benchmark.

My interest in providing evidence-based training led to my role as a consultant and program adviser for the Vocational Diploma of Dispute Resolution at CSU, for

which I co-wrote the module ‘Respond to Family Violence in Family Work’. I also worked in a team as a consultant to develop two further modules: ‘Supporting Vulnerable Families in FDR’ and ‘Operating in a Family Law Environment’. The purpose of developing these modules was to support CSU’s application to deliver a Graduate Diploma of Dispute Resolution.

For many years, I have practised as an FDR practitioner and a mediator in workplace dispute and conflict coaching at a regional private practice in New South Wales (NSW). I have two roles: The first is working with parents in dispute, in particular court-ordered, high-conflict parents for whom I primarily use a family therapy approach. This may require a written family report to be provided to the court. My second role is to provide conflict coaching and conflict management for those in workplace disputes. Both roles are equally satisfying and complex.

In my current private practice, as well as in my previous work as a practitioner providing FDR in a regional community setting, I have frequently observed the behaviours of parents, other FDR practitioners and lawyers. I have noticed that many parents are consumed with emotions and behaviours that are not conducive to settling disputes and, at times, I have observed that lawyers and FDR practitioners (including me) can feel inept at meeting the complex needs of parents. Witnessing the effects on parents, FDR practitioners and lawyers has led me to reflect on how we may further understand how best to prepare for FDR to ensure that the experience of FDR is more positive and successful.

1.2 The Research Project: Aims, Design and Significance

By completing an extensive review of the current literature relating to FDR and the family law system in Australia, particularly in regional Australia, I identified a gap in the literature about the experiences of those required to undertake FDR. Much has

been written on the introduction of legislative changes, the process of FDR and the changing landscape of families; however, the experiences of those who ‘live’ through preparing for FDR has not been explored. Although parents who are unable to reach an agreement regarding their post separation for their children are required to participate in FDR, Kitzmann, Parra, & Jobe-Shields (2012), suggest there is ‘a scarce amount of published literature on mediation preparation programs (p. 129). One of the key findings of their research is that ‘very few mediation preparation programs have been evaluated, [therefore] ‘little is known about program effectiveness’ (p.130). According to Field, (2014), ‘To ensure that the voice of vulnerable parties can be heard in family mediation, and that safe, just and appropriate outcomes are supported by the process, specific steps and intentional strategies are necessary’. Rundle (2013, p. 20) suggests that, ‘Clients expectations are affected by how their lawyers explain the mediation process and the tasks that lawyers engage in during the preparation phase’. On the other hand, Miller and Siebel (2009), highlight that although practitioners prepare their clients for mediation, preparation may not be systematic. Even so, according to Miller and Siebel (2019), ‘Mediation preparation results in better substantive outcomes, saves time and [may] salvage relationships’ (p.50). Furthermore, Nudelman and Johnson (2014), posit that ‘Mediation requires thoughtful preparation and that if the right parties are at the table, and the mediator and parties are well-prepared, agreement and settlement is attainable’ (p.10).

Hence, the aim of my research is to explore the experiences of parents, FDR practitioners and lawyers as they prepare for FDR in regional Australia.

To find participants with experience in the phenomenon, I considered parents, FDR practitioners and lawyers to be ‘experts’ in their experience of preparing for FDR.

Decisions regarding participant selection were based on the research questions, theoretical perspectives and evidence informing the study (Sargeant, 2012), with sampling of participants based on those who would be able to inform the aspects and perspectives related to the phenomenon being studied. As suggested by Mohajan (2018), ‘The researcher must go to the people, setting, site, and institutions to observe behaviour in its natural setting’ (p. 29). Therefore, I sought participants from Family Relationship Centres (FRCs) and locations in which FRCs were found. According to Denzin and Lincoln (2011), ‘qualitative research involves an interpretive, naturalistic approach to the world; therefore, researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them’ (p. 3).

I was interested in understanding the meaning of preparing for FDR from the perspectives of parents, FDR practitioners and lawyers rather than from the perspectives of researchers or government agents who had not spoken directly to those who had experienced preparing for FDR in a regional centre. Nevertheless, I understood that participant meaning would involve multiple perspectives and diverse views.

As suggested by Baxter, Gray and Hayes (2011), ‘the characteristics of families differ between the “city” and the “country” or “bush” [although] it is very difficult to identify exactly where the city ends and the country begins’ (p.1). The Australian Bureau of Statistics has emphasised the need for a ‘consistent terminology when referring to regional centres’ [and] acknowledges there is a range of different factors to consider such as population, natural resources, economic activity and proximity with other regions’ (ABS, Submission 5, p.5). Baxter, Gray and Hayes (2011) further suggests that ‘there are many similarities in the nature of families and their lives across

areas of varying remoteness, [however], overall distance still exercises some “tyrannous” influences on the lives of Australians and their families’ (p.7).

Within an Australian context, the Australian Statistical Geography Standard (ASGS), geographically divides Australia into five classes of remoteness on the basis of measure of relative access to services (www.abs.gov.au). For the purpose of this thesis, the class defined as ‘regional’ defines the area in which the data was sought. According to Parkinson (2013), those in rural population are generally underserved by welfare services, particularly for services supporting children and families. As suggested by Nickson, Gair and Miles (2016), ‘Rural and remote Australia can be appreciated for fostering resilience and enabling the rewards of rural living, but rural Australia has unique challenges, diverse and sometimes fragmented populations and industries, and increasingly it is characterised by hardships, limited services and infrastructure and disadvantage (p. 3)

My interest in regional Australia has come from training as an FDR practitioner in regional Australia and living in a regional setting in NSW.

In practice, mediation is the key process used in Australian family disputes (Cooper & Field, 2008), although FDR services vary in their approaches and underlying philosophies. As defined in the *Operational Framework for Family Relationship Centres* (AGD, 2019), ‘the aim of joint dispute resolution for parents with children is to assist them to agree on arrangements for the care of their children post-separation’ (p. 3). In contrast, Harman (2019) argues that ‘courts “resolve” disputes by identifying the rights of parties and then providing a “remedy” when those rights are infringed’ (p. 12) and ‘litigation rarely assists in “capacity building” or parental co-operation or alliance. Too often it achieves the exact opposite’ (p. 13).

Prior to a joint session at an FRC, parents undergo an intake and assessment and participate in group sessions (for separating parents) and individual interviews (for separating or separated parents) (AGD, 2019). During the intake and assessment sessions, parents are given advice on parenting arrangements that reflect their children's needs and achieving the best outcomes from FDR, and they are screened to determine the suitability of proceeding to a joint session with their previous partner. The preparation for joint sessions involves an interview conducted at an FRC. Unless the other parent is deemed unsuitable, they will also be invited to attend an individual interview and are offered the same level of support, assessment and preparation for the joint session. The focus of this research is on the preparatory stages of FDR—that is, the period of FDR up to but not including the joint session.

This study provided the opportunity for parents, FDR practitioners and lawyers to voice the yet unheard and for their commentary to open a space for further discussion and reflection on current FDR practice and research. Because of my prior knowledge of working in FDR and that the 'design of the project depends not only on the research questions, methodology and methods chosen, but what is practical and realistic for the setting' (Tai & Ajjawi, 2016, p. 197), I was aware that I would not have access to parents following the joint session for confidentially reasons. According to Flood (2010), researchers cannot rid themselves of what they know or think—this knowledge can be a valuable guide to inquiry. Additionally, Target et al. (2017) suggest that

with the degree of intense, uncontrollable stress [associated with family separation], it is very difficult for [parents] to remain calm and rational in this area of their lives, although many of them may appear to be well functioning in other areas. (p. 241)

The first and most important consideration in gaining access to research participants is to ‘do no harm’ (Jensen, 2008, p. 2). As suggested by Harman (2019), ‘separating families may require greater care and assistance than an intact family, in the same way that some sick or recovering persons may require greater care and assistance than a healthy person’ (p. 10).

Practicing as an FDR practitioner has enabled me to be in the same context as I am researching; this has advantages and disadvantages. As suggested by Kacen & Chaitlin (2006), an advantage of being at times an ‘insider’, facilitates an understanding of aspects of the study field that others may not have (who) have not had that same ‘insider’ experience. According to Tai and Ajjawi (2016), ‘the researcher’s philosophical “stance” is their belief on how things are known, learned about and experienced, and therefore how these things can be researched and investigated’ (p. 176). Within the healthcare setting, ‘a core tenet of patient-centred care is that patient’s needs, values, and preferences are respected in clinical decision making’ (Tong, Winkelmayer, & Craig, 2014, p. 1).

However, this has not been evident for ‘patients’ in FDR. Hence, given this observation, I argue that it is important to promote awareness and better understanding within the FDR community about the perspectives of parents, FDR practitioners and lawyers as they prepare for FDR, and the findings of this research will contribute to improving the quality and outcomes for consumers of FDR.

A qualitative phenomenological methodology was adopted, and data were gathered using in-depth interviews informed by a phenomenological theoretical approach. A glossary of the terminology and abbreviations used in this thesis can be found in Appendix A.

Data were collected between February and March 2014 from three regional sites separated by significant geographical distances. For logistical reasons, data were gathered first from the NSW site (Location 1), second from the Queensland site (Location 2) and third from the Victorian site (Location 3). The study was limited to three FRCs on the east coast of Australia to enable the collection of rich data, rather than studying all FRCs in Australia to enable the collection of statistical data.

At the commencement of the research project, an invitation to participate was sent to each FRC on the east coast of Australia seeking permission to conduct the project. I contacted the manager of each FRC in writing to comply with ‘proper community and organisational lines of authority’ (Jensen, 2008, p. 2) and to gain access to participants who had a ‘lived’ experience of the phenomena in question. Three FRC managers (all in regional Australia) agreed that I could have access to relevant participants (see Appendix C for the sample letter sent to each FRC manager).

In interpretative phenomenology, participants are regarded as experiential experts, and researchers acknowledge that experience cannot be easily revealed (Smith, Flowers, & Larkin, 2009). Rather, ‘a process of rich engagement and interpretation involving both the researcher and researched is required’ (Peat, Rodriguez, & Smith, 2019, p. 8). Phenomenology is an approach used to ‘explore people’s everyday life experience. It is used when the study is about the life experiences of a concept or phenomenon experienced by one or more individuals’ (Mohajan, 2018, p. 29). As a methodology, phenomenology has many ‘strengths and benefits and can be used to privilege the voice of marginalized populations by gaining an understanding of their lived experience’ (Archer-Kuhn, 2018, p. 1830).

According to Wojnar and Swanson (2007), ‘interpretative phenomenology is most useful when the goal is to interpret contextualized human experience. Such

interpretations are a blend of meanings and understandings articulated by the researcher and the participants' (p. 179). I identified phenomenology as the appropriate methodological approach for this study as it enabled me to explore and understand the individual and lived experiences of parents, FDR practitioners and lawyers preparing for FDR. In particular, interpretative phenomenology 'investigates local knowledge and understanding of a given program, people's experiences, meanings and relationships, and social processes and contextual factors that marginalize a group of people' (Mohajan, 2018, p. 29). Therefore, in interpretative phenomenology, 'investigators identify a phenomenon (a reality or experience) that can be described as people "live" the experience' (Ivey, 2013, p. 27). My presuppositions and knowledge of FDR were valuable guides to the inquiry and, as suggested by Lopez and Willis (2004), made the inquiry a meaningful undertaking.

Parents, FDR practitioners and lawyers may all be involved in preparations for FDR; however, the 'same situations can mean different things to different people and the worlds they occupy are inextricably intertwined' (Carpenter & Suto, 2008, p. 66). I was interested in 'process and meaning, over and above cause and effect' (Braun & Clarke, 2013, p. 6). As suggested by Patton (2012), I wished to understand how parents, FDR practitioners and lawyers 'feel about it, judge it, remember it and make sense of it' (p. 104) to reveal the lived meaning of their worlds, not by making assumptions but by developing an understanding from the meanings constructed by parents, FDR practitioners and lawyers.

To better understand the experience of preparing for FDR from the perspectives of parents, FDR practitioners and lawyers, I developed a set of objectives that were addressed throughout the research project. Tai and Ajjawi (2016) suggest that

‘qualitative research is pragmatic: the data must be collectable, and of sufficient depth and breadth to explore the research question and fulfil the aim’ (p. 178).

The first objective was to explore the experiences of parents, FDR practitioners and lawyers regarding the current FDR process. The second objective was to understand the needs of parents, practitioners and lawyers in relation to preparing for FDR. Taking participants’ experiences and needs into account, the third objective was to explore how prepared parents were for FDR. According to Tai and Ajjawi (2016),

Stating these things explicitly allows readers or consumers to identify the assumptions researchers have made regarding the data that they have collected, and how they have interpreted the data. Although this also applies to quantitative research, it is perhaps more important in qualitative research, as different stances will lead to multiple interpretations of data and conclusions. (p. 176)

1.3 Overview of the Research Project

By undertaking phenomenological research, I was able to explore the experiences and perspectives of parents, FDR practitioners and lawyers. These experiences ‘coalesce around a major transition or a significant event in the life of the participants’ (Glesne, 2015, p. 290). For parents, FDR practitioners and lawyers, the ‘significant event’ was that of preparing for FDR.

I recruited 18 parents, 16 FDR practitioners and 18 lawyers from three sites—one in NSW, one in Queensland and one in Victoria. All participants engaged in in-depth interviews about their experiences of preparing for FDR. Each interview was audiotaped and was 45 to 60 minutes in duration. By undertaking a thematic analysis of the interview data, I identified three key themes from participant narratives, providing new awareness of their experiences of preparing for FDR. Braun and Clarke (2013) suggest that thematic analysis is ‘a method for identifying, analysing and reporting

patterns or themes with the data’ and is perceived ‘as a foundational method for qualitative analysis’ (p. 79). As a result, I was able to elicit ‘rich, detailed and complex insights into an underrepresented phenomenon’ (Feeley, 2019).

Although a less adversarial approach and support for parents attempting to achieve resolution outside of the judicial system was introduced in 2006, a proportion of parents remain unable to reach agreement. This was highlighted by Beckovic, who commented in *The Australian* (21 June 2018) that it is common for judges to hear large numbers of family law cases in a single day when visiting regional centres. My research is significant because it identifies and addresses gaps in the knowledge about the experience of preparing for FDR from the perspectives of parents, practitioners and lawyers in regional Australia. As a result of listening to and analysing participants’ narratives to understand their lived experiences, new knowledge has been gained that will better assist those involved to prepare more effectively for FDR. In turn, this will reduce the need for parents to resolve their issues using a judicial process. Palihapitiya and Eisenkraft (2014) argue that ‘when children are involved, the relationship protection-benefit of mediation becomes especially important. Even though parents are disengaging from one another, they remain linked by a parenting relationship’ (p. 1).

1.4 Outline of the Thesis

This thesis comprises seven chapters. Chapter 1, the introductory chapter, defines the research topic, provides a background to the research question and highlights the importance of the study. The importance of the study has been established by ‘giving voice to a group of people’ (Braun & Clarke, 2013, p. 6)—in this case, the voices of parents, practitioners and lawyers as they prepare for FDR in regional centres. I also provide the milieu of the research topic, being my personal interest in the preparation of parents for FDR, which provides a rationale for my research questions.

As suggested by Peat et al. (2019), ‘the phenomenological ... tenets of [interpretative phenomenology] position the researcher as an integral part of the research process’ (p. 7). A glossary of acronyms and terms related to the field of FDR has been provided in Appendix A.

Chapter 2 is divided into three sections: In Section 1, I provide a historical perspective of how societal changes have influenced family law in Australia, including the changing landscape of relationships and parenting, to enable an understanding of the context of FDR. Section 2 is a critical review of the current literature on the effect of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) and, in particular, the current process of preparing parents for FDR. In Section 3, I discuss the key roles of parents, FDR practitioners and lawyers in the preparation for FDR and highlight how FDR practitioners and lawyers provide a collaborative service to parents in dispute.

Chapter 3 shows how the qualitative research project was conducted. Parent, FDR practitioner and lawyer participants were purposefully selected because of their unique experiences, their involvement in FDR and their availability to participate in interviews. The methodological approach and methods undertaken are discussed in detail.

Chapter 4 provides an overview of the current process of FDR and an exploration of the opportunities taken by parents, FDR practitioners and lawyers in preparing for FDR.

Chapter 5 explores the challenges experienced by parents in preparing for FDR, irrespective of the available opportunities. These challenges are particularly pertinent for those parents with pre-existing concerns, such as psychological distress and family

violence. The length of FRC waiting lists may potentially escalate pre-existing concerns for parents.

Chapter 6 discusses the divergent and disjointed perspectives between parents, FDR practitioners and lawyers about what it means to prepare for FDR. Additionally, practitioners and lawyers who endeavour to work collaboratively vary in their perspectives about what prepares a parent for FDR, resulting in parents being exposed to opposing approaches by those assisting them.

Chapter 7 is the final chapter in which I summarise the thesis, revisit the aims of the research and provide a discussion on the outcomes of those aims and how they were achieved. The limitations of my research are also identified. I provide recommendations for policy, further research and, in particular, the practice of FDR.

I have made three major contributions to the research relating to the lived experiences of parents, practitioners and lawyers as they prepare for FDR. First, I undertook a comprehensive exploration of the preparation of parents for FDR in three regional centres, which revealed that the current FDR process does not meet the needs of parents, FDR practitioners and lawyers when preparing for FDR. Second, I have expanded on the previous research by exploring parents' perceptions about what they need to effectively prepare for FDR. Parents, FDR practitioners and lawyers highlighted that they need further support to manage preparations for FDR where there is psychological distress, domestic violence or when parents are suspended on lengthy waiting lists. Third, I have contributed to a deeper understanding of the divergent and disjointed perspectives of parents, FDR practitioners and lawyers relating to how prepared parents are for FDR.

The most significant recommendation is that parents be screened for psychological distress as they prepare for the joint session. If parents are screened for

psychological distress in the early stages of engagement, they may be referred for appropriate interventions to assist them to prepare more effectively for FDR. In completing this research, I have provided new awareness of the need to provide parents with more opportunities to effectively prepare for FDR than those currently available and the need for emphasising the preparatory stages of FDR.

Chapter 2: Exploring the Research Terrain

I'm a storyteller: that's what exploration really is all about. Going to places where others have not been and returning to tell a story they haven't yet heard.

—James Cameron

2.1 Introduction

Relationship breakdown, particularly when children are involved, creates enormous emotional and financial stress for those involved, including organisations providing support to separating families. For 'decision makers and practitioners, children's various responses to significant or ongoing parental conflict add a further layer of complexity' (Smyth & Moloney, 2019, p. 76).

When an accessible, flexible and safe forum is provided to discuss issues of dispute, parents may achieve effective and sustainable outcomes, circumventing the need for an adversarial route to resolve their issues. 'Family law' is a generic term used to describe the laws and courts that regulate issues arising from family relationships. Alexander (2012) suggests that with the 'involvement of the legislature in many aspects of [family] relationship[s], and the greater diversity in what constitutes a family, this area of law has become increasingly complex' (p. 4). As an alternative to the adversarial approach to resolving disputes about post-separation arrangements for children, FDR may assist parents to keep their conflicts out of court, giving them the opportunity to negotiate, make their own decisions and create a parenting plan that reflects their post-separation arrangements for their children.

This literature review provides a context for my research design by identifying a gap in the contemporary literature regarding the experiences of preparing for FDR from the perspectives of parents, FDR practitioners and lawyers, thus providing a framework for my research questions (Lingard, 2015). The review of the literature covers the

period reflecting societal changes to family law in Australia, up to and including the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act* (Cth), as well as the contemporary literature related to the family law arena, including the focus on the changing landscape of families, relationships and parenting.

The aim of the changes to family law was to bring about a cultural shift in how family separation is managed, moving away from litigation and towards cooperative parenting (Neilsen & Norberry, 2006). Scholarly research has been conducted on many aspects of FDR, including the effects on children of entrenched parental conflict, and has provided meaningful insights into the effect of introducing a process to resolve post-separation parenting disputes about children. As suggested by Harman (2019), ‘although court processes and FDR can both acknowledge the trauma and emotional pain of the child’s separated parents, and thus of children, court processes do not respond therapeutically in the way FDR can’ (p. 10). In contrast to litigation, mediation provides ‘a means of resolving disputes that promises to reduce litigation while avoiding further damage to party relationships’ (Palihapitiya & Eisenkraft, 2014, p. 1)

Cantrell (2012) suggests that ‘where family law once committed fully to the adversary process, it now leads with processes designed to foster joint problem-solving . . . and acknowledges the presence and influences of a full cycle of emotions within families’ (pp. 64–65). According to Harrison (2002), ‘public commentary has focused on the increasing inadequacy of adversarial based litigation’ (p. 2), with Beck and Sales (2000) suggesting that there are many problems associated with litigating disputes. However, the introduced family law system remains imperfect. Limited resources and poor preparation of parents for FDR has led to less than ideal outcomes for separating parents and, while the terrain of family law has changed, ‘it has not yet reached a period of comfortable repose’ (Cantrell, 2012, p. 67).

FDR often occurs at FRCs. In their article *FDR Practitioners Working in the FRC System: Issues and Challenges*, Henry and Hamilton (2011) state that ‘each FRC is managed by a variety of non-government community-based organisations guided by differing value systems, practices, and processes’ (p. 110).

In my practice-focused review of the literature, I considered the research relating to either parents, FDR practitioners or lawyers, each of whom play a key role in FDR. The literature review was conducted for four reasons: first, to show the relevance of my research question to the field of FDR; second, to identify the research that has already been conducted; third, to show how the findings of my research may add knowledge to or challenge existing beliefs about the effective preparation of parents for FDR; and fourth, to identify gaps in the current literature regarding preparing parents for FDR.

Chapter 2 is divided into four sections. Section 1 relates to understanding the historical context of separation and divorce in Australia and the influence of societal changes on family law. A historical overview of separation and divorce has been included to provide an understanding of the significant changes that have occurred in the Australian context, leading to the implementation of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) and the introduction of FDR.

In Section 2, I discuss the research relating to FDR. Exploring the process currently available to parents highlights the preparation that is provided to parents to assist resolution of post-separation disputes.

In Section 3, I review the literature concerned with identifying aspects of preparing for FDR that may be challenging for parents. Not all parents are required to participate in FDR, just those who have been unable to reach agreements about post-separation arrangements for their children.

In Section 4, I discuss the literature that investigates any of the three groups of participants involved in preparation for FDR—parents, both those who initiate and those who respond to the FDR process, practitioners who provide assistance to parents and lawyers who provide legal advice to parents prior to, during or after engaging in FDR.

Three gaps were identified in the literature regarding the experience of preparing parents for FDR and are discussed at the conclusion of this chapter. These gaps relating to the research topic, ‘Preparing for family dispute resolution in regional Australia: Exploring the experiences of parents, family dispute resolution practitioners and lawyers’ are identified in Chapters 4, 5 and 6. Each of the three gaps are relevant to the practice of FDR and how adequately prepared parents are for that process, particularly since the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) and the implementation of FDR that occurred in 2006.

2.2 Section 1: Influence of Societal Changes on Family Law

Understanding how societal changes have affected the way Australians view family, relationships, separation and divorce is key to understanding the implementation of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) and FDR. Although to date the US has been at the forefront of shared parenting research, policy development and practice, countries such as Australia, Belgium and the Netherlands have introduced legislation to encourage the concept of shared time arrangements in separated families (Smyth, 2017). Smyth and Chisholm (2017) point to the result of the introduced changes: ‘One of the central planks of the Australian reforms was the introduction of new and expanded community-based programs to help families strengthen relationships or deal constructively with separation-related disputes’ (p. 590).

The nature of what constitutes a family has changed and continues to change, and the landscape of family law continues to evolve. Significant changes in societal views relating to areas of family law were first noted in the late 1960s and early 1970s (Parkinson, 2006). These include economic stability, the consistent lobbying by fathers' groups for changes to the family law system (Batagol, 2003), the increased intolerance of family violence (Kaspiew, 2005) and the questioning of beliefs previously regarded as sacrosanct, such as the permanence of marriage. Couples living together without being married, getting married at increasingly later ages and having greater access to divorce are relationship trends that are important to consider when designing programs and delivering services to couples and families (Weston & Qu, 2013). However, according to Harman (2019), 'the *International Convention* does not distinguish between family forms; and nor should it. The rights of children should not be determined as enlivened or denied by reference to the state of the relationship between parents' (p. 11).

According to Parkinson (2017), 'the increase in family instability also has obvious consequences for the family law system' (p. 4), and the number of children being raised in single-parent families has risen; therefore, more children may be exposed to family law disputes. As an example of societal change in relation to the importance of 'hearing a child's voice', Article 12 of the *United Nations Convention on the Rights of the Child* (Children's Rights Alliance, 2013; United Nations Children's Fund, 2014) requires the participation of children in proceedings that are relevant to their care in an endeavour to hear their views. Consequently, this has been incorporated into the objectives and principles of the *Family Law Act 1975* (Cth) in section 60B(4). To put the changes to family law into perspective, the management of separation and divorce prior to the 2006 amendments to family law are now discussed.

2.2.1 Fault-based divorce

Until 1975, for a divorce to be granted in Australia, it was necessary for the party seeking divorce to prove that their spouse had been responsible for a ‘matrimonial offence’. The legal procedures for divorce were costly and protracted and involved indignity and humiliation to those involved. The *Matrimonial Causes Act 1959* (Cth) (the so-called Barwick Act) established the grounds for dissolution of marriage. Prior to the establishment of the Family Court, critics of the ‘legalistic’ procedures that couples faced questioned the need for couples to use the law to resolve their interpersonal problems. Attorney-General Lionel Murphy argued for a more compassionate, dignified and less litigious climate for the resolution of family disputes than that provided by the *Matrimonial Causes Act 1959* (Cth). Murphy (as cited in Harrison, 2002) commented that ‘it does not seem right that divorce itself should be an occasion for judicial intrusion’ (p. 5). This led to the changes that eliminated the need to find evidence of matrimonial fault when choosing to separate.

2.2.2 No-fault divorce after 1975

According to Parkinson (2015), a common theme in the history of family law reform in Europe, North America and other countries including Australia and New Zealand has been the abandonment of the assumption that divorce could dissolve the family as well as the marriage when there are children. Divorce applications are filed in the Federal Circuit Court. In 2017 and 2018, 45,190 applications for divorce were filed with the court.

The widespread and growing dissatisfaction with legal arrangements regarding matrimony eventually led to a complete overhaul of the federal legislation in the mid-1970s. Australian society increasingly sought informal mechanisms to resolve family law disputes, rather than relying on formal resolution by courts. The *Family Law Bill*,

introduced to the House of Representatives in November 1974 by Prime Minister Gough Whitlam, sought to repeal the *Matrimonial Causes Act 1959*. Whitlam proposed a comprehensive set of provisions dealing with all aspects of family law. The purpose of the bill was to allow marriage to be dissolved without the need for one party to experience the additional distress of having to make formal charges against the other party. The bill provided only one ground for divorce, which was the irretrievable breakdown of the marriage as evidenced by at least 12 months of separation. The introduction of the *Family Law Act 1975* (Cth) was the initiative of the first attorney-general in the Whitlam federal government, Senator Lionel Murphy QC. According to Parkinson (2006), the no-fault divorce was ‘a consequence of a major shift in the focus of family law with a promise of freedom [for parents] to begin anew’ (p. 230). Parents could have new partners, with ties to their former partner being limited to contact with children and child support. However, as suggested by Moloney (2010) ‘calmness and rationality are by no means universal features of separation and divorce’ (p. 185) and there remain major societal, emotional and financial implications for separating couples. Of interest in the ALRC (2019) *Final Report* is that

over one-third of all matters that proceed to trial will settle on the ‘steps of the court’: In 2017/18, 41% of matters that proceeded to trial in the Family Court settled at trial, meaning that at some point during trial, but before judgment, the parties came to an agreement. (p. 80)

Moreover, official divorce statistics tend to underrepresent marriage breakdown because many marriages end in permanent separation and either never proceed to divorce or do not proceed to divorce for several years. In these circumstances, marriage breakdown is not officially recorded until divorce is awarded (Hewitt, Baxter, & Western, 2005).

2.2.3 Introduction of a less adversarial process

A small body of descriptive research on marriage breakdown in Australia, mainly focused on the demographic trends of divorce, has been conducted in recent decades. However, research has grown precipitously since the introduction of FDR and the growing interest in post-separation parenting arrangements following the parliamentary inquiry *Every Picture Tells a Story: Report on the Inquiry into Child Custody Arrangements in the Event of Separation* (House of Representatives Standing Committee on Family and Community Affairs, 2003). Recent changes to the family law system has led to a considerable volume of published literature highlighting the benefits for children and parents of a less adversarial approach to litigation and of the changing concepts of what constitutes a marriage.

The Australian Government promoted a less adversarial approach to separation and divorce with the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth). This new legislation encouraged parents to seek assistance in resolving their post-separation parenting arrangements outside of the court system, thus taking a less adversarial approach to settling disputes. However, Hunter (2003) suggests that some family law disputes may have more satisfactory and appropriate outcomes if parents are legally represented than if parents attempt to settle them through mediation alone. To counteract the notion of lawyer involvement as being an adversarial approach, Hunter argues that policies should respond to realities instead of adversarial mythologies. Altobelli (2001) suggests that the adversarial system is not an appropriate forum for making parenting decisions that are in the best interests of the child. The contrasting views of Altobelli (2001) and Hunter (2003) highlight differences in what constitutes an adversarial approach when assisting parents to prepare for FDR. Irrespective of the debate about whether the involvement of lawyers and courts in

settling family disputes is adversarial and therefore less desirable, parents unable to resolve their post-separation parenting arrangements are required to participate in FDR.

The adversarial approach can be both financially and emotionally costly for parents in dispute (Fisher & Pullen, 2003) as well having a detrimental impact on children. Hewitt (2008) estimates that adversarial approaches cost ‘three to six billion dollars a year with no accounting for the social and emotional toll’ (p. 33). In addition to costs, an adversarial approach may distract parents from focusing on the needs of their children. The report *Out of the Maze: Pathways to the Future for Families Experiencing Separation* (Family Law Pathways Advisory Group, 2001) indicates there has been an inadequate focus on the interests of the child in family law services. According to Hewitt (2008), the report showed that although a proportion of parents managed to separate with little interaction with the family law system, others felt frustrated and believed that the family law system was biased.

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) is the central legislative provision in Australia relating to family law. The act provided for the establishment of the Federal Magistrates Court (now the Federal Circuit Court) and made a provision for non-court-based services, including FDR. According to Moloney (2013), ‘As a centrepiece of Australia’s 2006 family law reforms, the community-based Family Relationship Centres (FRCs) represented a major development in the government’s commitment to incorporate family relationship services into its family law system’ (p. 214). There has been a sharp decline in applications for parenting orders before the court and a corresponding growth in the number of family law clients presenting to dispute resolution programs, possibly indicating that parents are taking the opportunity to use a less adversarial approach to resolve disputes. Even so, Moloney (2013) indicates that there is ‘unequivocal evidence from the Australian Institute of

Family Studies’ evaluation data that judicial officers are dealing mainly with families displaying seriously dysfunctional attitudes and behaviours’ (p. 214). Of interest is that the number of divorce applications was consistent across a five-year period (ALRC, 2019, p. 88). In Australia, unlike in some other countries, divorce is not intrinsically linked to decision-making about care of children and/or redistribution of assets, liabilities and financial resources.

Marriage equality has been a contentious topic of debate in Australia in recent times (Sloane & Robillard, 2018). It has been on the Australian political agenda for much of the present century, ‘particularly after other countries introduced same-sex marriage from the early 2000s’ (Wilson, Shalley, & Perales, 2019, p. 1). In present-day society, marriage is no longer assumed to be a lifetime commitment (Kamenecka-Usova, 2016).

A further change to family law occurred in October 2017, when an amendment to the *Marriage Act 1961* (Cth) was introduced—the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth)—which redefined marriage as ‘a union of two people’. The amended act introduced non-gendered language to permit the equal application of its requirements to all marriages and to allow the recognition of same-sex marriages that were solemnised in foreign countries.

The study presented in this thesis focuses on the preparation of parents for FDR. Amendments to the *Marriage Act 1961* (Cth) are discussed to highlight how societal views have influenced changes in family law. It is not the purpose of my research to provide commentary on the literature debating the amendments, but to acknowledge that the field of family law is rapidly changing. However, as suggested in the ALRC (2019) *Final Report*, ‘the law cannot, and cannot be expected to, provide a solution to the

complex emotional, cultural, social, health, and economic issues that underlie the breakdown of an intimate relationship’ (p. 63).

2.3 Section 2: How Does the Current Family Dispute Resolution Process Work?

In Section 2, I discuss the current process of FDR. The philosophical underpinnings of the less adversarial approach to resolving disputes is discussed, followed by an overview of the literature relating to how the current FDR process works in the Australian context. To explore the challenges that parents face in preparing for FDR (covered in Section 3), it is important to first understand the current preparation of parents for FDR. A review of the literature relevant to each of the steps in FDR in Australia follows.

The social phenomenon of combining marriage, conciliation and mediation in court services began in California, which was among the first in the US and in the world. The Australian Government’s overall strategy in relation to family law and children is to provide a less adversarial dispute resolution process that meets the specific needs of disputing parents (National Alternative Dispute Resolution Advisory Council, 2007). According to Neilsen and Norberry (2006), ‘most family law matters are resolved without court orders (about 95%)’ (p. 3), and the remainder need assistance to resolve post-separation arrangements for their children. Parents are encouraged and required to undertake FDR instead of becoming involved in litigious court processes (Astor & Chinkin, 2002; Webb & Moloney, 2003).

Kelly (2004) states that ‘mediation was promoted as less expensive and time-consuming, more humane and satisfying to participants than litigation, resulting in better compliance with agreements and reduced re litigation’ (p. 3). Similarly, Singer (2009) argues that a ‘collaborative, interdisciplinary, and forward-looking FDR regime

[has replaced] conventional models of adjudication' (p. 363). There is consensus in the family law arena on the philosophical underpinnings of FDR as a less adversarial approach to post-separation disputes. Courts now regard FDR as being an effective means of reducing court lists, particularly for simple cases, with changes aimed at bringing about a cultural shift in how family separation is managed (Astor & Chinkin, 2002).

In its transition to a less adversarial approach to resolving post-separation parenting disputes, the Australian Government introduced 65 FRCs across Australia. As suggested by Parkinson (2013), 'while FRCs have many roles, a key purpose is as an early intervention initiative to help parents work out post-separation parenting and manage the transition from parenting together to parenting apart' (p. 195). Parents needing assistance with post-separation parenting disputes may access that assistance at any one of the FRCs or from a private FDR practitioner. Policy directives of FRCs include improving relationships to prevent separation, increasing parental involvement, protecting children from violence and providing alternatives to the litigation system through the use of FDR to diffuse interparental conflict following separation (Behrens, 2004).

FRCs are promoted as both helping to prevent relationship breakdown as well as assisting parents with disputes relating to relationship separation. Attorney-General Philip Ruddock (as cited in Peatling, 2006) likened the network of FRCs assisting people through the different stages of their relationships to 'aircraft control centres'. In contrast to this view, Sharma (2006) suggests that 'they are a duplication of 100 services already subsidised by the government since the 1960s' (p. 4). Citing the failure of similar programs in Britain, Sharma (2006) notes that FRCs are 'symbolic politics and good outcomes are highly doubtful' (p. 3). Britton and Johnson (2012) are also sceptical

of the intention behind the establishment of the FRCs, suggesting that it has been aimed at diverting cases away from courts to reduce the burden on the judicial system and to quieten the ‘escalating voice of the men’s lobby’ (p. 3). As pointed out by Sharma (2006), ‘there appears to be some confusion as to whether the government is trying to prevent relationship breakdowns or make them easier by making the process less adversarial’ (p. 4).

Clearly, there is disparity in the literature as to the underlying objectives of the government in establishing FRCs. Overall, there is some evidence in the current literature that indicates a lack of cohesiveness about the fundamental purpose of FDR and FRCs.

2.3.1 Introduction of family dispute resolution

The terms ‘mediation’ and ‘family dispute resolution’ are used interchangeably in the family law arena. According to Kamenecka-Usova (2016),

Family mediation generally devotes considerable attention to non-legal emotional and relationship issues [and this is] what makes it more than just a dispute resolution method and in the context of family disputes, mediation can lead to a reconciliation and reunification of both parties. (p. 3)

FDR and related interventions ‘assist families to sit with the discomfort of dysfunctional processes while working to inject hope for a future in which new family forms can accommodate the needs, perceptions and existing attachments of their children’ (Harman, 2019, p. 10). Similarly, Parkinson (2013) points out that the development of alternative and less adversarial dispute resolution processes ‘was the beginning of a recognition that disputes about parenting after separation should not be regarded as merely a legal problem requiring the interventions of lawyers and courts for its resolution’ (p. 196). Separation may lead to or bring about dissolution of a

relationship, although the lives of parents remain ‘inextricably entwined with one another as a consequence of the continuing obligations of parenthood’ (Parkinson, 2006, p. 240).

Recent evaluations indicate the emergence of a more coherent policy approach and that the government and other key sectors support quantitative and qualitative research in the area of FDR (Sourdin, 2012). Even so, the available empirical research does not address questions about the effectiveness of programs for separating parents (Beck, Holtzworth-Munroe, D’Onofrio, Fee, & Hill, 2009). As a result, much needs to be done to educate litigators and others about the systematic preparation of parents for FDR (Miller & Seibel, 2009). FDR has evolved from a terrain of adversarial approaches to that of a relational community-based context. Parents are provided with services to assist in resolving disputes; thus, FDR is regarded as more ‘community-centric’ than ‘court-centric’ in its approach to resolving post-separation disputes about children (Parkinson, 2013, p. 196). However, FDR is governed by a ‘detailed legislative framework under the *Family Law Act* and associated regulations’ (ALRC, 2010, p. 987) and continues to be the key process used for post-separation disputes about children in Australia. The *Family Law Act* 1975 (Cth) defines FDR as:

A process (other than a judicial process) in which a family dispute practitioner helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other . . . and in which the practitioner is independent of all of the parties involved in the process. (s 10F)

As of 1 July 2007, a court cannot hear an application for a parenting order unless the parent files a certificate provided by a practitioner about whether the parties have made a genuine effort to resolve their issues (*Family Law Act* 1975 (Cth) s 60I.). An objective of the *Family Law Amendment (Shared Parental Responsibility) Act* 2006

(Cth) is to ensure that ‘children have the benefit of both of their parents having a meaningful involvement in their lives to the maximum extent consistent with the best interests of the child’ (Parkinson, 2012, p. 6). Shared parental responsibility creates an obligation for parents to consult with each other and reach agreement about major issues related to the long-term care, welfare and development of their children, including their children’s education, religion, culture, health, surname and usual place of residence. However, FDR may not be appropriate for all disputes, particularly where one party has been threatened with violence (*Family Law Regulations 1984* (Cth) reg 63). Although guided by differing regulations, FDR practitioners and lawyers work with parents in dispute using various models and processes.

2.3.2 Variances in family dispute resolution models

Inconsistencies exist in how FDR is executed and in the underlying reasons for differences. These discrepancies in delivery and procedures may be understood from the findings of a 2013 audit of FRCs. The Australian National Audit Office (ANAO) (2013) conducted a performance audit of FRCs and observed a significant variation in service delivery models. ANAO notes that the *Operational Framework for Family Relationship Centres* (AGD, 2019) had anticipated [that there would be] a degree of variation in the operations of FRCs in their provision of FDR. This expected variation was to allow for a responsive delivery of services in a range of geographical and social situations and to respect and recognise the experience of service providers. There have been numerous attempts to evaluate dispute resolution processes, with many Australian empirical studies focusing on specific industries and cultural and demographic groups. Evaluation studies vary in terms of their objectives and are often not comparable because of their differing contexts; therefore, they have limited relevance to the field of FDR (Sourdin, 2012).

Among the issues that need further investigation are the relative merits of the different mediation models used by FRCs in providing FDR. Kelly (2004) affirms that ‘no empirical research exists that explores and compares the efficacy of different models, the purity of their processes and practices, for whom and what type of disputes they are most effective, and their respective outcomes’ (p. 30). Although it clearly deals with resolution, Altobelli (2001) suggests that the definition of FDR, or how outcomes are to be achieved in FDR have not been established, nor is there clarity on ‘the process to be used or the forum [in which] it should be conducted’ (Cooper & Brandon, 2007, p. 288). Additionally, the variance in service provision of FDR may be influenced by the philosophical stance of service providers and FDR practitioners (Cooper & Field, 2008). In accordance with this, Brandon and Stodulka (2008) suggest that practitioners may incorporate aspects of their training that are familiar to them, potentially creating a variance in providing FDR (p. 200).

Regardless of the chosen FDR model, models are well structured, focus on the best interests of children and aim to keep parenting disputes away from litigation when appropriate to do so (Lundberg & Moloney, 2010). Even so, FDR may not be suitable in all circumstances or for all involved, particularly women. There is some debate with regard to the terminology used to describe the violence experienced by women and children, and various terminology is used in policy, practice and research (Campo, Kaspiew, Tayton, & Moore, 2014). For women who have been victims of intimate partner violence, ‘the fear and intimidation they feel toward their co parent might make meaningful participation in mediation very difficult’ (Morris, Halford, & Petch, 2014, p. 134).

FRCs are fully funded by the Australian Government and operate in accordance with guidelines set by the government. All FRCs provide FDR and have a shared

identity and logo to promote them as a coordinated national network. Each of the 65 Australian centres, which can be found in various geographical locations, has a different service provider. The ethos and service provision of service providers varied prior to their establishment as FRCs, which may contribute to the variance in FDR service provision. Although regarded as less adversarial and in the best interests of children, FDR may vary between locations and FDR practitioners and may not cater to the needs of all parents seeking assistance to resolve disputes.

2.3.3 Outcomes of family dispute resolution

Not all separated parents are required to participate in FDR. In a longitudinal study of over 10,000 separated families, Kaspiew et al. (2009) found that 62% of parents reported their relationship with the other parent as ‘friendly or cooperative’ after 15 months of separation. Regardless of the catalyst for FDR, there are two possible outcomes of participation. The first is that a parenting agreement is reached and is recorded, dated and signed by both parties. The alternative outcome is that parents cannot reach agreement and are consequently issued with a 60I certificate, which permits them to proceed to the Federal Circuit Court if either parent wishes (*Family Law Act 1975* (Cth) s 60I).

2.3.4 Parenting agreements

For parents who have participated in FDR and have reached voluntary agreement about post-separation arrangements for their children, that agreement is formalised in a document known as a ‘parenting plan’. According to Parkinson (2006), ‘the idea of encouraging parents to draw up parenting plans in sorting out arrangements after separation has now become a widespread practice’ in Australia. In contrast, as suggested by Moloney (2019), ‘reaching a parenting arrangement through legal

argument and litigation runs a considerable risk of leaving family members in a more difficult space with respect to their ongoing relationships’ (p. 50).

Most separated parents consider the best interests of their children and seek to arrive at a workable parenting arrangement (Moloney, 2014). However, for a parenting plan to be sustainable, several factors must be considered. A parenting plan must be made free from threat, duress or coercion between the parents and may deal with any matters relating to the child (*Family Law Act 1975* (Cth) s 63C). The agreement must first meet the children’s needs and be developmentally appropriate and practicable. It is not legally binding at the time of FDR but may be used for consent orders by the Federal Circuit Court of Australia. As suggested by Target et al. (2017), ‘the quality of contact experiences [of children with parents] has far more impact on children’s psychological well-being than does the quantity or format’ (p. 219).

In an exploratory study commissioned by the Curtin University School of Occupational Therapy and Social Work to evaluate the effectiveness of parenting plans to inform clinical practice, Britton and Johnson (2012) found two significant factors in relation to parents’ perspectives of parenting plans. First, participants reported being uncertain about whether the parenting plan they had developed was in relation to shared care, substantial care or time spent with children. The second finding was that parents were vague about whether or not the plan had been signed (p. 16). These two findings may reflect the ignorance of parents about the family law system, the emotional climate of mediation or the length of time that had elapsed since the mediation session (Britton & Johnson, 2012). This research has similarities to the study presented in this thesis in that it was conducted at three FRCs. However, it also has significant differences—the research was exploratory, it was conducted in Western Australia at two Perth metropolitan FRCs and one larger regional centre and it sought the perspectives of

parents only. The findings in the study by Britton and Johnson (2012) are of interest as parenting plans are executed once parents have prepared and participated in FDR and indicate a resolution of the day-to-day arrangements for their children.

2.3.5 Unsuccessful or unsuitable for family dispute resolution

Despite participating in FDR, parents may be unable to reach agreement about post-separation arrangements for their children. Additionally, parents may engage in the process only to find that the practitioner conducting the sessions is not satisfied that the joint session can continue. Under the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (Cth), when a practitioner is not satisfied that a party is willing or able to negotiate, FDR cannot proceed. In recognition of the impact of domestic violence, the reformed regulations state that clients may be exempt from attending FDR where there are safety concerns. In this circumstance, the practitioner can issue a 60I certificate under the *Family Law Act 1975* (Cth) s. 601(8)(aa) or s. 601(8)(d), which permits a parent to proceed directly to court if they choose to do so. If parents have reached this stage in the FDR process, the dispute between them is one that can only be resolved within the court system—some would say that the adversarial process has begun.

Interrelate, a community-based provider of FDR services in NSW, was commissioned by the AGD to undertake a mixed methods study to explore the issuing of section 60I certificates. The research aimed to understand the number and categories of certificates issued, the characteristics of clients who did and did not receive certificates and parents' understanding of the purpose of the certificate. Smyth et al. (2017), who conducted the study on behalf of Interrelate, stated that little empirical research had been conducted on section 60I certificates and questions remained about the role of the certificates since their implementation. The study was limited to the

experiences of practitioners and parents at one FRC in NSW. The research had similarities to the study presented in this thesis in that it was conducted at an FRC and sought to explore the experiences of practitioners and parents. However, the experiences of practitioners and parents were related to section 60I certificates, which are issued only after the FDR process.

2.3.6 Family dispute resolution conducted by practitioners

Under the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (Cth), the process of FDR requires the presence of an impartial third-party practitioner who is registered with the AGD. The practitioner may operate as a private provider or as an employee of an FRC. FDR practitioners also assess the immediate and future safety needs of the clients and ascertain the capacity of the parents to participate in FDR (Cooper & Brandon, 2008). FDR practitioners assume considerable responsibility when working with families going through divorce and separation and should be alert to signs of lasting conflict between separated parents and responsive to the needs of children in these situations (Hastings et al., 2013, p. 87).

The *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (Cth) stipulate that before FDR can proceed, FDR practitioners must determine any history of family violence, the risk of child abuse, the equality of bargaining power between the parties, the emotional, psychological and physical health of the parties and other relevant matters. Given that practitioners play an active role in determining whether parents have made a 'genuine effort' and may be required to issue a section 60I certificate based on their assessment of the suitability of FDR, questions may be raised about whether practitioners are truly impartial. (Cooper & Field, 2008). Harman (2017) conducted research similar to that of Cooper and Field (2008), who questioned whether practitioners are, in fact, impartial. In contrast to Cooper and Field (2008), who did not

provide the perspectives of practitioners from any particular source, Harman (2017) studied two practitioners from sources outside of FRCs. Cooper and Field (2008) and Harman (2017) both highlight the concern that, in practice, it may not be possible for practitioners to be impartial as they conduct FDR. The process of FDR at FRCs is conducted to ensure that parents progress through a range of steps to adequately prepare. Each of these steps is now discussed.

2.3.7 Engaging in family dispute resolution

Either parent can register for FDR at an FRC or with an FDR practitioner operating in private practice. Once a parent has initiated the process of FDR, the FRC or the private FDR practitioner sends an invitation of participation to the other parent.

Although the registration process may differ between service providers, they have similarities. The point in time that FDR is deemed as having commenced is debatable. Harman (2017) suggests that an FDR practitioner has not commenced FDR until an assessment of suitability has been conducted and the practitioner has determined that it is appropriate to continue the FDR process. Unless the case is unsuitable for a joint session, the FRC (or other FDR provider) invites the responding parent to attend an individual session. Under the *Operational Framework for Family Relationship Centres* (AGD, 2019), each parent must be offered the same level of support, assessment and preparation in preparing for FDR. The *Family Law Regulations 1984* (Cth) stipulate that non-initiating parents must be contacted in writing and informed that if they choose not to attend the joint FDR session, they may be issued a certificate under paragraph 601(8) of the *Family Law Regulations 1984* (Cth). Services providing FDR usually contact the responding parent on two separate occasions. The regulations do not stipulate the length of time between contacts nor the method of the second contact. If the parent does not respond to the invitation or participate as

expected, the process becomes mandatory. Consequences for not adhering to the invitation to participate include costs being awarded against the non-participating parent. Henry and Hamilton (2011) conducted research with FDR practitioners in FRCs in Western Australia, finding that clients who had been invited to participate were more likely to be abusive and resistant to mediation. In contrast, initiating parties were more open to mediation and more motivated to compromise and form parenting agreements.

2.3.8 Assessing suitability to prepare

One step of preparing parents for FDR is the assessment of the suitability of parents to effectively participate. Regulation 25 of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (Cth) requires practitioners to conduct an assessment to verify that FDR is appropriate. To determine the appropriateness of FDR, the practitioner must identify the parents' needs and consider their ability to negotiate freely. By assessing several factors, practitioners can gain an understanding of each parent's situation, determine the suitability of FDR and identify the immediate and future safety needs of clients. Factors considered by the practitioner include determining any history of family violence, the safety of all parties, the equality of bargaining power, the risk that a child may suffer abuse, the emotional, psychological and physical health of the parties and other relevant matters.

In their study of 62 women who had experienced family violence, Jaffe, Crooks and Poisson (2003) sought to understand the experiences of women using legal services. The women were asked to reflect on their experiences and provide recommendations on how they could be assisted more effectively. Many women reported reaching a 'crisis point' when leaving their abusive partners and felt confused and overwhelmed by the plethora of services and choices ahead of them. The majority of women attempting to leave abusive partners had suffered emotional, psychological, financial and physical

abuse, and most had experienced abuse post-separation comparable to the abuse they had experienced during the relationship. Reflecting on their experiences, the women felt that a more streamlined and centralised system would have increased their access to appropriate services. These victims of family violence also suggested that practitioners should be better informed about domestic violence and its impact on victims, and that enhanced and flexible services could better meet the needs of them and their children.

Sophisticated intake procedures aimed at determining readiness and capacity to mediate are increasingly being developed (Cleak & Bickerdike, 2016). However, Kaspiew, Gray, Qu and Weston (2011) suggest that more intricate screening and assessment tools and more highly trained professionals are needed. A study conducted by Kaspiew et al. (2009) found that parents experiencing family violence did not believe that lawyers or practitioners created an environment that lent itself to disclosure of family violence. Additionally, professionals in the family law system do not always screen for violence or assess risk or danger (Parkinson, Webster, & Cashmore, 2010). Parents are not confident that the process of intake and assessment is effective and, as suggested by Kaspiew et al. (2011), further research to develop the process of determining the safety of parents who experience family violence is warranted.

2.3.9 Shifting focus

Education sessions conducted to provide information for parents are compulsory at most FRCs. Group education sessions focus on children's needs and provide advice on creating parenting plans that reflect children's developmental needs and achieve the best outcomes for FDR. Education sessions are delivered by FDR practitioners to groups of up to ten people, and former partners cannot attend the same session to allow parents to freely exchange ideas (Kochanski, 2011). Sessions may include information about the inherent difficulties of proceeding to litigation, suggesting that being more

informed may dissuade potential litigants from ‘having their day in court’ (Dalby, 2005, p. 134). McIntosh and Long (2005) argue that dispute resolution services may influence the psychology of family restructuring and reduce the possibility of parents and children entering cyclic distress (p. 99). They point out this can be achieved using targeted, evidence-based education strategies. However, according to McIntosh and Deacon-Wood (2003), while these may be beneficial in some circumstances, they may have limited benefits in others.

The appropriate timing of education sessions in dispute resolution has been debated in the literature. Research conducted by Bacon and McKenzie (2004) suggests that education sessions should be provided prior to mediation to maximise the chance of successful negotiation. However, these authors do not indicate precisely how education sessions can maximise successful negotiation. A strategy used internationally, particularly in California, is to provide ‘divorce education’ classes or workshops to separating parents prior to mediation. Although popular in the USA, there is no evidence of similar divorce education programs occurring in Australia. Bacon and McKenzie (2004) assert that if parental education programs following separation ‘can promote more constructive approaches to conflict resolution, it will contribute to more positive post-separation adjustments for separating parents’ (p. 88).

In support of education programs in the Australian context, Berry, Stoyles and Donovan (2010) conducted a pilot study with 31 parents at the Sydney City Family Relationship Centre to test the hypothesis that there would be an improvement in parental perceptions of parent–child relationships and a reduction in parental acrimony 6–10 weeks after a post-separation parenting education program. While parental perceptions of the parent–child relationship did improve, there was no improvement in parental acrimony following the post-separation parenting program. Although Berry et

al. (2010) reached a similar conclusion to that of Bacon and McKenzie (2004) about the benefits of education sessions, these studies differ in that Bacon and McKenzie (2004) conducted their research in the US prior to mediation, while Berry et al. (2010) conducted theirs in Australia 6–10 weeks after the education session. Both studies support the notion that education sessions are beneficial for parents; however, the timing of education sessions, either prior to or after the joint sessions, has not been ascertained.

2.3.10 Pre-family dispute resolution for parents

Although it is not a specified requirement for FDR, FRCs may include a step termed ‘pre-family dispute resolution’. Typically, this session prepares parents for FDR but is different to the intensive skills-based education programs (Kitzmann, Parra, & Jobe-Shields, 2012). The aims of the pre-FDR session are to increase positive negotiation behaviours between parents, sensitise parents to the impact of separation and co-parental conflicts on children and encourage parents to be more child-focused during mediation (Casey & Wilson-Evered, 2012). According to Shurven (2011), the merits of including a premediation session are appropriate:

Careful preparation and thought put in at the early stage of a mediation process will yield dividends throughout the rest of the process [although] it can be a disincentive to include pre-mediation sessions given the time and cost of organising meetings. (p.121)

While Shurven (2011) indicates that preparation in the early stages of preparing for FDR may prove beneficial, it has not yet been possible to determine the value of premediation sessions, and further research is warranted.

2.3.11 Coaching sessions to assist in preparation

Conflict coaching sessions may be offered to parents as an intervention to assist in their preparation for FDR. According to Eddy (2014), ‘to make mediation more effective—especially in high-conflict cases—some practitioners offer premediation coaching services, or have other professionals provide this service’ (para. 1). Similar to dispute resolution models, coaching models can vary, but the primary focus of coaching is to assist a client to identify their goals and the steps needed to reach those goals. Herrmann (2012) compares mediation with conflict coaching, stating that mediation ‘requires the co-operation of at least two opposing parties’ (p. 46) in contrast to conflict coaching, which is a ‘one-on-one conflict resolution approach involving only one party (and the coach)’ (p. 46) and is an ‘individualised process specific to the client’ (p. 47). Brinkert (2006) has a similar interpretation of conflict coaching, suggesting that its purpose is to develop ‘the disputant’s conflict-related understanding, interaction strategies, and interaction skills’ (p. 518). Similarly, Berg and Szabo (2005) suggest that conflict coaching is focused on ‘solution construction rather than problem analysis’ (p. 27). Although they refer to business coaching, Blackman, Moscardo and Gray (2016) suggest that there are several approaches to coaching and that any one coaching program may include a range of techniques and activities. Although there may be similarities between business coaching and conflict coaching, literature in support of conflict coaching as an intervention in FRCs could not be sourced.

2.4 Section 3: What are the Needs of Parents when Preparing for Family Dispute Resolution?

Section 3 explores the literature relating to the challenge’s parents may face in preparing for FDR. In reference to family violence, mental health problems and substance misuse, Hayes, Weston and Qu (2011) coined the term ‘toxic trio’ (p. 11) to

describe issues that may be experienced by parents in addition to the stress of separation. Previous research has shown that those who experience a relationship separation or divorce have increased rates of depression, substance abuse and poor mental health (Gibb, Fergusson, & Horwood, 2011).

Parents involved in the family law system are troubled (Kaspiew et al., 2011) and those presenting for FDR are likely to have complex issues (Britton & Johnson, 2012). As suggested by Polak and Saini (2019, p.12) ‘Mental health issues might have been present previously, but exacerbated by the family breakdown, creating higher risk of high conflict postseparation. Additionally, Hickerson (2017) suggests ‘the conflict itself may bring on situational anxiety, depression, or other mental health disorders even if temporarily’ (p.54).

The current FDR process, even accounting for exemptions, does not necessarily cater for all parents. The literature on family violence, substance abuse and mental health in the field of FDR has been reviewed.

2.4.1 Defining family violence

The term ‘toxic trio’ includes parents presenting to FDR who are experiencing family violence (Hayes et al., 2011). The term ‘family violence’ is defined here according to the ALRC (2010) report, *Family Violence: A National Legal Response*. Compared with the older term ‘domestic violence’, family violence includes the witnessing of family violence by children and is included in the interpretation of family violence in section 4 of the *Family Law Act 1975* (Cth). Given its effect on children, there is a growing need to understand the impact of family violence. Additionally, violence against women is widespread in the Australian population. However, according to Phillips and Vandebroek (2014), the number of women experiencing

family violence is unknown because many cases of sexual assault and domestic and family violence go unreported by victims.

Reforms to the family law system in 2011 reflect the different terminology and approaches to violence, particularly as it relates to the process of FDR. The *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth) introduced amendments to the *Family Law Act 1975* to assist with the screening of and response to family violence and child abuse. In July 2012, legislative changes came into effect to support the disclosure of family violence and child abuse and for professionals to manage parenting arrangements more confidently where issues of safety were of concern. According to Cleak and Bickerdike (2016), family violence for parents attending FDR is the ‘normative experience, not the exception’ (p. 23). Field (2006) asserts that the process of FDR may exacerbate the dangers presented by post-separation violence because it provides perpetrators with the opportunity to ‘coerce, to intimidate, to monitor, and to threaten their victim’ (p. 37). To ensure the safety of all parties involved, practitioners must undertake an assessment and screening process of parents participating in FDR.

Every aspect of the family law system should encourage and facilitate the disclosure of family violence and ensure that effective action is taken (Batagol & Brown, 2011). Despite this, parents affected by family violence have reported that they were not asked about family violence when seeking assistance from family law professionals (Kaspiew et al., 2015). When considering a solution to the dilemma of screening parents for family violence, research suggests that ‘screening for family violence among mediation clients has not been very effective, and there is a lack of clarity about how family violence patterns should influence decisions about mediation’ (Cleak and Bickerdike, (2016, p.19).

Practitioners who perform screening assessments suggest that screening tools are difficult to do in day-to-day practice. A study by Kaspiew et al. (2009) found that over 75% of staff providing FDR services believe that mediation is unsuitable for up to a quarter of parents because of domestic violence and client safety concerns. Therefore, services provided to this cohort need to consider the complexity of cases and ensure staff are sufficiently training and supervised to promote best practice (Britton & Johnson, 2012). It has been acknowledged that FRCs and staff who work with parents in dispute are, in fact, frontline services for parents experiencing family violence; therefore, this exposure is a core issue in practice (Moloney et al., 2007). The *Operational Framework for Family Relationship Centres* (AGD, 2019) provides guidelines for staff to identify family violence. However, Cleak and Bickerdike (2016) suggest that screening and risk assessment processes must be suitable for the conditions it is utilised including being a tool that is appropriate to the skills of the practitioner undertaking the assessment and is mindful of the client's situation.

In 2015, the Australian Institute of Family Studies was commissioned by the AGD to undertake an evaluation of the 2012 family violence reforms (Kaspiew et al., 2015). This mixed methods study sought to address three research questions: first, an understanding of the extent to which post-separation arrangements had changed since the implementation of the amendments; second, whether parents were disclosing family violence to legal professionals; and third, whether there had been notable changes in practice among family law professionals and whether these changes were consistent with the intent of the reforms. The study indicated that the 2012 family violence amendments were perceived positively by most family law professionals, with the strongest support evident among non-legal professionals compared with lawyers. While some parents reported that they had been asked about family violence while attending

FDR, many had not, nor had they been asked by lawyers about their experience of family violence (p. 188). An interesting finding of this research was that following the 2012 reforms, the number of parents reporting concerns about family violence did not increase and parents did not believe that their concerns were being more appropriately managed. The research did not necessarily address the perspectives of those parents with a background of family violence on preparing for FDR, only the evidence of changes in the number of disclosures of family violence. The decision to offer FDR to parents affected by family violence is complex, ill-defined and complicated by a lack of confidence in assessment procedures. In 2013, the Family Law Detection of Overall Risk Screen (DOORS) was introduced as a ‘whole-of-family’ risk screening tool designed to be implemented across the family law sector. As suggested by McIntosh, Lee and Ralfs (2016), the DOORS framework ‘screens dominant risk factors and antecedent triggers that may combine to escalate risk as dispute resolution processes take place’ (p. 34). However, it was found that ‘only a minority of professions reported using the DOORS tool in assessment’ (Kaspiew et al., 2015, p. 188).

In a 2009 report commissioned by the AGD to examine the impact of family violence, researchers from the disciplines of criminology, law, education, psychology and social work from Monash University, James Cook University and the University of South Australia collected data from parents and children using an online survey (Bagshaw et al., 2010). Researchers collated data about the effect of domestic violence on the decisions people make while at court or during FDR and found that a history of domestic violence influences parents’ decisions about access to services and post-separation parenting agreements. The research also highlighted that parental separation does not necessarily mean an end to violence, and for many in abusive relationships, the separation phase is the time of greatest risk of partner violence and homicide. Parents

preparing for FDR may have concerns about their safety if they prepare for and participate in FDR. However, not all parents disclose their concerns about family violence and those who assist in preparation, such as practitioners and lawyers, do not necessarily screen for family violence. Ballard, Beck, Holzworth-Munroe and Applegate (2011, as cited in Cleak, Schofield, Axelson, & Bickerdike, 2018) found that irrespective of premediation preparation, mediators did not report the presence of intimate partner violence in over half of the cases in which parents themselves reported family violence.

Regardless of the introduction of various screening tools and reports commissioned by the AGD to assess the impact of family violence, there remain significant gaps in determining the history and the impact of family violence on parents as they prepare for FDR. Additionally, the literature supports the need to further investigate interventions that may assist parents with a history of family violence. Given that separation is a period of increased vulnerability, these interventions are particularly relevant to parents participating in FDR shortly following separation.

2.4.2 Impact of mental health on preparation

Most people are not at their best when they are going through a divorce. Stress, disappointment and powerful emotions can negatively affect a person's level of functioning. These strong negative emotions may also exacerbate symptoms of mental illness (Frost & Beck, 2016, p. 39). However, high levels of psychological distress in individuals undergoing divorce should not be confused with the presence of mental illness (Frost & Beck, 2016, p. 41).

Parents that present to FDR are inherently vulnerable. High-conflict parents are trapped in defensive thinking patterns that 'may keep them in conflict [and] unable to reach resolution' (Eddy, 2014, p. 1). Those with who live in regional Australia and

experience mental illness may experience difficulties in access to physical health care according to (Jones, Kruger, & Walsh, 2016). Although the prevalence of mental health problems such as schizophrenia in remote areas in Australia is broadly similar to that in cities, the health outcomes for people in remote areas are worse (Judd et al., 2002).

Considering the circumstances in which parents present for FDR, it is likely that mental health issues play a significant role in their need for assistance and affects their preparation for FDR. Separated and separating parents are more likely to have experienced and be experiencing negative mental health effects for three reasons: First, separation itself is likely to be highly stressful, contributing to mental health problems; second, existing mental health issues are likely to contribute to separation; and third, separation may facilitate factors that contribute to poor mental health, including ongoing conflict, poverty and violence (Rodgers, Smyth, & Robinson, 2004). Almost all divorced adults and their children experience some psychological distress around separation, with approximately 35% of adults experiencing clinical levels of depression or anxiety (Halford & Sweeper, 2013). The experiences of separation, or neglect and abuse or other significant life events may contribute to mental health problems in children (Zumbach, 2016)

Given that the majority of separated parents are required to attend FDR to resolve parenting disputes and that a proportion of clients attending may also suffer a mental illness, staff need further training and information to effectively prepare parents. Hoffman and Wolman (2012) suggest that professionals dealing with conflicting parents ‘need to be cautious about assuming that the people in any given mediation are operating at full capacity and in a rational manner’ (p. 805). However, from a legal perspective, functioning is more relevant than diagnosis, and the precise standard varies by context (Frost & Beck, 2016, p. 42).

For parents who are likely to re-engage with each other, Mayer (2013) suggests that the mediator's role may include assisting parents to develop a flexible understanding of the other parent's experience (p. 36). This concept has implications for the way in which practitioners work with parents experiencing separation and endeavouring to manage mental health concerns.

A study conducted by Petch, Murray, Bickerdike and Lewis (2014) sought to assess the prevalence of psychological distress among clients seeking family and relationship counselling and mediation at a non-government organisation. All participants accessing face-to-face sessions for counselling or mediation at Relationships Australia from 23 April to 22 May 2012 were approached to participate in the study. The researchers found that staff were required to report basic demographic data such as age and gender and to provide a service evaluation form to clients as part of government reporting requirements. However, even though seeking counselling or mediation may imply that clients are experiencing some degree of psychological distress, no assessment of client psychological health was performed. Interestingly, clients did not necessarily indicate they were seeking assistance for psychological distress, and those attending for mediation scored lower than those attending for counselling on the Kessler Psychological Distress Scale (Kessler & Mroczek, 1994). However, the researchers found that the rate of psychological distress in clients seeking mediation was still double the rate of psychological distress in the general Australian population. Their findings provide evidence that clients seeking counselling and mediation assistance at non-government organisations are likely to be experiencing psychological distress. These findings are relevant to parents seeking assistance with FDR, whose emotional wellbeing is not screened but who may be experiencing psychological distress at a higher rate than occurs in the general population.

Halford and Sweeper (2013) found that almost all divorced adults and their children experience some degree of psychological distress, with approximately 35% experiencing clinical levels of depression and/or anxiety. Psychological distress can affect day-to-day functioning, which may in turn affect a parent's ability, or the ability of those assisting parents, to effectively prepare for FDR. However, 'mental illnesses and distress fall along a continuum from acute symptoms which can be significantly debilitating to symptoms that are well managed with appropriate treatment' (Frost & Beck, 2016, p. 42). Given that the psychological wellbeing of parents is not assessed as part of the FDR process, this creates challenges for practitioners to provide the necessary support and referrals. While emotional stress is a part of everyday life, excessive stress has been linked to impaired functioning. Therefore, legal and mental health professionals working with the high-conflict population should familiarize themselves with the interacting systems that frame and exacerbate high conflict (Polak and Saini, 2019, p.132).

Similar to Petch et al.'s (2014) study, research conducted by Case, Lin and McLanahan (2001) found that those with a recent relationship breakdown and those separated but not divorced reported significantly higher levels of both anxiety and depression when compared with the general population. Interestingly, in cases where the relationship breakdown had occurred more than a year earlier, there was no significant difference in reported symptoms of anxiety and depression between that group and the general population.

It is becoming increasingly difficult to ignore the impact of psychological distress, not only at the time of separation, but also on a parent's capacity to effectively prepare for FDR. There are important legal issues around disclosing mental health treatment in a divorce proceeding. Mental health conditions and treatment still carry a

great deal of stigma and may be used in contentious proceedings to challenge a person's credibility or parenting skills (Frost & Beck, 2016, p. 43).

Separation is acknowledged as a highly stressful experience and is a major life event for many parents. Gibb et al. (2011) found that mental health problems are predictive of separation, but that separation is also predictive of mental health problems (p. 168). The Australian Institute of Family Studies (as cited in Lundberg & Moloney, 2010) claims that FDR practitioners 'believed that the mandatory nature of family dispute resolution was associated not only with an increased number of high conflict cases, but an increased number of cases in which the separation was quite recent' (p. 211). When preparing a parent for FDR, factors that are not necessarily considered include the psychological distress of parents, the period since separation and other significant factors that can accumulate prior to a parent presenting for FDR.

Emotions become evident following separation and when parents present for FDR. These may arise in part from the breakdown of ideological beliefs about one's former partner and relationship, as well as resentments towards the partner who left the relationship. Emotions exhibited are similar to those of loss and grief and may arise from 'the fear of change for these parents [as they remain] connected unconsciously with the pain of giving up one's grievances and facing the loss—of the family, relationships, home and so on, which for many remains very painful' (Target et al., 2017, p. 240). Separation involves grief and loss for both parents and children. It is a time when children require the 'reassurance, security, support and love of their parents. The needs of children experiencing the added trauma of parental conflict can often be overlooked by parents enduring their own trauma' (Hastings et al., 2013, p. 90).

Ideological beliefs about the relationship may differ between parents. Lundberg and Moloney (2010) suggest that there is an increasing number of parents for whom the

level of conflict may impede their ability to mediate their parenting disputes (p. 211). As emotional issues increase, decision-making becomes more difficult. A parent's interpretation of who left the relationship and how decisions were made about separation may affect his or her emotional responses to separation, which in turn can result in varying emotional adjustments following divorce (Parkinson, 2012). Many, although not all, couples who experience relationship breakdowns can successfully move on with their lives, and those with children often renegotiate their relationship after divorce in positive ways (Smart, 2000). Those who did not choose to end the relationship experience different emotions to those who did, and the former have a limited capacity to engage in the FDR process compared with the latter (Dee, 2013). Recent separations in which at least one of the parties might still be coming to terms with a range of practical and emotional realities are likely to make the task of helping parents to focus on their parenting role and reach resolution of their disputes more challenging (Lundberg & Moloney, 2010).

Contesting child issues post-separation, especially for non-initiators of separation, provides a legally sanctioned means of maintaining contact with a former spouse and fighting a partner's decision to leave the marriage (Sbarra & Emery, 2008). This does not negate the fact that many parents do have legitimate reasons for contesting decisions about children.

Research investigating the relationship between initiator status and separation has been exploratory and based on small samples only. Sweeney (2002) argues that the initiating partner has the critical advantage of time, having both more time to adjust emotionally as well as more time to find alternatives to the current relationship.

The timing of separation and the ability to make decisions is different for each parent. In situations involving conflicting parents, the parent who has not initiated

proceedings may be reluctant to attend or engage with dispute resolution services. In research conducted by Hewitt (2008), 61% of separations were initiated by females, while only 10% were jointly initiated. Although marital dissolution tends to be difficult for all involved, the nature of the experience differs depending on whether individuals choose to separate or have had this decision made for them, potentially affecting how they prepare for FDR.

The precise onset of mourning is difficult to pinpoint because the process of separating may begin well before physical separation and the initiation of professional advice (Baum, 2006, p. 245). There are an increasing number of social sanctions and rites that facilitate working through the death of a loved one; however, the opposite has been true of the separation experience. When working with parent's post-separation, the grief and varying emotional states that emerge with the end of a relationship has implications for FDR. Feelings of overwhelming injustice and powerlessness often arise for the non-voluntary party when the relationship bond is severed. While the work of Hagemeyer is dated, there remain several aspects that continue to be respected and that form the basis of the current literature on the emotional stages of divorce. Hagemeyer (1986) suggests that the experience of divorce may be cyclic in nature, with the intensity of emotions being closely related to the importance of the individual who left the relationship. As a result, grief is experienced as a 'confusing and painful journey' (p. 237), adding 'an extra dimension of frustration and pain' (p. 238).

In addition to diagnosed and undiagnosed mental health or psychological distress, parents may also present to FDR with heightened levels of stress. The Australian Psychological Society commissioned an online survey of the stress and wellbeing of 1,537 Australians to provide insight into the psychological health of the Australian population (Casey & Mathews, 2011). Almost one in three respondents

(32%) reported experiencing symptoms of depression, with 10% of those indicating symptoms in the severe or extremely severe range. The researchers found that participants who were not married, those who had experienced a recent relationship breakdown and those who were separated but not divorced reported significantly higher levels of both anxiety and depression when compared with the general population. Interestingly, the researchers also found that when the relationship breakdown occurred more than 12 months earlier, there was no significant difference in reported symptoms of anxiety and depression between that cohort and the general population. This suggests that the most stressful period following a relationship breakdown is during the first 12 months. In line with the evidence about family violence, mental health and psychological distress, it can be assumed that parents are also experiencing heightened levels of stress as they prepare for FDR.

The impact of mental health and/or family violence on FDR has been well documented in the literature; however, there is now published literature relating to substance abuse and FDR. Although Hayes et al. (2011) suggest that parents may present to FDR with a 'mixed trio' of concerns, further research may highlight the significant impact on parents as they prepare for FDR.

Despite the introduction of FDR as a less adversarial approach to resolving issues, there remain significant concerns for parents who experience diagnosed and undiagnosed mental health concerns, family violence and psychological distress as they prepare for FDR. Each aspect potentially affects the ability to function on a day-to-day basis and to effectively prepare for FDR. As highlighted by Zumbach (2016), 'Over all, psychological evaluations in family court proceedings still remain a relatively sparsely addressed subject in research. This indicates a high necessity for further research in this area in general' (p. 3106).

2.5 Section 4: Interface Between Parents, Practitioners and Lawyers in Family Dispute Resolution

This final section discusses the literature relating to the three key players in the preparation of FDR—parents, FDR practitioners and lawyers.

2.5.1 Role of parents

Parents who are unable to reach their agreements about post-separation parenting are required to participate in FDR. Along with the defined process established by the particular FRC, parents are also required to meet obligations set by the AGD for participation in FDR. Although there have been numerous changes, parents are required to understand the term ‘shared parental responsibility’ and be aware that, under the current law, each parent has a responsibility for their children unless otherwise provided for by a court order.

Amendments to the *Family Law Act 1975* (Cth) made by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) have introduced a presumption of ‘shared parental responsibility’, although this presumption does not apply to parents who have engaged in domestic violence or child abuse. Research conducted by Bagshaw et al. (2010) revealed a high level of confusion for parents about the differences between ‘shared parental responsibility’ and ‘shared care’. Under the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth), anyone who is the parent of a child under the age of 18 is said to have ‘parental responsibility’ for that child, irrespective of parental relationship changes such as separation, divorce or remarriage. Parental responsibility relates to the legal duty, power, responsibility and authority a parent has in relation to their child or children. As a result of having parental responsibility, parents are responsible for all decisions about their children, including choices about education, care and welfare and developmental needs. With these

amendments, and in the absence of a court order, both parents have equal shared parental responsibility for their children.

Underpinning the concept of shared parental responsibility is the need for parents to work cooperatively regarding the needs of their children and to share the responsibility of raising children equally. Therefore, it is expected that parents will make a genuine effort to consult with and work with each other regarding major long-term decisions concerning their child. Part of preparing parents for FDR is ensuring that parents understand that shared parental responsibility is different from ‘equal time’. Parents will only spend equal time with a child where they agree to that arrangement or where a court finds that equal time is in the best interests of the child and is the most suitable arrangement in the particular situation. Given the paucity of focused research in this area, even when parents do understand the difference between the terms, the extent to which shared care arrangements remains durable is uncertain (Wilcox, 2012).

Parents are also expected to have a meaningful relationship with their children. Although intuitively attractive as an idea, there remain some questions about the precise meaning of the term (Trinder, 2009). ‘Meaningful relationship’ is an important conceptual breakthrough in family law—the term is not defined in the act, nor are guidelines given as to how parents should have a meaningful relationship with their children. The *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) is in accordance with the United Nations Convention on the Rights of the Child, which affirms the rights of the child to enjoy an ongoing relationship with both parents (Moloney, 2014). From the child’s standpoint, meaningful relationships are primarily about parental attunement and the flexibility and emotional security that this brings, and less about processes principally aimed at determining or agreeing upon parcels of parenting time (Moloney, 2014).

Parents are also required to be mindful of the paramount consideration—the ‘child’s best interest’. Although the act sets out in section 60CC the matters in which the court may consider what is, in fact, in a child’s best interest, the court does not determine or mandate a child’s best interest. As a principle, the best interests of the child is so broad in meaning as to be ambiguous—it is, in fact, difficult to determine what a child’s best interests are (Chisholm, 2009) or to interpret exactly what is in a child’s best interest (Bagshaw et al., 2010). An alternative view is that every child’s position should be assessed individually and should not be constrained by a rigid view of his or her best interests (Chisholm, 2009). It should be noted that Chisholm is reporting about decisions made in family law courts; however, his recommendations could equally be applied to all family law service provision (Wilcox, 2012). While both idealistic and laudable, predicting the best arrangements for children may be impossible in practice (Lundberg & Moloney, 2010). Even so, when reaching agreements in FDR, parents are required to consider the best interests of their children when developing a parenting plan.

Parents are expected to make what is termed ‘a genuine effort’. Section 60I of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) requires parents in conflict over arrangements for their children to make a genuine effort to resolve their dispute through FDR or to produce a certificate to this effect before the matter can be listed for trial (Rhoades, Astor, Sanson, & O’Connor, 2008). The genuine effort statement encourages parties to ‘turn their minds’ to resolving disputes before initiating ‘potentially costly litigation’ (Hobbs, 2012, p. 250). According to Astor (2010), the following efforts are needed to show a genuine effort in FDR: ‘attendance, willingness to consider options, willingness to consider putting forward options and willingness to focus on the needs and interest of the children, to the best of the parent’s

ability' (p. 63). Parents are required to engage genuinely in prelitigation action (i.e. FDR) or to demonstrate why they have not. However, Hobbs (2012) argues that the exact meaning of this is unclear and Astor (2010) suggests there is difficulty in interpreting what is actually genuine effort by a parent as their experience is determined by their circumstance. Parents are encouraged and required to think and behave in a way that considers the needs of their children as they prepare for and participate in FDR. Even so, the terminology may be difficult to understand.

2.5.2 Role of family dispute resolution practitioners

When conducting FDR sessions, FDR practitioners endeavour to ensure sessions are delivered in an impartial and cooperative manner that is non-adversarial, child-focused and addresses real or perceived power differences between the parents. Practitioners may have a background in law, psychology or social work in addition to their required qualifications in FDR. Social workers who have qualified as FDR practitioners constitute one of the main professional groups working in the field, and they work alongside lawyers and psychologists (Martin & Douglas, 2007). According to Martin and Douglas (2007), a major contribution of social work is the emphasis on reflexive practices that consider political, social and economic contextual factors. All FDR practitioners are required to have an undergraduate degree or higher qualification in psychology, social work or law, in addition to having a graduate diploma in family dispute resolution.

As part of a dual role, FDR practitioners must remain impartial while making an assessment about the suitability of parents to prepare for and participate in FDR. On occasion, when FDR is deemed not suitable, a practitioner must decide on the type of section 60I certificate to issue and ensure parents are provided with appropriate referrals. To issue certificates, practitioners must be registered as an FDR practitioner

and have sufficient family law mediation experience and training to be registered with the AGD. Although operating outside of the court, practitioners are regulated by the statutory framework of the practice standards of the *Family Law (Family Dispute Resolution Practitioner) Regulations 2008*. Part of the role of practitioners is to fulfil the obligations of the *Family Law Act 1975* and to ensure that those obligations are met before commencing FDR sessions with parents. In assessing whether a case is suitable for FDR, the practitioner must consider whether both parents can ‘negotiate freely’ or whether there are any factors that may prevent a party from participating effectively. When clients have an Aboriginal or Torres Strait Islander or a culturally or linguistically diverse background, cultural issues are also factored into the decision about the form of dispute resolution offered to parents. It is the role of practitioners to ensure parents understand the FDR process and the confidentiality and admissibility requirements of practitioners and legal professionals under sections 10H and 10J of the *Family Law Act 1975* (Cth).

2.5.3 Role of lawyers

Prior to the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*, mediation was ‘lawyer exclusive’ (Scott, 2012, p. 6). Prefiling requirements for children’s matters has introduced the profession of FDR practitioners, altering the role of lawyers for parents in dispute. However, lawyers play a significant role in the preparation of parents for FDR because they are in a position to provide legal advice about post-separation parenting, ‘typically focusing on normative solutions, which in turn derive from the lawyer’s assessment of what is likely to happen if the case went to court’ (Moloney, 2019, p. 45).

FRCs are not intended to work in isolation but as an integral part of a much wider system. Given that the legal profession and legal services are an important part of

that system, the ‘Government expects the Centres to work collaboratively with them to ensure the best outcomes for clients’ (AGD, 2019, p. 42).

On behalf of the Family Law Pathway Network, Scott (2012) conducted a mixed methods study to gain an understanding about how family lawyers are adapting to interdisciplinary practice and to identify the challenges they may be experiencing. A random sample of legal practitioners with varying years of legal practice were selected from a variety of locations and invited to participate in an online survey. At the time of conducting the research, the NSW Law Society had 24,543 registered legal practitioners with current practising certificates. Forty-one per cent of the respondents in the study indicated that they spent 25% or more of their time dealing with family law matters. Of the same group, 16 lawyers identified as FDR practitioners and all respondents were practising law in non-rural localities. This differs to the lawyer participants in my research, who were all from rural localities and practising as lawyers only rather than having a dual role of FDR practitioner and lawyer. Findings of the research by Scott (2012) indicate that balancing the sociolegal dimensions of family law matters appears to be the current area for professional and service development.

FRC managers may request lawyers practising within the family law area to provide legal information and advice to staff and parents. Legal services may include assisting clients to help them identify any legal issues affecting their situation, formalising parenting arrangements and providing advice on court applications where exceptions to FDR apply. However, the *Operational Framework for Family Relationship Centres* (AGD, 2019) enables individual FRC managers to determine whether they consider it appropriate to include lawyers in the FDR process. This puts FRC managers in a more powerful position to that of lawyers seeking to advocate for their clients. Guidelines set by the AGD indicate that when supporting clients at an

FRC, legal professionals agree to work collaboratively with FRC staff in a non-adversarial process to navigate a resolution without litigation where possible and appropriate. Since 2009, FDR practitioners in FRCs have been given the discretion to allow legal representatives to be present during dispute resolution sessions in appropriate cases. The AGD (2019) *Operational Framework for Family Relationship Centres* states,

A protocol for the provision of legal assistance in Family Relationship Centres was developed ... to enable legal practitioners (including private lawyers) to continue to act for a client in litigation in circumstances where dispute resolution has not been successful. This was not previously the case in 2009. (p. 18)

2.5.4 Interface between family dispute resolution practitioners and lawyers

Prior to the implementation of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*, lawyers ‘walked alongside parents’ to advise them on how best to resolve their post-separation disputes. Post-implementation, practitioners do not give advice; however, they assist parents in the FDR process, with lawyers providing legal advice outside of FDR.

Cooper and Brandon (2011) suggest that ‘lawyers and practitioners are now joint “gatekeepers” to the family law system and as such must establish effective, cooperative relationships’ (p. 198). The concept of practitioners and lawyers working together was central to empirical research conducted by Rhoades et al. (2008) and funded by the Australian Research Council and the AGD. This qualitative study investigated how practitioners and family lawyers managed their interpersonal relationships when assisting parents with post-separation parenting arrangements and identified the positive and negative aspects of the interface between the two groups. The sample consisted of 59 participants, comprising 29 practitioners and 30 family lawyers, who were

interviewed over a two-year period to gather detailed information about the collaborative relationship between practitioners and lawyers. A significant finding of this research was that, although some lawyers and practitioners enjoyed positive, collaborative relationships, many had limited interactions and significant tensions and misunderstandings between the groups.

Tensions between practitioners and lawyers and their ill-defined roles may have a negative impact on the preparation of parents for FDR. Professional tensions are present between legal and practitioners in the family law area (Ardagh, 2008). In contrast to Cooper and Brandon's (2011) notion of lawyers and practitioners being joint 'gatekeepers' and Rhoades et al.'s (2008) findings that some practitioners and lawyers have a good professional relationship, Ardagh (2008) believes that the tension between the two groups may arise from practitioners using facilitative methods to resolve disputes and lawyers undertaking an evaluative approach. However, difficulty remains in bridging the gap between the professions to create understanding and collaboration and to co-develop research that could advance the field of FDR. Irrespective of their commitment to work together, law and social science take different philosophical approaches and have different definitions of 'truth'. The concern is that practitioners and lawyers may take conflicting approaches to the preparation of parents for FDR, which may have a significant impact on vulnerable parents as they prepare for FDR.

By conducting a review of the literature relating to family law, I have identified three gaps that relate to the preparation of parents for FDR. The first is an understanding of the practical preparation that is currently provided to parents when preparing for FDR. The literature review shows that the preparation processes across FRCs vary. These variations may be attributable to the philosophical underpinning of practitioners assisting parents and the values of the particular FRC. To date, the current preparation

of parents for FDR has not been researched, despite the fact that 65 FRCs across Australia have been providing FDR since the first centre opened in July 2007.

The second gap in the literature is an understanding of the needs of parents, practitioners and lawyers when preparing for FDR. The literature review identified that parents who prepare for FDR are those who have not been able to resolve their issues themselves. Parents who can communicate and negotiate with each other about post-separation arrangements for their children are not required to participate in FDR. This implies that there is a degree of vulnerability in those parents who seek assistance with post-separation arrangements. In addition to the emotions and challenges inherently associated with separation, parents may also present to FDR with a myriad of other issues that may pre-exist or co-exist with the separation, such as mental health issues, family violence and substance abuse. Endeavouring to address the second identified research gap may provide an understanding about what, if any, aspects of the current FDR process participants find difficult. A greater understanding of parents' needs, especially those parents with complex issues, may contribute to practice, enabling the provision of services that can be adjusted to meet the needs of individual parents. From there, further research could investigate how this may be addressed.

The third gap identified in the literature is an understanding of the preparation of parents for FDR from the perspectives of parents, practitioners and lawyers. To date, research within the FDR field has not sought to understand the perspectives of the three key players involved in FDR. The literature review also alludes to tensions that exist between practitioners and lawyers, despite each playing a significant role in the preparation of parents.

Given that parents have been required to participate in FDR since the implementation of the *Family Law Amendment (Shared Parental Responsibility) Act*

2006 over a decade ago, these three gaps identified in the literature were unexpected. Under the act, parents are required to participate in a process that has had minimal change in format or participation requirements other than more emphasis on the impact of family violence. By placing a lens on the identified research gaps, the findings of the study presented in this thesis may contribute to the body of research addressing practice issues in preparing parents for FDR.

2.6 Summary

A review of the literature relevant to FDR in the Australian context was conducted, incorporating the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* and FDR. Literature examining societal values that led to the change from an adversarial to non-adversarial process of assisting parents to resolve post-separation parenting issues was included to provide context. From the outset, the intention was not to consider the appropriateness of the changes or the definition of family and relationships—rather, it was to interpret the research that has been conducted in the field of FDR, particularly as it relates to preparation of parents for FDR.

The purpose of the literature review was, in part, to explore and understand what is already known about FDR in the Australian context. Irrespective of the preparation that is undertaken by parents or the assistance provided by FRCs, there is currently a limited understanding of the experience of preparation from the perspectives of the three key players involved in that process—those of the parents themselves and the practitioners and lawyers who support parents through the FDR process.

Significantly, the literature review has identified three gaps that my research will attempt to address. The identified research gaps are significant to parents, practitioners

and lawyers involved in preparing for FDR because they all play a significant role in assisting parents in undertaking a non-adversarial approach to resolving disputes.

In Chapter 2, I discussed the literature that relates to the changes in family law and have identified three gaps. In Chapter 3, I present the research methodology and methods used for my study. An analysis of the data is presented in Chapters 4, 5 and 6.

Chapter 3: Mapping the Field

A distinctive feature of interpretative scholarship is that it aims to describe the meaning of events from the point of view of the participants. (Sweeney & Anderson, 2013, p. 22)

3.1 Introduction

In Chapter 3, I present the research methodology and methods used for this study. The focus of this chapter is to discuss the philosophical underpinnings of the research methodology and the development of a research strategy that was appropriate to the setting and research question. Additionally, this chapter includes a discussion on how I gained access to three FRCs to collect data, how those data were analysed and the development and analysis of themes from the data.

Chapter 3 is divided into two sections. First, I discuss the rationale for adopting a qualitative methodology using a phenomenological theoretical approach. Second, I explain how gathering data by in-depth interviews reveals the lived experiences of participants. This is followed by a discussion on the rationale for choosing an interpretivist inquiry in preference to a positivist/postpositivist or transformative/emancipatory theoretical framework. The early identification of a theoretical framework is intended to transparently show my philosophical intent and rationale for the research.

3.2 The Research Topic

The research topic grew out of my desire to understand the phenomenon in question. This study is concerned with the lived experience of preparing for FDR in regional Australia. My goal, as suggested by Padgett (2012), is ‘to have readers feeling as if they have “walked a mile in the shoes” of participants’ (p. 36).

The research topic is ‘Preparing for family dispute resolution in regional Australia: Exploring the experiences of parents, family dispute resolution practitioners and lawyers’. This research is the culmination of my professional interest and a working involvement with parents, practitioners and lawyers as they prepare for FDR. Changes to the *Family Law Act 1975* made by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* means that parents are now required to participate in FDR if they are unable to reach their own agreement about children’s matters post-separation. The implementation of mandatory FDR ‘aimed to reshape post-separation parenting in a way which grants children the meaningful involvement of both their parents in their upbringing’ (Henry & Hamilton, 2011, p. 105).

Over several years, I developed an increasing curiosity as to whether different or further preparation would assist those in dispute to prepare more effectively and, thus, lead to a greater likelihood of satisfactory outcomes for those involved. This line of inquiry may provide insight to those involved in family law into the meaning parents, practitioners and lawyers attribute to their experience of preparing for FDR. In turn, the findings may inform practice. The research question is consistent with methodology and methods that encourage an in-depth exploration of the experiences of parents, practitioners and lawyers. Rather than testing a hypothesis, the preferred approach was to conduct research that was open-ended and exploratory.

In planning to undertake the research project, I considered Yilmaz’s (2013) explanation of qualitative research, which confirmed in my mind that the research question was better suited to a qualitative approach:

Unlike quantitative studies which are concerned with outcomes, generalisations, predictions and cause-effect relationships through deductive reasoning, qualitative studies are concerned with process, context, interpretation, meaning

or understanding through inductive reasoning. The aim is to describe and understand the phenomenon studied by capturing and communicating participants' expression in their own words via observation and interview. (p. 313)

The core purpose of this research was to understand the lived experiences of parents, practitioners and lawyers as they prepare for FDR as opposed to explaining causality or seeking theory. By subjectively interpreting the data—the narrative of individuals who have experienced the phenomenon—I sought to create a construction of the phenomenon. The interpretivist paradigm emerged from Husserl's philosophy of phenomenology and Dilthey's study of hermeneutics, with the intention of understanding the 'world of human experience' (Cohen & Manion, 1994, p. 36). Interpretative phenomenology is ontologically, epistemologically and methodologically positioned within the chosen paradigm and provides an understanding of the constructions that exist within the phenomenon.

3.3 Phenomenology as a Methodology and a Method

Phenomenology as a methodology and as a method can reveal participants lived experiences of preparing for FDR. Phenomenology is both a philosophy and an approach frequently employed by researchers, and 'there are as many styles of phenomenology as there are phenomenologists, each with many commonalities' (Dowling, 2007, p. 131). Knowledge emerges from interactions between researchers and participants and, as a result, phenomenological research is considered subjective and inductive. Consequently, engagement between participants and researchers offers researchers an understanding about a phenomenon not typically studied (Reiners, 2012).

Phenomenology 'locates its various forms in the positivist (Husserl), postpositivist (Merleau-Ponty), interpretivist (Heidegger) and constructivist (Gadamer)

paradigms' (Dowling, 2007, p. 131) and is 'a philosophy, which can be applied as a methodological research approach' (Miles, Chapman, Francis, & Taylor, 2013, p. 274). The word phenomenology translates from the Greek, meaning 'to bring into the light' (Miles et al., 2013, p. 274).

According to Edward and Welch (2011), 'phenomenology is based on the fact that the experience of individuals is somehow accessible to others and we can enter into these experiences through an intimate dialogue' (p. 169). Designed to explore and understand people's everyday lived experiences, phenomenology provides a rich, subjective account of a phenomenon of interest as it occurs while considering the lived experience of the individual, from the individual's perspective (Delaney, 2003).

3.4 Historical Perspectives: Husserl and Heidegger

Phenomenology is a broad discipline and method of inquiry in the field of philosophy. Two German philosophers, Husserl and Heidegger, are credited for their work on phenomenology. However, the phenomenological movement is not limited to the work of Husserl and Heidegger—phenomenology challenged the dominant views on the origin and nature of truth (Dowling, 2007). According to Reiners (2012), phenomenology is an 'inductive, qualitative research tradition rooted in the 20th century philosophical traditions of Edmund Husserl (descriptive) and Martin Heidegger (interpretive)' (p. 2).

The work of Husserl is interesting, but even more impressive is the work of Heidegger. Both philosophers proposed that reality consists of objects and events known as 'phenomena' and our experiences of those phenomena, and that phenomenology is the study of experience and how we experience the experience. However, they differed in their views on many aspects of philosophy, including the concept of 'bracketing', which is relevant to this research. With respect to bracketing,

Reiners (2012) states that ‘Heidegger believed it was impossible to negate our experiences related to the phenomenon under study, for he believed personal awareness was intrinsic to phenomenological research’ (p. 2). Heidegger also believed we constantly make judgements and assumptions about the way the world works—while it is not possible to exclude our assumptions and judgements, we can be aware of and transparent about them. Heidegger was ‘critical of Husserl’s emphasis on description, rather than understanding, and of his use of bracketing’ (Priest, 2004, p. 6).

In hermeneutics, pre-existing personal experiences, prejudgements and prejudices are not eliminated or suspended; rather, they are acknowledged as exerting a profound influence on the understanding of phenomena and are, therefore, important to the interpretation. Priest (2004) asserts that ‘understanding and interpretation is a reciprocal process relying on the personal involvement of the researcher with that which is being researched, with interpretation permeating every stage of the research process’ (p. 3).

3.4.1 Martin Heidegger (1889–1976)

Heidegger was known for his contribution to phenomenology and existentialism. According to Luft (1994), Heidegger was ‘the most important German philosopher of the twentieth century. He was also an outspoken supporter of Adolf Hitler and National Socialism’ (p. 480). Because his parents could not afford to send him to university, Heidegger entered a Jesuit seminary and was later accepted at the University of Freiburg to study theology. Heidegger was supported by the Catholic Church based on the understanding that he would defend his theology. Breaking away from Catholicism, Heidegger changed his focus from theology to philosophy, completing his doctoral thesis on psychologism in 1914. According to Horrigan-Kelly, Millar and Dowling (2016), ‘Heidegger’s phenomenological philosophy is challenging and the influence of

his philosophy in shaping the conduct of interpretative phenomenological research is broadly debated’ (p. 1).

Heidegger was a student of Husserl’s, who chose him to be his successor. They worked together for approximately 10 years at the University of Freiburg, during which time Heidegger was Husserl’s assistant from 1920 to 1923. Heidegger initially concurred with Husserl’s ideas but gradually developed his own insights and views that were distinctly different to those of Husserl. Over time, Husserl became critical of Heidegger’s work, ‘particularly around 1929 often noting their differences in his lectures’ (Mulhall, 2013, p. 9). Heidegger became increasingly involved with the Nazi Party and his political aspirations were offensive to Husserl, who was Jewish. Heidegger later referred to his involvement with the Nazi Party as the ‘greatest stupidity of my life’ (Braver, 2014, p. 147).

Although I respect the work of Husserl, my views are more consistent with those of Heidegger, who believed it was impossible to fully suspend one’s own assumptions and judgements.

3.4.2 Critiques of Heideggerian phenomenology

Consideration was given to critiques in the literature of Heideggerian philosophy, particularly as there are many controversies surrounding Heidegger’s work and associations. Within the field of phenomenology, there are several criticisms of Heidegger’s work, particularly regarding his style of writing and his political views. Miles et al. (2013) state that Heidegger’s work uses

complicated, and at times cryptic, philosophical language. Heidegger frequently constructed his own terminology to bring attention to specific concepts. In addition to these initiatives, the direct translation from German to English has been at times difficult and makes his phrases more complex. (p. 273)

The interpretative phenomenological approach as described by Heidegger was used to provide a framework for this research project. The link between the chosen methodology and research question is shown by discussing the philosophical precepts of Heideggerian phenomenology. Limitations of the chosen methodology are also included to show my understanding of the implications of taking an interpretative phenomenology approach.

3.5 Taking a Heideggerian Hermeneutical Perspective

This research is about human experience, specifically an exploration of the experience of preparing for FDR. Heidegger's philosophical solution for understanding the meaning of an experience is through conceptualising human experience as *dasein*. In other words, 'human existence and a human being are wrapped together in this one idea which, by its very nature, is layered and complex' (Wilson, 2014, p. 2911).

Heidegger's concept of interpretative phenomenology provided the methodological guidance for interpreting the lived experiences of parents, practitioners and lawyers. To frame the research, four concepts of Heidegger's 'tenets of being' were selected to highlight the specific phenomenon under examination—the lived experience of parents, practitioners and lawyers as they prepare for FDR. The four concepts chosen are relevant to my research questions and elevated my understanding of the data. The four principles of Heideggerian thinking relevant to this research are 'models of engagement', '*augenblick*', 'familiarity' and 'unveiling the taken for granted' (Mulhall, 2013).

3.5.1 Models of engagement

Heidegger was primarily concerned with understanding the 'average everydayness' of human beings as they exist in their world. Given that humans undertake mundane activities on a daily basis, Heidegger believed that rather than

filtering these activities out of our thinking, we should seek ‘understanding of the self, starting with activities he calls our average everydayness’ (Mulhall, 2013, p. 138).

Heidegger used the concept of engagement to illustrate that ‘being-in-the-world’ is to be embedded in the world, to be with and to habituate with others. Heidegger defines the way people are engaged in the world in terms of what he calls ‘ready-to-hand’, ‘unready-to-hand’ and ‘present-to-hand’. These concepts are relevant to understanding the participants’ perspectives as they engaged in the FDR process, particularly as they engaged for different purposes and at different stages of their separation journey. Following is an overview of each of Heidegger’s three distinct models of engagement.

3.5.2 Ready-to-hand

When an activity is well executed, the ‘equipment’ being used is unnoticed. ‘Ready-to-hand’ objects are those that are well used and readily understood. McDaniel (2013) describes ready-to-hand entities as ‘tools, objects of use, cultural products, things of value and significance’ (p. 21). Ready-to-hand entities do not stand out as discrete objects; rather, they become embedded in the project. If the tool or piece of equipment is functioning properly, the user pays no attention to the characteristics of the object and operates in autopilot. An individual may spend most of their time engaged in an activity, neither being unaware of their time nor being aware of what is surrounding them, with the equipment being unnoticed and perceived as an extension of the body and action. Everyday coping skills are learnt from past experiences and are adapted to current situations so that everything works as it should (Dreyfus, 1991).

Heidegger used the metaphor of a hammer to describe the concept of ready-to-hand. A hammer is understood as a piece of equipment that is available ‘to complete a task, to achieve or to produce something’ (Braver, 2014, p. 20). Heidegger suggests

that, with little thought and in the absence of concentration, a hammer may be used and manipulated to complete a task. It is necessary to understand the tool to operate it, but this ‘pre-ontological understanding is more of a know-how’ (Braver, 2014, p. 20).

Heidegger called it *umsicht*, which Braver (2014) interprets as ‘taking it all in, having a sense of our environment and surroundings’ (p. 32). Rather than concentrating on the object, the focus is on the activity or task being achieved, and the relationship with the object does not require cognitive activity.

Therefore, the ready-to-hand mode of engagement involves ordinary everyday activities that go unnoticed. As a further example, a person may use communication skills in a ready-to-hand way. The equipment or communication skills may be unnoticed because they are an extension of one’s normal vocabulary and skill sets. When a person is in a satisfactory relationship, his or her communication skills are ready-to-hand, unnoticed and taken for granted. An individual who can successfully communicate with others experiences his or her communication skills as ready-to-hand. In contrast, when equipment breaks down and becomes noticed, it is said to be ‘unready-to-hand’ (Mulhall, 2013, p. 41).

3.5.3 Unready-to-hand

According to Heidegger, equipment, tools or skills are inconspicuous or elusive when they are functioning correctly; however, they become conspicuous when a problem arises (Mulhall, 2013, p. 49). The user of the equipment becomes aware of the deficit as he or she must now find an alternative way to carry out the task or a way to repair the malfunctioning equipment. For the parents in this research, this is the time they seek FDR. When the equipment breaks down, the breakdown becomes noticeable, the task is altered, and the user loses his or her grasp on the previously available ready-to-hand equipment. The malfunctioning equipment becomes conspicuous. Limited

access to previously usable equipment requires deliberate concentration on the new task at hand. In the current malfunctioning form, the equipment is not in a customary place; rather, it is ‘concealed from prior intention of use and is not equipment at hand, but rather a hindrance to the predetermined task’ (Braver, 2014, p. 20).

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) requires parents to engage in FDR if they are unable to communicate and negotiate with each other about post-separation arrangements. When this occurs, they no longer have the skills (or equipment) ‘at hand’. Processes they have previously undertaken become unworkable; therefore, they seek the assistance of a neutral third party to assist in resolution of disputes.

3.5.4 Present-at-hand

When a piece of equipment is not functioning, everyday activities cease, and the malfunction or missing part becomes apparent. The equipment is viewed differently and is perceived as nothing more than an object. When this occurs, the user attempts to explain the physical properties and characteristics of the malfunctioning piece of equipment. While they consider another way to perform the task, users become aware of not only the malfunctioning equipment, but also of the related tools, tasks and goals. Heidegger referred to the detached way we reflect on the situation as a ‘deficient mode of concern’ (Braver, 2014, p. 103).

In the present-at-hand mode, the entity becomes just a piece of equipment—it becomes something there, present-at-hand, needing to be replaced or repaired. Previously, the equipment was there, being navigated without conscious thought. When an obstacle arises, the damage becomes obvious to allow the user time to repair it. The present-at-hand mode is the most detached and objective mode in which the user stands outside the situation, looking on. Parents preparing for FDR are aware that ‘an obstacle’

has arisen and that, in the current circumstances, they feel unable to ‘repair’ the difficulties between them. Therefore, Heidegger’s concepts of ready-to-hand and present-at-hand are applicable to this research.

‘Being-in-the-world’ is Heidegger’s summary of these ideas. On a day-to-day basis we are in the world attending to our concerns and we ‘rarely give explicit thought to our tasks, the tools we use to accomplish them, or even ourselves. We are absorbed in the world ... a fluid dynamic circulation of activity’ in which we are involved (Braver, 2014, p. 36).

Parent participants in this research had experienced separation and were unable to reach agreement about their children. As a researcher, I did not stand and look in or at the participants. Rather I sought to explore, understand and interpret parent experiences of preparing for FDR as a direct result of their equipment failure—their inability to work with each other effectively to resolve the issues between them regarding their children.

3.5.5 Moment of vision

Heidegger’s term *augenblick* translates to ‘the moment of vision’, which means to seize the moment and to make it one’s own (Tietz, 2001, p. 87). When anticipating the future, Heidegger suggests that *augenblick* is ‘making use of the present to accomplish the future’ (Tietz, 2001, p. 88). Anticipating the future by making the present evident enables one who ‘having-been’ to release oneself into the present or current action to seize the moment. When anticipation is projected into the future, our future and our past become evident, what Heidegger refers to as ‘having-been-ness’ (Tietz, 2001, p. 88). Humans are not defined by being thrown into the world because they can throw off a condition by seizing hold of possibilities. This movement is defined by Heidegger as *entwurf* or ‘the experience of demonstrating potential through

acting in the world' (Tietz, 2001, p. 88). Heidegger's notions of projection and being 'thrown into the world' are relevant to this research to understand what participants do to seize opportunities to assist in their preparation for FDR.

3.5.6 Familiarity

Heidegger argued that humans are not entities who exist parallel to the world but are those who are submerged in the world. Offering an alternative description of experience, Heidegger suggested our fundamental experience of the world is that of familiarity. According to Braver (2014), 'our sense of identity, the understanding of who we are cannot be disentangled from the world that is around us' (p. 32). We are familiar with our world and know our way around what is owned. Familiarity is a background feature of our experiences, which usually go unnoticed. However, in the absence of familiarity, we begin to notice differences in our world. When that which is familiar becomes disrupted, we become aware of the unfamiliarity, the changes in our environment, interactions and understandings with which we have become accustomed.

When we are going about our business in the world, we encounter and use, but do not always observe, the entities around us. Therefore, we do not need to explicitly know or cognitively reflect on what we are doing (Tietz, 2001). However, our cognitive attention becomes focused on tasks or events that are unfamiliar or when our skills are challenged. We focus on the goals towards which we are struggling rather than on the aspects of activities over which we have mastery. Tools or events that are unfamiliar require focus, whereas familiar tools or events do not (Mulhall, 2013, p. 50).

Similar to the concept of models of engagement, the concept of familiarity is relevant to this research and may highlight new understandings of the lived experiences of parents, practitioners and lawyers as they prepare for FDR. The world of FDR is not the everyday world of parents. When parents come to FDR, they are entering a world

that is unfamiliar to them, a world in which they do not possess mastery or relevant skills.

3.5.7 Fusion of horizons and dialoguing with the text

Gadamer (1975) coined the term ‘fusion of horizons’, which describes a process of interpretation and understanding and relates to how we have culturally and historically constructed pre-understandings or prejudices that enable us to make sense of events and people (Whitehead, 2004). For example, when we are engaged in conversation, the interpretation of that conversation by those involved will be based on their past experiences, biases and prejudices.

Throughout this project, I have been immersed in the text and the transcriptions of the participants’ experiences of preparing for FDR. By immersing myself in the text, I had the opportunity to reflect on the information provided by the participants and consider my contribution to the understanding of the phenomena. According to Miles et al. (2013), the term ‘fusion of horizons’ is a ‘metaphor demonstrating that understanding involves the viewpoint of the researcher and the participants that spiral into new understandings of the participants experiences of the phenomenon’ (p. 273). Miles et al. (2013) also suggest that ‘for this fusion to occur, in the beginning, the researcher readies in openness to hear the story of the other and makes interpretation from a number of linguistic sources’ (p. 273). As I progressed through the research project, I included multiple linguistic sources, including participants’ stories, the emerging meanings and the revealing of that which was hidden. On the research journey, insights occurred at every step of the process, including during data collection, transcribing, interpreting and writing. Understanding the totality of all that was realised by fusing the horizon of the participants’ narratives with that of my own provided a richer understanding of the phenomena. Interactions between myself as the interpreter

of the text, and the participants' narratives, allowed a fusion of the participants' meanings and understandings of the phenomena.

Heidegger considered the importance of how the pre-understandings of the interpreter interact with the text, highlighting the need for transparency of the researcher's background. My own experiences were fused with those of parents, FDR practitioners and lawyers to produce a shared understanding of phenomena, to look beyond that which is taken for granted and to ask, 'What does it mean to be prepared for FDR?' By questioning and reflecting on the text, a greater understanding of the lived experiences of participants may be achieved. As a result, 'new understanding has been achieved by revealing previously unnoticed concepts' (McDaniel, 2013, p. 337).

3.5.8 The hermeneutic circle

The hermeneutic circle relies on the circular movement from the whole to the parts. Heidegger suggests that 'circularity is analysing the whole by its parts, but the parts can be identified only by their systematic roles within the whole' (Tietz, 2001, p. 169). In other words, the text must be deconstructed before being reconstructed, resulting in a shared understanding. The hermeneutic circle is the circular and repetitive action to and from the text to find interpretations that are new and meaningful.

Bringing my assumptions and prior understandings to the text helped the meanings in the text to emerge. While interpreting the text, I became aware of my assumptions and prejudices, but did not exclude them. According to Reiners (2012), Heidegger's 'interpretive hermeneutics utilizes the hermeneutic circle method of analysis, where there is continual review and analysis between the parts and the whole of the text' (p. 2). In relation to the research project, it was essential that I was aware of how my background as an FDR practitioner influenced the text, in particular what I expected the text to say or not say. This is discussed further in Section 3.6.

3.5.9 Limitations of hermeneutics

The best approach to take is frequently debated by researchers because all approaches have their limitations. Phenomenology is not suited to research questions that depend on eliciting statistical data from large samples but is suited to exploring and understanding research questions requiring in-depth exploration.

In the preceding sections of this chapter, I explained the philosophical and methodological framework for the research project. Phenomenology is important in the study of human experience and was determined to be the most appropriate approach to answer the research question because it enabled an exploration of the meaning participants attributed to their experience of preparing for FDR. In the following section, I discuss the methods used to explore the research question.

3.6 Phenomenological Methods

Data were gathered for this research through the use of semi-structured in-depth interviews informed by a phenomenological theoretical approach. I described my rationale for taking a qualitative approach earlier in this chapter. While I acknowledge that other methodologies and methods may have been suitable for this research, the exploration and understanding of the depth and richness of participant perspectives may have been diminished.

Colaizzi (1978) developed a seven-step framework for collecting and analysing data while under the supervision of his mentor, Giorgi (1970), who had previously developed a six-stage model. Colaizzi added a seventh stage to this model, expanding the process of phenomenological analysis, which has ‘contributed to advancing a rigorous approach to phenomenological enquiry’ (Edward & Welch, 2011, p. 164). Van Kaam (1966), Giorgi (1970) and Colaizzi (1978) all employed a series of steps in their work. The commonality between these researchers is that ‘data is transformed by the

researcher into meanings that are expressed as phenomenological concepts and those transformations are combined to create a general description of the participants experiences' (Dowling, 2007, p. 136). Following are the steps I undertook by incorporating Colaizzi's framework to gain an understanding of the experiences of participants.

3.7 Inclusion and Exclusion Criteria

The focus of this research project was to explore the lived experiences of parents, FDR practitioners and lawyers as they prepared for FDR. To do this, it was necessary to turn to those experiencing the phenomena. To be included in the study, participants must have either experienced preparing for FDR as parents or have assisted those who were participating in FDR.

To eliminate inconsistencies and to minimise ambiguity, inclusion and exclusion criteria for participation were established at the beginning of the research project. Inclusion criteria were as follows: being a parent preparing for FDR or being an FDR practitioner or lawyer assisting parents to prepare for FDR prior to the joint FDR session; having the ability to speak English; being at least 18 years of age; and being available during the period the researcher was onsite.

Participants who did not have the required characteristics were excluded from the study. Accessing the lifeworld of individuals was predicated on the assumption that parents, practitioners and lawyers were able to provide a clear, articulate and in-depth perspectives 'of their experience of the phenomenon being investigated' (Edward & Welch, 2011, p. 168). Two lawyers were involved in working with Aboriginal and Torres Strait Islander parents at Location 2. One lawyer identified as Aboriginal and provided experiences of working with Aboriginal and Torres Strait Islanders in a

process where parents were required to participate in FDR without any consideration of their [the parents] specific cultural needs.

No concerns were identified by parents, practitioners or lawyers about their inclusion or exclusion in the research, which may have been because of the purposive sampling methods and voluntary participation. Parents who had already completed the joint FDR session were excluded because they had already participated in FDR and were no longer preparing for it.

3.8 Sample

In this interpretative phenomenological study, I conducted a ‘deliberate process of selecting respondents based on their ability to provide the needed information’ (Padgett, 2012, p. 73). Each interviewed participant was preparing for FDR at a regional FRC, either as a parent or as a practitioner or lawyer assisting a parent. By virtue of their experiences, each participant could provide data relevant to the research question.

Based on how participants were selected, the findings of this research project are transferable without being generalisable in the statistical sense. Because the research was qualitative, there was no requirement for a representative sample of the population. However, the research findings may help to inform similar research projects, such as explorations of the lived experiences of parents, FDR practitioners and lawyers in metropolitan settings in Australia.

Data were collected from three participant groups at three regional sites. To ensure participant confidentiality, each participant was allocated a pseudonym. However, the participant group and participant location were retained. For example, ‘Franklin’ was the pseudonym allocated to a participant who was a parent situated at Location 3. When citing verbal transcriptions from participants, I have used the format

(Franklin—Parent, Location 3), enabling the reader to differentiate whether a participant is a parent, an FDR practitioner or a lawyer and in which location they were situated.

3.8.1 Sample size

As the experience of participants can never be fully understood, the sample size for this study was not predetermined. The aim was to include parents, practitioners and lawyers who had experienced preparing for FDR and were willing and able to share their experience of this phenomenon.

Recruitment of participants ceased at the point of data saturation. Guest, Bunce and Johnson (2006) suggest that ‘data saturation is presumed to have occurred when all the main variations of the phenomenon have been identified and incorporated into the emerging themes or theory’ (p. 65). Therefore, ‘additional data would not lead to any new emergent themes’. As Glaser and Strauss (1967) suggest, theoretical saturation occurs when the data collected seems complete and integrated.

The sample size must be large enough to allow most or all of the important perspectives to be uncovered. However, repetition of perspectives may occur if the sample size is too large. Padgett (2012) states that

Given the flexibility inherent in qualitative sampling, a study may end up with fewer participants than anticipated because data became saturated earlier on, or it may end up with a larger sample because of the need to pave new leads from the analysis. (p. 25)

Throughout the research project, I considered whether the sample provided enough data to enable a thorough exploration of the experience of preparing for FDR.

As with any qualitative research area, participants may have diverse opinions; therefore, it was not necessary to collect data from everyone participating in FDR. In qualitative research, the objectives and characteristics of the study population determine

which and how many participants are selected. Initial concerns about insufficient data emerged for Location 1 because three visits over a two-month period were required to interview more than one or two parents and for the interview duration to be sufficient. At Location 3, I attended the FRC over a period of two months to ensure adequate data collection. The reason for the poor attendance of participants (particularly parents) when I was onsite has not been established. However, I was reliant on FRC staff having appointments with parents on the days I was available and, since it did not affect the outcome, I considered it simply a matter of coordination.

In total, 52 participants were recruited, comprising 33 females and 19 males. As suggested by Padgett (2012), ‘Because of the fundamental concern with quality over quantity, sampling is not done to maximise breadth or reach, but to become saturated with information about a specific topic’ (p. 26).

All participants interviewed had considerable experience with preparing for FDR. Some were more articulate and had reflected on their experience of preparing for FDR; however, all participants generously shared their experiences. All interviews were de-identified to ensure anonymity. Additional information gathered about parents included the number of times they had attempted FDR and whether they had been the parent initiating or responding to the process. For FDR practitioners and lawyers, additional information included prior qualifications and whether they worked in a community legal service or in private practice. These data were collated in the memo section of NVivo 10.

3.9 Semi-Structured Interviews

Interview questions (see Appendix G) were designed to be open-ended and to elicit comprehensive answers, rather than simple ‘yes’ or ‘no’ answers. Questions were neutral, respectful and clear and excluded acronyms and legal terminology. They were

designed to allow participants to respond easily in the early stages of the interview and to build their confidence in generating rich descriptions of their experiences. The interviews provided participants with opportunities to construct or reconstruct their experiences and, as such, they were ‘influenced by their ability to articulate, reflect on, and recall experiences and the accompanying emotions’ (Taylor, 2005, p. 41).

The semi-structured in-depth interviewing style allowed questions to be prepared ahead of the interview and similar questions to be asked at each location and enabled participants to attribute their own meaning to their experiences. Verbal transcriptions supplemented by field notes formed the main data for the study. Semi-structured interviews enabled the use of key questions that helped define areas of exploration and allowed the dialogue to digress to pursue ideas in more detail. As suggested by Padgett (2012) ‘intensive interviewing is scheduled in advance, takes place in a private setting, is conducive to trust and candour and requires careful preparation’ (p. 127). Glesne (2015) suggests that ‘questions often emerge in the course of fieldwork and may add to or replace pre-established ones’ (p. 96). Therefore, each interview was unique.

Interview questions were initially field tested with two participants to assess whether the questions would generate valid and reliable data. Prepared interview guides were used to frame in-depth interviews, which lasted 45 to 60 minutes in duration. Interview questions were designed in accordance with Padgett (2012), who suggests that interviewers use ‘broad, open-ended questions to ensure the rapport and openness necessary to access the participants lived experience’ (p. 35). This helped participants express their perspectives in their own words. With written consent, each interview was audiotaped.

Allowing time between interviews proved to be beneficial because it helped prevent the accumulation of unanalysed field notes and transcripts, which would have presented additional challenges. At the conclusion of each interview, I asked the interviewee whether he or she had any further comments. FDR practitioner and lawyer participants did not make any additional comments at this stage; however, several parents spoke more about their experiences of separation once the audiotape had been turned off. Because participants did not give permission to include this information and there was no accurate method of recording participant dialogue post-interview, any dialogue exchanged after interviews was not included in the analysis. Some parents expressed their frustration about the behaviour of their former partners, indicating the need for their personal separation stories to be ‘heard’. Reflecting on this experience, I considered the potential benefits of giving parents the opportunity to tell their stories as they prepared for FDR. Collection of data was aligned with the first stage of Colaizzi’s (1978) framework.

In the second stage, I extracted key statements from the data by reading and thinking about interview transcripts, writing memos, developing coding categories and applying them to the data, analysing narrative structure and contextual relationships and developing matrices. Interview tapes were listened to prior to transcription to allow an opportunity for preliminary analysis. During this process of listening and reading, I wrote notes and memos on what I ‘heard’ in the data to develop tentative ideas about categories and relationships. Padgett (2012) asserts that memo writing is an ‘ongoing process as the researcher documents thoughts and ideas that emerge through interacting with the data’ (p. 179). The qualitative software program NVivo 10 was used throughout the study because it has the facility to store and retrieve large amounts of data and to code and sort transcripts, memoranda and field notes for analysis. The

process of data collection and analysis was planned and modified as necessary to match the data and to address any validity threats to the research conclusion.

3.9.1 Verbal transcriptions of interviews

Audio recordings of interviews were transcribed as soon as was practicable after each interview. Two of the interviews were 30 minutes and the remainder were 46–60 minutes in duration, providing a depth of experience as described by participants.

In reality, lengthy parent interviews contained information that was important as parents took the opportunity to vent their frustrations about their former partners. When considering transcription, I reflected on and tested different options prior to deciding on the preferred strategy. Consideration was given to how every utterance or pause in speech may or may not affect the findings if they were included in the transcriptions. Whether to transcribe interviews verbatim compared with non-verbatim was deemed of minimal significance as the focus was on collecting participants' experiences of the phenomenon. Therefore, capturing non-verbal features such as emphasis, speed, tone of voice and pauses was not considered essential for interpreting the data. All decisions about transcribing were guided by the methodological assumptions underpinning the research project.

Costs for transcription were factored into the research project budget; however, given the financial constraints, I transcribed approximately 50% of the interviews. The remaining interviews were transcribed using TranscribeMe, a web-based service offered by NVivo 10 that converts audio content, including single- and multi-speaker content, into accurate text. Using TranscribeMe, transcription files were completed quickly, confidentially and at an affordable price.

3.9.2 Supplementing text with field notes

Field notes were written to record my insights and thoughts throughout the project and to add to the collection of data that reflected participants' experiences of the phenomenon. However, field notes were 'not documents that were intended to be shared' (Glesne, 2015, p. 72). Field notes served the purpose of exploring my personal reactions to events as they occurred and to document 'hunches' about emerging themes and other aspects of the project I wished to remember. Field notes were either descriptive or reflective and were recorded as memos using NVivo's project journal function. Throughout the project, I compiled information to accurately document factual data and my reflections. Observations were captured by writing rich descriptions of each participant, which occurred as soon as possible after each interview and as insights arose when reflecting on the data.

The notes formed an audit trail of the research project and verified what occurred throughout the project. I also recorded my thoughts, ideas, questions and concerns in my field notes. Units of meaning that identified or informed an understanding of each participant's experience of preparing for FDR were highlighted in the transcripts. Each transcript was de-identified and numbered sequentially in chronological order of interviews.

In the third stage of analysis, Colaizzi (1978) recommends creating formulated meanings from the data. This was achieved by formulating 'general statements or meanings for each significant statement extracted from the participants narratives' (Edward & Welch, 2011, p. 165).

The fourth stage involved grouping the meanings into clusters and themes. Data in this research applied to the preparatory stages of FDR, including engaging and registering with an FRC, the period spent on a waiting list, the initial interview,

education sessions and, for those who sought additional help, counselling and/or legal advice. One parent was interviewed on the day he was scheduled to participate in the joint FDR session, while others had not yet been allocated an appointment for their joint session. Statements that represented a common focus were grouped together as a theme of clusters and categories using NVivo 10. Coding was theory- and data-driven. Three main themes emerged from the data, each revealing how participants created meaning from their experiences.

The experiences of parents, FDR practitioners and lawyers are included collectively in preference to allocating a chapter each to parents, FDR practitioners and lawyers. However, each chapter includes discussions that relate specifically to each participant group. Presenting the findings in this way provides a contextual background to reveal the meanings participants attributed to their experiences of preparing for FDR. The similarities between each participant group, irrespective of geographical location or participant group, are highlighted. Categories are then further consolidated to create additional themes that were common to participant descriptions of their experiences of FDR.

Table 3.1 outlines the themes and subthemes of the participants' narratives revealed through thematic analysis.

Table 3.1

Data Chapters and Themes

Chapter	Chapter Title	Themes
Chapter 4	Help Me Get Through	Seeking change Learning one or two things . . . is good enough Legal advice: costs to start, costs to continue Being heard, being listened to—its Maslow's stuff
Chapter 5	Suspended in Unfamiliarity	Are they presenting in a skittish way? People say it doesn't matter, but it does I'm booked, I'm booked, I'm booked
Chapter 6	Divergent and Disjointed: Perspectives of Parents, Practitioners and Lawyers	Parents' perspectives Practitioners' perspectives Lawyers' perspectives Tension between practitioner's and lawyers

The fifth stage involved an exhaustive description of the phenomenon by providing a rich and inclusive interpretation of the lived experience of the phenomenon (Colaizzi, 1978). The main themes are described in detail and are illustrated by the data.

For the sixth stage, I provided an interpretative analysis of symbolic representations (Edward & Welch, 2011). As Colaizzi (1978) suggests, the final validation of data analysis involves returning to participants to ensure that they recognise their experiences in the themes and final statements and to 'revise the description according to their comments' (Priest, 2004, p. 5). In this final stage of Colaizzi's framework, I sought a representative sample from participants to confirm that my analysis of the data accurately reflected their experiences.

Other researchers may conduct research using comparable methods and arrive at similar conclusions; however, my findings are interpretative and were relevant to a certain group of participants at a given point in time. Therefore, dependability criteria are not considered relevant. Previous knowledge brings assumptions about what might

be found in the data. No interpretation of an object can be free of preconceptions because, without a preliminary orientation, it would be impossible to grasp the object at all (Heidegger, 1962). As stated by Mulhall (2013), ‘we would have no sense of what it was we were attempting to interpret’ (p. 84). In keeping with the Heideggerian stance of the researcher being involved, and in contrast to Husserl’s concept of bracketing, I remain transparent about being an experienced practitioner prior to conducting the research project. This was highlighted in Chapter 1.

It was important for my role as researcher to be ‘emic’—to be inside and immersed in the data to seek ‘hidden’ meanings in the experiences of preparing for FDR. As suggested by Padgett (2012), ‘when researchers seek *verstehen* (deep understanding), they pursue studies that are *emic* (i.e. focused on the insider point of view, rather than *etic* [the outsider’s perspective])’ (p. 17). Additionally, to maintain transparency, I chose to acknowledge my assumptions and reflections along with recognising what is known and what was expected to be known at the conclusion of the project. Bazeley and Jackson (2013) suggest that, rather than deny the existence of previous knowledge and assumptions, ‘the researcher should recognize them, record and become aware of how they might be influencing the way the researcher is thinking about the data; thus, controlling the impact of prior knowledge’ (p. 25). Heidegger (1962, as cited in Mulhall, 2013) uses the phrase ‘the fore-structure of interpretation’, which is the connection of interpretation with understanding (p. 87). Heidegger suggested our preunderstanding, or our ‘fore-structure’ of understanding, is sometimes hidden from us but always forms the background to our meaning of things (Parsons, 2010). According to Reiners (2012), ‘Heidegger believed it was impossible to negate our experiences related to the phenomenon under study, for he believed that personal awareness was intrinsic to phenomenological research’ (p. 2). Even so, the inquirer

needs to be diligent in examining their fore-structure in terms of what emerges from the data as they attempt to drill deeper into interpreting meaning (Gadamer, 1975).

Heidegger suggested that fore-structure consists of three elements: fore-having, fore-sight and fore-conception. Considering my background in the field of mediation and FDR, I bring to the research project my ‘fore-having’ of knowledge. My experience and qualifications as an FDR practitioner provide an understanding of the background context in terms of concrete interpretations of the phenomenon. Parent and lawyer participants did not necessarily know that I practised as an FDR practitioner. However, when arranging interviews at each FRC, FDR practitioners became aware of my background because we shared a common language and were familiar with acronyms specific to the field of FDR.

Heidegger describes ‘fore-sight’ as ‘something that is understood but is still veiled’ (Blattner, 2006, p. 95). While I had some understanding of the phenomenon prior to the research, the meaning that parents, practitioners and lawyers attribute to their experiences of preparing for FDR remained elusive.

My previous involvement and expertise in the field of FDR brought to the study that which Heidegger describes as ‘fore-conception’, a practice that is grounded in the researcher’s ‘conceptualizations of the object of interest’ (Mulhall, 2013, p. 85). My experience as an FDR practitioner potentially enhanced my awareness and provided knowledge and sensitivity to the issues being addressed in the research.

The need to be open to the thoughts and opinions of others and to set aside my own experiences to understand those of the participants was considered throughout the research project. Addressing positionality required me to be constantly aware of the experiences I have accrued as an FDR practitioner and to regularly examine my own theoretical lens. Additionally, I was mindful of the term ‘bridling’ as described by

Dahlberg, Dahlberg and Nyström (2008), who ‘warn the researcher to avoid reading and understanding too quickly, too carelessly or too slovenly’ (p. 130).

As Heidegger suggests, a critic evaluating the existence of preconceptions of the researcher will, in fact, bring their own preconceptions to the criticism, which may in turn be open to evaluation. Thus, a circular action becomes manifest. Even though I brought a range of pre-understandings to this research project, the project was undertaken in anticipation that new possibilities for the effective preparation of parents for FDR would be unveiled.

3.10 Ethical Considerations

Ethics approval was sought from James Cook University (approval number H5400) (see Appendix B). The purpose of seeking ethics approval was to ensure the research was conducted under the *National Statement in Ethical Conduct in Human Research (2007)* guidelines issued by the National Health and Medical Research Council in accordance with the *National Health and Medical Research Council Act 1992* (Cth). Once ethical approval had been obtained, it was necessary to seek written approval from each FRC manager (see Appendix C). Additionally, an information flyer (see Appendix E) and participant consent form (see Appendix F) was provided to the FRC managers and participants involved.

It was not anticipated that participation in the study would expose individuals to any more risk than what they would encounter in everyday life or in the process of FDR. Even so, consideration was given to the possibility that participants may be exposed to minor risks. The only foreseeable risk to participants was the potential that they may experience anxiety induced by participating in an interview. Information sheets that included contact details of counselling services were provided to each participant prior to engaging in the interview. Participation was voluntary. A plan was

put in place to address any emotional distress of participants should it occur—the interview would cease, and the participant would be referred to counselling services available onsite. Some participants chose to engage in dialogue once the recorded interview had ended, inadvertently providing them with a short period to express their frustrations regarding their former partners. The provision of counselling for participants aligns with the view of Padgett (2008), who suggested that ‘the researcher should make advance arrangements for referrals to professional counselling if emotional responses are likely to occur’ (p. 68).

To ensure confidentiality, personal contact details of participants were not recorded at any stage. Participant transcripts were de-identified and stored on a USB stick, which was secured in an offsite safe. During all interactions with participants, I observed the basic ethical principles of beneficence, which may have accounted for the lack of identified risks to either the participants or the researcher throughout the interview period. Table 3.2 provides a summary of the participant numbers and locations.

Table 3.2

Summary of Participants

Location	No. Parents	No. Practitioners	No. Lawyers
New South Wales	5	6	4
Queensland	7	4	5
Victoria	6	6	9
Total	18	16	18

3.11 Entering the World of Participants

Written approval to conduct the research was obtained from each of the three FRC managers and a meeting was held with managers, team leaders and practitioners to

elicit any potential practical issues; however, no concerns were raised. As suggested by Padgett (2008), ‘the researcher should obtain the permission of gatekeepers whose approval is necessary to carry out the study . . . Such written permission is essential if their cooperation involves assistance in recruitment’ (p. 57). Participation of parents and practitioners in the research project relied solely on gaining support and assistance from FRC managers in each state. Initially, there were reservations from FRC staff because they felt parents were vulnerable or that it was unreasonable to ask parents to answer research questions. I reflected on the need to have rapport in phenomenological interviews as well as on the concept of reciprocity. Carpenter and Suto (2008) suggest that reciprocity is ‘required on the part of the researcher and is a genuine presence, self disclosure, respect and commitment to involving the participants in all phases of the research’ (p. 126). While respecting the reservations of FRC staff, I was reassured by the provision of ethics approval, my experience, professional qualifications and commitment to the research topic and the aims and relevance of the study.

When explaining my research project and that parents, FDR practitioners and lawyers would be interviewed, managers at Locations 1 and 3 would not allow me to interview lawyers at the FRC without first asking them if it was reasonable to do so. Therefore, it was necessary to independently contact lawyers with a request for participation in the research in each of the three FRC locations.

An overview of each location and the process used to choose locations and participants is now provided.

Selection of locations was based on the following: that the location had an established FRC; that I had not worked in the location as a practitioner; and that the FRC manager agreed to participate in the research.

Participants were purposively chosen to provide the necessary data by sharing their lived experiences of preparing for FDR. Participation was voluntary and each participant was provided with an information sheet about the research. After reading the information sheet and consent form, participants were encouraged to ask any questions. If they continued to express interest in participation, they were asked to sign a consent form. They were again provided the opportunity to ask questions before commencing the interview.

Parents were those who were engaged in the FDR process and had not yet participated in a joint session with their former partner. Interviews were arranged at the time parents were attending the FRC in relation to their participation in FDR.

FDR practitioners were required to be qualified under the stipulations of the *Family Law (Family Dispute Resolution Practitioners) Regulations Act 2008* and employed as an FDR practitioner at the FRC. Additionally, practitioners needed to be available during the period interviews were being conducted. Appointments were made by the team leader of each FRC for FDR practitioners to attend the research interview at a time that was least disruptive to their normal working day.

Invitations were posted to all lawyers who offered family law services in the same geographical location as each of the three FRCs, inviting them to participate in the research (see Appendix D). If they responded to the invitation to participate in the research, I confirmed a time and place with them to conduct the interviews. The interviews were conducted at the business premises of each lawyer from Locations 1 and 3. The process varied for Location 2—this is explained in detail below. All participants and FRC managers were individually thanked. Participants were not provided with any compensation for their time or travel.

Australia is a large and diverse country. Taylor (2017) states that ‘this diversity is obvious when we compare the densely populated southeast to the sparse and underdeveloped north, but significant economic differences exist even across rural areas’ (p. 21). According to the ALRC (2019), the locations for the existing 65 FRCs ‘were selected over 10 years ago, during which time there has been significant population growth’ (p. 471). Pidgeon (2013) highlights that the provision of FRC services to families in rural and remote communities has been an accessibility challenge. FRCs provide outreach services to the main population centres in their region as well as telephone mediation (p. 231). Irrespective of the introduction of FRCs in Australia, families in more remote areas still rely on information, advice and telephone mediation via the Family Relationship Advice Line. Taylor (2017) suggests that even though ‘formulating ideas for regional development policy is easy, solutions need to be economically and politically feasible. As such, policy options must be tailored to local conditions and acceptable to local constituencies’ (p. 22).

As the country transitions from the mining investment boom, diverse regions face diverse pressures and impediments to adjustment. Taylor (2017) states that ‘although all regions must adjust to some extent, there are no one size-fits-all solutions to regional development in Australia’ (p. 21). The need for more local specialist services to support rural communities is well established as a ‘significant issue in Australia’ (O’Sullivan, Stoelwinder, & McGrail, 2019, p. 99).

It has been suggested that a limitation of phenomenology is the lack of attention to gender, race and cultural understandings (Kall & Zeiler, 2014). However, greater cultural diversity of study participants may or may not result in different findings; therefore, there is opportunity for this aspect to be explored in future research studies, even though participants in this research project came from three different sites in three

Australian states. All FRCs must have strategies in place to provide flexible, culturally sensitive and accessible service delivery models and practices to Indigenous clients (AGD, 2019, p. 17).

Submissions to the ALRC (2019) have highlighted the need for models and approaches that meet the needs of Aboriginal and Torres Strait Islanders, culturally and linguistically diverse groups, LGBTIQ people and people with disabilities (ALRC, 2019, p. 276). Even so, in their final report, the ALRC (2019) argues that the rural context makes a difference to the approach to service integration, stating that ‘limited resources require rural service providers to be innovative and flexible in how services are used’ (p. 1036), while Sullivan et al. (2019) assert that ‘promoting the supply, distribution and sustainability of rural outreach services requires multilevel policy development and regional service planning’ (p. 99).

According to Jones et al. (2016), additional barriers to accessing services arise from recruiting and retaining health professionals in regional Australia. Of concern in regional centres is that ‘rural people are less likely to seek help for mental health’ (Collins, Winefield, Ward, & Turnbull, 2009), ‘the life expectancy of people living with a serious mental illness [in regional settings] is up to 10–15 years less than the general population’ (Jones et al., 2016, p. 247) and that ‘policy solutions that apply in metropolitan contexts may not be appropriate in rural contexts’ (Henderson et al., 2018, p. 1031). According to Yamin and Norheim (2014),

A human rights-based approach needs to confront the fact that more than sixty-five years after the Universal Declaration of Human Rights (UDHR) was adopted without dissent, the world is still ravaged by inequalities in power, money, and resources both within and between countries. (p. 297)

3.11.1 Location 1—New South Wales

Location 1 is a regional centre located in the Riverina region of NSW with a population of approximately 64,000 people. Situated midway between Sydney and Melbourne, it is the largest inland city in NSW and is an important centre for agricultural and military enterprises. The original inhabitants of the region were the Wiradjuri people.

Once approval had been obtained from the FRC management in Location 1, dates were organised to interview parents and FDR practitioners and an office was provided onsite. Initially, only one parent agreed to participate in the research. Given the insufficient parent numbers, I agreed with the FRC manager to return to Location 1 on two more occasions a fortnight apart to interview other parents. In total, I visited Location 1 on three occasions. Six FDR practitioners were interviewed onsite at the FRC. Interviews were conducted around practitioners' work obligations and their appointments with parents.

The FRC manager required me to personally arrange all interviews with lawyers and for interviews to be conducted offsite. Invitations to participate in the research were sent to ten lawyers practising in the same location as the FRC and who worked with parents in family law. Four private lawyers responded and were interviewed at their offices. One of the four interviews was conducted via telephone because of distance constraints. A second invitation sent to lawyers who had not responded to the first invitation resulted in no further responses.

3.11.2 Location 2—Queensland

Location 2 is a regional city in north-east Queensland with a population of approximately 180,000, supported by government and military industries. Following approval from the management of the FRC, dates were arranged to interview parents

and FDR practitioners. Interviews were conducted over a one-week period to accommodate the centre's operational needs. Similar to the process used at Location 1, parents were interviewed at the time they were attending the FRC for other appointments. Team leaders at the FRC allocated times for interviews with FDR practitioners. Interviews occurred over the same one-week period at times convenient to practitioners and management.

All lawyers working in family law in Location 2 were sent an invitation to participate in an interview. There were no responses to the 20 invitations sent. A second invitation was sent one month later, still with no responses. After consulting with the manager of the FRC Manager, I decided to give a presentation at a Family Law Pathway Network meeting to generate interest in the research and to seek lawyer participants. This resulted in five lawyers agreeing to participate in the research interviews. Unlike Location 1 and Location 3, the manager of the FRC at Location 2 gave permission for the interviews with lawyers to be conducted at the FRC. As the researcher, I was responsible for all aspects of arranging interview appointments with lawyers from Location 2.

3.11.3 Location 3—Victoria

Location 3 is located 300 km north-east of Melbourne. It has a population of 54,000 and borders a city with a population of 106,000. Location 3 was the last FRC site attended to conduct interviews. A meeting was held with the client services manager of an auspice organisation and the FRC manager and team leader to discuss the research project. It was agreed that interviews could be conducted with parents and practitioners and an office was provided for this purpose. The team leader allocated appointments for interviews at times convenient to the parent or practitioner during the period I was onsite.

I was responsible for organising offsite interviews with lawyers in Location 3. Twenty invitations were sent to lawyers working with parents in family law for expressions of interest to participate in the research project. Responses were received from both community and private legal practitioners. Interviews with lawyers were conducted at their offices at times that were suitable to them.

3.12 The Question of Rigour—Establishing Trustworthiness

Trustworthiness in qualitative research can be achieved by undertaking a variety of approaches rather than being reliant on one set of criteria. As suggested by Glesne (2015), ‘trustworthiness is about alertness to the quality and rigor of a study [and] about what sorts of criteria can be used to assess how well the research has been carried out’ (p. 53).

Prolonged engagement with the data can be accomplished by spending an extended time in the field. This was achieved by being onsite at each of the three FRCs and conducting interviews with lawyers at their offices. This occurred between January 2014 and May 2014. Additionally, interviewing participants required me to be onsite during both daytimes and evenings, depending on participant availability.

Data were predominantly generated from in-depth interviews informed by a phenomenological theoretical approach. Other sources of data such as memos and reflections that occurred throughout the project were included and documented in the project journal component of NVivo. Journal entries were made throughout the research and included interview schedules, study planning, methodological decisions and my own thoughts about the project. Copious entries were made early in the project as ideas and questions developed regarding the phenomenon in question, with fewer entries occurring as the project neared completion. Early in the research project, visual models were created in NVivo 10 to identify what was known about the phenomenon in

question and to assist in identifying pathways to discovering more about it. These visual models changed as the project developed, with later models having little resemblance to earlier models.

Rich, thick descriptions (Glesne, 2015, p. 53) were obtained by writing descriptively and allowing readers to understand the context of my interpretations. Feedback was obtained from representative samples of the practitioner and lawyer participant groups to verify my interpretations, which did reflect those of participants. Clarification of researcher bias and subjectivity was determined on a regular basis by reflecting on my subjectivities and how they were both used and monitored (Glesne, 2015). Throughout the project, an audit trail of the project was documented in the NVivo project journal. Data were analysed through a process of reflecting, exploring, judging their relevance and developing themes that accurately depicted participants' experiences.

The trustworthiness of this research was enhanced through critical reflection (Kahn, 2000) and by providing an open and transparent decision trail using Colaizzi's (1978) framework. All notes, transcripts and audiotapes were retained to maintain an audit trail and in accordance with James Cook University requirements for doctoral research. One of the main objectives in building trustworthiness in my research project was to ensure credibility of the project—this was achieved by undertaking the project in what Yin (2011) suggests is a 'publicly accessible manner' (p. 8).

3.13 Data Analysis

I took a phenomenological approach to data analysis along with considering the research goals and data collection method of in-depth interviews with participants. The analytic phenomenology approach commenced as I transcribed interviews, orienting me

towards an ‘exhaustive, reflective and detailed analysis of each participant’s experience’ (Carpenter & Suto, 2008, p. 128). Glesne (2015) suggests that by consistently

reflecting on the data, working to organise (the data) and trying to discover what the data tells you, the study will be more relevant and possibly more profound than, if the data analysis is a discrete step to be undertaken after data collection. (p. 189)

Analysis of the data occurred through sustained ‘hermeneutic engagement with the data and application of an interpretive lens’ (Wilson, 2014, p. 2910). Initially, I read the data while making notes and memos about key points—some of this occurred immediately following a participant interview. Passages of transcripts were then labelled and categorised according to content so that identically labelled data could be retrieved as needed. The categories had short labels, and, on occasion, a definition was included where required. Categories were organised conceptually—in the early readings, categories were broad and in later readings, they were subdivided into smaller and more precise categories as the data analysis progressed. Throughout the research process, I remained open to new perspectives and ideas.

Three major themes and several subthemes emerged from the data. Each one of the major themes is presented as a chapter and each chapter includes several subthemes.

3.14 Hermeneutical Phenomenological Reflection

Hermeneutic phenomenological inquiry endeavours to elicit the essential meanings of the lived experience of participants by reflecting on their experiences. Elucidation of what it means to prepare for FDR for parents, FDR practitioners and lawyers required me to gain a deep understanding of the participants’ lived experiences as they related to the phenomenon. Therefore, an opportunity is provided when adopting

an interpretative phenomenological approach to undergo an experience that disrupts the everyday aspects of the phenomena that are taken for granted.

The process of interpretation may be circular in which understanding is sought through a dynamic process of entering and re-entering the hermeneutic circle (Conroy, 2003, p. 9). Throughout the project, this occurred numerous times, resulting in rewriting the coding book and recoding themes as new meanings became known, which often followed reflection on the transcripts. Moving in and out or back and forth, periodically looking at the whole of the text and at other times looking at parts of the text, provided me with an evolving awareness, often highlighting previously hidden or undisclosed meanings. In this project, it was I, the researcher, who examined the text to determine what it means to be effectively prepared for FDR. The participants provided the narrative and descriptions of their experiences of the phenomena; however, each time the text was re-explored, further possibilities of what it means to be prepared for FDR were feasible. Participants related their stories and their experiences of the phenomenon from their own perspective and, as the researcher, it was my role to interpret those experiences to achieve the objectives of the research.

3.15 Researcher Concerns

During the research project, I reflected on any concerns that may have affected the outcome of the research so that appropriate adjustments and adaptations could be made. Given that my intention was to use an interpretative phenomenological approach, my primary concern was the possibility of inadvertently combining aspects of descriptive phenomenology and interpretative phenomenology. To maintain the distinction between the two approaches, I reflected on the differences between the roles of participant and researcher. The role of the participant is to provide a narrative, while

the role of the researcher is not to describe but to interpret the descriptions of the lived experiences.

3.16 Presenting the Findings

The findings of this study are presented in the following three chapters. Chapter 4: Help Me Get Through relates to the first research question: *What preparation is currently provided to parents to prepare for FDR?* To date, preparation of parents for FDR in the Australian context is not fully understood, despite the changes that were introduced in 2006. In Chapter 4, I answer the first gap identified in the literature by exploring the preparation currently provided to parents and the opportunities they take to prepare for FDR.

Chapter 5: Suspended in Unfamiliarity also derives from the thematic analysis of the data and applies to the experiences of parents, FDR practitioners and lawyers as they progress through their preparations for FDR. Heidegger's concept of 'familiarity' forms the framework for Chapter 5, even though the experiences of participants are more related to 'unfamiliarity'. For Chapter 5, the second research question is relevant: *What are parents, practitioners and lawyer's need's when preparing for FDR?* According to Hayes et al. (2011), parents often present to FDR with a 'toxic trio' of mental health issues, family violence and substance abuse—this cohort of parents is, therefore, inherently vulnerable. Chapter 5 highlights that, irrespective of whether individuals participate in all that there is to offer or comply with the current FDR process, there are many aspects that remain difficult for participants when preparing for FDR.

The final chapter with respect to data is Chapter 6: Divergent and Disjointed: Perspectives of Parents, Practitioners and Lawyers. Chapter 6 relates to how well participants believe parents are prepared for FDR and highlights the contrast between the perspectives of parents, practitioners and lawyers when thinking about preparing for

FDR. Of particular interest is the disparity between the views of practitioners and lawyers. In this chapter, a combination of the third and fourth research questions answers the third gap identified in the literature. Chapter 7 concludes the thesis.

3.17 Summary

In this chapter, I presented the methodology and methods used to answer the research question. I also discussed my perspectives on how the interpretative phenomenological approach responds to the research question. The research project sought to explore a phenomenon in a natural setting and to collect participants' narratives and interpret their stories to answer the research question. Chapter 3 also provided a transparent explanation of the process as it occurred to provide other researchers the opportunity to consider researching the perspectives of parents, practitioners and lawyers in non-regional areas of Australia.

The aim of my research was to understand the lived experiences of parents, practitioners and lawyers as they prepare for FDR. As suggested by Padgett (2012), 'the purpose of the research is about exploring a topic about which little is known—especially from the insider perspective' (p. 16). As a researcher, I was intent on 'capturing the lived experience from the perspectives of those who live it and to create meaning from it' (Padgett, 2012, p. 17).

Early in Chapter 3, a review of the historical aspects of phenomenology was included for two reasons: first, to place into context the origins of phenomenology, and second, to form a framework that highlights interpretative phenomenology as the most appropriate approach to answer the research question. In this chapter, I addressed critics of phenomenology and Heidegger, identified limitations to the interpretative phenomenological approach and demonstrated the methods undertaken for collecting and interpreting data.

The narratives of 52 participants across three sites were audiotaped, transcribed and meticulously analysed for meanings and disparities. Hermeneutic interpretation and the fusion of horizons between parents, practitioners, lawyers and me as the researcher enabled an interpretative analysis of the data, which is presented in Chapters 4, 5 and 6.

A description about how I conducted the research, the overall strategies and the thinking behind those strategies, the design, techniques and their use along with a comparison of methodologies was covered in Chapter 3. In Chapter 4, the first major theme is presented.

Chapter 4: Help Me Get Through

The secret of getting ahead is getting started.

—Mark Twain

4.1 Introduction

Chapter 4 is the first of three chapters in which I present an exploration of the experiences of preparing for FDR from the perspectives of parents, practitioners and lawyers. Parents unable to reach agreement about post-separation arrangements for their children are required to attend FDR and make a genuine effort to resolve issues between them. However, 12 years after the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* and FDR, there has been minimal exploration of the experiences of parents, practitioners and lawyers in preparing for FDR.

Precisely when FDR commences is contested in the literature. Parkinson (2017) suggests that FDR begins when a formal assessment about the suitability of FDR has been established. In my research, the commencement of FDR occurred once parents had completed their intake and assessment, had attended education sessions and had been deemed suitable to proceed to a joint FDR session. Several parents had also attended individual FDR sessions and had been referred to other programs or agencies for further support. At the time of their interviews, parents were still in the preparatory phase of FDR and had not yet participated in joint sessions.

The joint mediation session itself and the subsequent period were not included in this research as the focus was to explore the experiences of preparing for FDR, rather than the experience of FDR itself. This and the following two chapters describe the individual experiences and perspectives of 18 parents, 16 FDR practitioners and 18 lawyers across three regional Australian sites, one in NSW (Location 1), one in Queensland (Location 2) and one in Victoria (Location 3).

In Chapter 4, I describe four themes that emerged from the data. Theme 1, ‘Seeking change’, relates to how and why parents sought assistance from others to help them communicate and negotiate with each other regarding post-separation parenting arrangements for their children. Of particular interest is that 13 of the 18 parents were those who initiated the FDR—these parents were clear about what they hoped to achieve by participating in FDR.

Theme 2 is titled ‘Learning one or two things . . . is good enough’. All parents, regardless of whether they had initiated or responded to the process, had participated in an education session. Parents and practitioners shared different perspectives on many aspects of the education sessions, including their purpose, format and purported benefits.

Theme 3 is titled ‘Legal advice: costs to start, costs to continue’. Research participants were divided in their opinions about whether legal advice was necessary in the FDR process. Parents who sought legal advice did so prior to engaging in FDR. FDR practitioners varied in their opinions regarding the involvement of lawyers. Each of the 18 lawyers believed parents should have legal advice as they prepared for FDR to provide them with a clear understanding of the likely outcomes should they be unable to reach agreement. Of those parents who chose to obtain legal advice, none could afford to continue receiving legal advice. Therefore, parents wishing to obtain legal advice during FDR relied on FDR practitioners to agree with this and to refer them to subsidised legal services.

Theme 4 is titled ‘Being heard, being listened to—its Maslow’s stuff’. Parents sought support from practitioners, while FDR practitioners sought support from colleagues. FDR practitioners, particularly those at Location 3, noted that parents should have their biological and psychosocial needs met prior to being able to

effectively prepare for FDR, with one FDR practitioner describing it as ‘it’s Maslow’s stuff’. Although lawyers did not mention the need for support, they did provide examples of their own self-care strategies and of colleagues who had experienced ‘burnout’ as a result of working with complex family law clients.

Although they complied with the established process of preparing for and participating in FDR, regardless of category, participants all had differing views on how preparation for FDR occurs.

As mentioned in Chapter 3, data were collected from three participant groups and from three regional sites. To ensure participant confidentiality, pseudonyms have been provided. However, participant groups and locations have been included in citations, which are provided in the following format: (Pseudonym—Participant Group, Location). For example, Franklin (pseudonym) was a parent who was interviewed at Location 3; therefore, quotations from this participant are cited as (Franklin—Parent, Location 3). This format allows readers to identify whether the participant was a parent, an FDR practitioner or a lawyer and to distinguish them by location.

Each of the four themes is now discussed.

4.1.1 Seeking change

Substantial changes to Australian family law were implemented in 2006. Since then, numerous services, including FDR, have become a central part of the Australian Government’s response to family separation. The main objective of the provision of these new services is to move away from litigation and place a greater emphasis on non-adversarial and early dispute resolution. Along with changes to how family dispute issues are resolved, 65 FRCs were established to assist with the dissemination of information about less adversarial processes and the delivery of several programs, one of which is FDR. Parents may choose to undertake FDR at an FRC or with a private

practitioner. The parents interviewed for this research were all engaged in preparing for FDR at FRCs. There are a number of steps that parents must take in the FDR process—each step must be completed prior to engaging in a joint session with the other parent and a practitioner. When FDR occurs at an FRC, each parent undergoes an intake and assessment procedure. Preparation for the joint session involves an interview, and each parent is provided with an equal level of support and preparation. Following this, parents attend an education session in which they are encouraged to focus on the needs of their children as well as receiving advice on parenting plans. Referrals to external services are provided as appropriate.

Parents shared their reasons for deciding to engage in FDR. Where parents were dissatisfied with their current circumstances and unable to reach agreement, FDR offered a supportive environment and an opportunity to resolve their issues. The reasons for engaging in FDR varied and included the desire for a new parenting arrangement that allowed more time with children, seeking advice on how to parent with similar values and parenting styles and seeking a legally binding agreement with the other parent.

Parents cited examples of previous attempts they had made to reach agreement—these included discussing their concerns with their former partners but failing to reach an agreement; previous attempts at FDR in which former partners had failed to attend the joint session; and agreements that were not being upheld. For parents who wished to discuss issues of difference, FDR provided a forum and an opportunity to speak with former partners. For some, FDR was perceived as the only environment in which they felt able to speak with their former partners.

Parents believed that more time with children meant an increased number of days, nights and meals spent with children. Seeking more time also involved knowing

which days a parent could arrange events and activities without their children being present—in other words, having time to themselves rather than having to look after children. ‘More time’ was also interpreted as ‘more structure’—having structure enabled a parent to spend time conversing with their children or assisting them with homework.

Craig (Parent, Location 1) described how, prior to engaging in FDR, he had been unsuccessful in his attempts to contact his ex-partner to arrange more time with his children:

Basically, I wanted to have more time with my children because I’m separated . . . I sent an email to my ex-partner wanting to have more days with the kids, and she pretty much knocked [it] on the head . . . so, here we are, and I’m just hoping I can get the kids for one or two nights a week for dinner. So, check on their homework, see how they’re going and talk to them . . . Hopefully she can understand that I want to have the kids as much as I can.

Another catalyst for engaging in FDR was to seek a change to previous arrangements in which time spent with children had been reduced from daily to only occasional contact during the week. These changes meant that parents missed being with and spending time with their children. One parent explained how he had previously had time with his daughter but that the arrangement had changed. In the best interests of his daughter, he wished for her to spend time with him on specific days. Failing resolution of this, he planned to take the matter to court:

The outcome’s going to be that we will come to an agreement where I will have . . . probably once a week plus every second weekend . . . whether it’s in the best interest of [my daughter] or not, so I’ve got a good feeling that it’s going to end up going to court but I’d like to avoid it. (Charles—Parent, Location 3)

Shared parenting is different to seeking more time. Shared parenting was experienced by parents in this research as sharing the day-to-day routines of parenting equally. Harman (2019) highlights that the purpose of ‘assisting parents to create an atmosphere of happiness, love and understanding for their children must obviate against aggressive, partisan advocacy’ (p. 9). There are several terms used to describe the types of shared care arrangements for children. As suggested by Rathus (2010), ‘subsection 65DAA(3) of the [Family Law Act] provides a statutory definition of “substantial and significant time” which must include weekdays, weekends, holidays, daily routine and special events’ (p. 167). As this ruling applies to both parents, shared time and shared care can only occur when children regularly spend time with each parent. However, when the *Family Law Amendment (Shared Parental Responsibility) Act 2006* was enacted, it provided limited guidance on how the best interests of the child were to be determined.

For parents in this research, shared parenting meant equal time with children and a shared workload, rather than one parent having most of the responsibility for childcare. According to the ALRC (2019), ‘Parental decision making can shape a child’s experiences and development in profound ways. Decisions made by a parent on education, health, religion [and] culture can affect a child’s life on a fundamental level’ (p. 175). For Davina (Parent, Location 2), ‘making the family work and always being the one to put in an effort’ meant there was an inequitable distribution of parenting roles.

Another reason for engaging in FDR was the dissatisfaction arising from differences in parenting values. Ensuring similar values required parents to discuss issues relating to children’s routines, medical needs, appropriate clothing and accessories and cultural values. Franklin (Parent, Location 3) believed that engaging in

FDR could help resolve the difficulties related to his and his ex-partner's different cultural backgrounds, stating that, 'We have had problems since we started our relationship'.

The interchangeable terms used by parents with respect to parental responsibility and shared care implies that parents could misunderstand the *Family Law Amendment (Shared Parental Responsibility) Act 2006* and, hence, engage in FDR without being cognisant of what they are seeking. In other words, some parents believed they needed to attend FDR to resolve disputes about issues that are already enshrined by law. Smyth, Chisholm, Rodgers and Son (2014) explain that 'the 2006 amended Act, introduced [in 2006], created for the first time a presumption of "equal shared parental responsibility"' (p. 118). Although this legislation does not actually provide for equal time, parents arranging equal time with their children may still be a consideration.

To seek change, it was not unusual for parents in this research to engage in FDR on multiple occasions. Parkinson (2013) suggests that one 'reason for allowing more than one free or heavily subsidized mediation in any two-year period is to allow for experimentation and reality-testing [of parenting arrangements]' (p. 205). In contrast to the view that parents can access FDR sessions more than once for the purpose of trialling agreements, Petra (Parent, Location 3) suggested that frequent use of FDR was the result of communication difficulties between parents, stating that there had been no improvement in communication and, hence, 'why I feel we keep returning'.

Having to frequently attend FDR and the lengthy time periods between attempts did not deter parents. Helen (Parent, Location 1) had attended FDR '18 months ago' and Justine (Parent, Location 3) recalled that 'we were here a bit over 12 months ago, trying to sort out parenting arrangements'. Similarly, Allyson (Parent, Location 3) remarked

that she returns on a yearly basis since the FRC had opened: ‘Here we go again, number seven, number eight’.

For other parents, the catalyst for engaging in FDR was the desire to make formal, permanent parenting arrangements, which they believed could be achieved in the joint session. Ben (Parent, Location 1) was seeking an arrangement that was ‘under lock’ as he felt this would enable him to be more organised and plan for times when he was not caring for his children. Michael (Parent, Location 2) wanted to make ‘a formal agreement’ and Davina (Parent, Location 2) was seeking an agreement that was ‘binding’.

With respect to everyday relationships with their ex-partners, parents also engaged in FDR to ‘get things sorted’ (Christine—Parent, Location 3) and ‘to get things fixed’ (Craig—Parent, Location 1). Formal agreements were important to prevent parents continually changing arrangements:

Just to get a formal agreement, to stop her saying, ‘I’m going to do this’ and ‘I’m going to do that. If you don’t do what I say, I’ll do this’. Because I’ll be able to say, ‘No, you can’t do that’. (Michael—Parent, Location 1)

As they progress through FDR, parents are equipped with information about the process and the limitations of what can be achieved. Therefore, it is notable that parent participants who had been prepared for FDR expected to reach potentially unrealistic goals. Agreements or parenting plans made in FDR are not legally binding—they are simply a signed and dated written record of the agreement between parents about the care of their children. Parents who misunderstand the purpose of FDR and participate in the hope of obtaining a legally binding document will not have their expectations met. However, parenting plans can reflect the changing needs of children as they develop. As suggested by Parkinson (2013), ‘there is really no such thing as a final arrangement with

children . . . For this reason, a common goal of mediation in FRCs is to help parents work out parenting arrangements that are appropriate at the time of engaging in FDR. Interestingly, parents who shared their expectations about the outcomes of FDR did not mention their expectations about what the other parent might be seeking. Parent participants appeared to be inadequately prepared and misinformed about the purpose of FDR and the formality of agreement outcomes.

The 13 parent participants that had initiated the process of FDR were aware of the challenges in reaching agreements with their former partners. Techniques they had used previously were no longer available to them; therefore, they were seeking an alternative way to communicate and negotiate. According to Target et al. (2017), ‘Public policy and case law in the courts strongly endorse continuing contact with both parents following divorce if safe, however in practice this is a challenge for many parents and children in divorced families’ (p. 219). The malfunctioning ‘equipment’, or the inability of parents to communicate and negotiate, was unfamiliar territory. This ‘equipment’ was concealed from its prior intention of use and was not ready-to-hand; rather, it had become a hindrance to the predetermined task or, as suggested by Heidegger, unready-to-hand (Mulhall, 2013, p. 49).

4.1.2 Learning one or two things . . . is good enough

A further step in the process of FDR is participation in group education sessions, with ex-partners attending sessions separately. Education sessions are facilitated by FDR practitioners and place a particular focus on the needs of children following parental separation. Although FRCs may differ in their provision of education sessions, there was a consistent focus across the three locations chosen for this study. Education sessions include topics such as strategies for coping with separation, the importance of discussing parental issues away from children, developing parenting plans that consider

the developmental stages of children, family violence and the value of taking a less adversarial approach to resolving issues. Harman (2019) asserts that ‘Therapeutic intervention, support, and educative assistance may be necessary to assist parents heal from trauma or to affect behavioural change or attitudinal shift before a child-focused agreement can be reached’ (p. 15).

These topics are facilitated by an FDR practitioner in a two-hour session, which can potentially change a parent’s behaviours and thought processes. Hunter and Commerford (2015) argue that

Communication is considered in relationship education to be a feature of relationships that can be changed to lead to immediate and future improvements in relationship quality. In other words, communication is one of the “potentially modifiable variables that predict relationship outcomes” (Halford & Bodenmann, 2013, p. 513)’ (p. 5).

However, as Taylor (2005) suggests,

Change does not occur immediately. The philosophy behind the requirement of parenting-after-divorce . . . education programs is to expose the parents to the information that will aid and guide them and their children in their post-divorce adjustment. It is hoped that some change will be immediate, however realistically it’s known that some will complete the requirement just because it’s a requirement. (p. 77)

Education sessions held at the FRCs in this research included topics such as *Parenting after Separation* (Location 1), *Building Connections* (Location 2) and *Parenting Orders Program* (Location 3). Although there are different names for programs, as Kitmann et al. (2012) suggest, ‘there are often many similarities in programs designed to prepare parents for mediation’ (p. 2). Parents attend education

sessions separately to their ex-partners. The rationale for the use of mixed-gender groups in education sessions is to eliminate any issues with family violence and, as suggested by Kochanski (2011), to give parents the freedom to exchange ideas without having their ex-partner present.

Parents expressed different perspectives to practitioners about the purpose and benefits of education sessions. For parents, having the opportunity to participate in a mixed-gender group and being able to express their experiences was valuable. Andrew (Parent, Location 2) felt that ‘there were many services available for mothers but not fathers who have separated’. However, by participating in the education sessions, he was provided the opportunity to spend time with others who had similar concerns to him and became aware of the support available to fathers. Andrew went on to describe his new insights about how his ex-partner might be feeling. The knowledge gained by participating in mixed-gender education sessions facilitated a sense of satisfaction and hope because other parents were experiencing similar feelings:

[I hoped it] . . . helped their situation a little bit because they definitely did with me . . . the group enabled me not to feel so alone and to realise that there were other parents in similar situations . . . having mixed genders in the education session was enlightening and provided the opportunity to hear different perspectives and talk amongst the group . . . they heard me out, I heard them out . . . it was like an [Alcoholics Anonymous] meeting . . . where you sit around and talk. (Andrew—Parent, Location 2)

Irrespective of location, there were differences between parents’ and practitioners’ understanding of the purpose, the format and necessity of education sessions. Practitioners mentioned three significant benefits in providing education sessions for parents. First, education sessions assisted parents to change their current

adversarial thinking and provided practitioners with the opportunity to shift parents' thinking. According to Jane (FDR practitioner, Location 2), 'people do a 180-degree turnaround in attitude after those education sessions'. Second, education sessions allowed parents to obtain new information to create changes in their thinking. One FDR practitioner suggested that parents 'obtain new information and that even learning one or two things from the education session . . . is good enough because it starts to turn the wheel' (Craig—FDR practitioner, Location 1). Third, older parents in education sessions can share their experiences with younger members of the group. FDR practitioners noticed that a parent may be more inclined to listen to advice from older parents than to the same advice from the group presenter. Suggesting that periodically there may be 'heroes' in the room, the exchange of information between parents was expressed by Joanne (FDR practitioner, Location 2) as, 'I've seen it work beautifully where the 40-year-old man says to the 18-year-old man...'.

Although education sessions at FRCs are compulsory (AGD, 2019), FDR practitioners in this research were committed to ensuring parents attended them. To cater for the availability of parents, education sessions were held on both evenings and days of alternate weeks. Parents who had attempted FDR on previous occasions expressed their reluctance to reattend education sessions, despite their availability. However, having done so, 'new learning was gained', although Helen (Parent, Location 1) did question the validity of a 'blanket decision' to impose education sessions on all parents.

When encouraging parents to participate in the education session, Maryanne (FDR practitioner, Location 1) experienced that some parents were 'defensive and reactive' and 'felt surprised' that parents would have such a reaction to the information she was providing. The rules for parents attending education sessions as they prepared

for FDR varied between the three FRCs. At Location 1, practitioners implied that it was compulsory for parents to attend the education session. When encouraging parents to attend, Samson (FDR practitioner, Location 1) suggested practitioners do not always tell the truth to parents about education session attendance:

A lot of people say, ‘Do I have to do the education process?’ We usually don’t tell the absolute truth, and we say, ‘Yes, look, that’s part of our process, both parties agree to do it, and we think it’s an important part of the preparation, and it is an important part’.

At Location 2, attendance at education sessions was voluntary for parents. Parents were given an alternative option to work one-on-one with a practitioner, although practitioners did not give explanations for the criteria to work individually with parents. FDR practitioners at Location 3 did not mention their views on the necessity of parents to attend education sessions.

FDR practitioners at Location 3 commented that they were continually thinking of new ways to provide information and education to parents, particularly for those who were isolated or illiterate. This prompted FDR practitioners to think of innovative ways of delivering the education sessions other than didactically. Maryanne (FDR practitioner, Location 1) remarked that there are ‘those parents that cannot read the written material’ and went on to suggest there are also parents who do not understand the information provided.

According to the 2010–2011 report by ANAO (2010):

Providers of services in the family law arena [are to be] aware that increasingly, clients have a preference to access information remotely and digitally, yet still enjoy a personalised service experience; [therefore], service providers may have to adapt their service provision to meet these needs. (p. 43)

At Location 3, FDR practitioners were trialling the use of social media to provide education, but this was still in the development stage at the time of the research interviews. Although FDR practitioners recognised the need to provide a variety of ways to present education sessions to parents, delivery is currently didactic and supplemented with printed material.

FDR practitioners in Location 2 highlighted that they provided education sessions that met the cultural needs of Aboriginal and Torres Strait Islanders, although cultural considerations were not mentioned at either Location 1 or Location 3.

According to the *Operational Framework for Family Relationship Centres* (AGD, 2019), 'Indigenous outreach services are located within FRCs in specified areas of high-need or with significant Indigenous communities to contribute to enhanced Indigenous service delivery' (p. 10). FDR practitioners at Locations 1 and 3 did not provide culturally sensitive education sessions because the prevailing client population and demographics of those regional centres did not require it.

View of parents differed from those of FDR practitioners on the value and necessity of education sessions. For parents, education sessions provided a sense of universality and enabled a sharing and understanding of other parents' experiences of separation and gender differences regarding emotions and parenting arrangements. For FDR practitioners, the value of education sessions was twofold: first, to inform parents about the effects of conflict on children, and second, to encourage parents to take a different approach to enhance preparation and facilitate parental agreement. Lawyers did not comment on education sessions as part of preparing for FDR.

Theme 2 has explored participants' experiences of participating in education sessions. The positive experiences parents mentioned may be because interviews were

conducted prior to the joint FDR session and during a period in which parents were being supported on an individual basis by the FDR practitioner.

From this research, two aspects of education have become evident as being beneficial to parents as they prepare for FDR. First, parents and FDR practitioners have a different focus in the purpose of the education sessions. Parents seek the collegiality of other parents experiencing difficulties so they may share their experiences. In attending education sessions, parents expressed that they felt less isolated and appreciated the different responses to separation and post-separation parenting from men and women. In contrast, FDR practitioners hoped the education sessions would generate changes in parents' behaviour, believing this could be achieved by educating parents on the developmental needs of children and the effects of entrenched conflict. The emphasis for FDR practitioners to provide education on the effects of conflict may be attributed to the extensive work by Dr Jennifer McIntosh, who has written widely on the detrimental effects of conflict on children.

Second, although FDR practitioners endeavoured to develop new ideas on how to present education sessions, they had limited expertise in catering for parents who were illiterate or had difficulty understanding the content of the information provided. FDR practitioners, particularly those at Location 1, provided printed material to parents and spent time 'working through the booklet', although practitioners at Location 1 were those that highlighted that many parents may, in fact, be illiterate.

Given the varying needs of parents, Marcy (2001) suggests that 'adult learners have differing ways of gathering, processing, interpreting, organising and thinking about information' (p. 118). Practitioners identified that parents acquire information differently in the education sessions—therefore, it may be beneficial for information to be relayed to parents in a variety of ways. Parents and FDR practitioners both

appreciated the benefits of education sessions; however, each had different expectations about their current purpose and format and the necessity of parents to attend.

4.1.3 Legal advice: costs to start, costs to continue

Parents are permitted to obtain legal advice at any time during the FDR process, although participants' experiences of legal advice and FDR varied depending on the site and on whether they were a parent, FDR practitioner or lawyer. With the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* and FDR, the role of lawyers in the family law arena has changed substantially.

The AGD considers it important for parents to be aware of the broader family law system and their rights and responsibilities under the *Family Law Act 1975*. The *Operational Framework for Family Relationship Centres* (AGD, 2019) states that parents are not to be legally represented at FRCs. Even so, FRCs, FDR practitioners and lawyers have defined roles in relation to providing legal advice for parents involved with FRCs. All those who work with parents at an FRC are required to understand their obligations under section 63DA of the *Family Law Act 1975* (Cth). Many of the guidelines are ambiguous, and differences between lawyers providing advice and those representing parents during the FDR process may be misunderstood.

Assessments conducted by FDR practitioners can identify risk factors such as physical and/or emotional violence, financial issues, substance abuse, the needs and capacities of parents, cultural issues and the appropriateness of FDR. Part of this assessment also determines whether legal advice is recommended. The encouragement for all parents attending FDR at an FRC to access subsidised legal advice may reflect that parents cannot afford to pay for their own legal advice. This was highlighted by several parents in this research. Parents were not averse to seeking legal advice but were not in a position to commence or continue receiving legal advice because of its

associated costs. Parkinson (2017) commented that relationship breakdown and separation is a period of financial stress for many families, particularly for those with children. For these parents, the additional cost of legal representation is prohibitive (p. 1). Similarly, Kritzer (2008) comments that

the central aspect of much of the debate over access to justice is the cost of legal services . . . individuals of limited or modest means do not obtain legal assistance because they cannot afford the cost of that assistance. (p. 876)

Some parents sought legal advice as their first step in preparing for FDR. Parents sought advice specific to their personal situation, including advice about instruction, the merit of their case or confirmation that it was necessary to participate in FDR in preference to going directly to court. For example, Peter (Parent, Location 2) wanted advice from a lawyer to determine whether ‘spending \$100,000 going to court [was] a futile venture’.

Parent participants who did seek legal advice as part of preparing for FDR did so either voluntarily or on the recommendation of friends or were referred by FDR practitioners. Several factors were considered by parents about accessing legal advice, including the costs involved with starting and continuing. The cost of seeking legal advice may be a determinant for a parent in deciding whether to, first, engage a lawyer and second, to continue receiving legal advice. Allyson (Parent, Location 3) stated that ‘sometimes, starting impacts your choice to follow it through or not. I know personally, financially to finish this process . . . I’m going to have to get a loan to continue this legally’. For John (Parent, Location 3); the decision whether to continue legal advice was determined by his financial constraints, not by the value of receiving legal advice: ‘When I talked to the solicitor, she said I can fight it through the court, but what’s the

point? . . . [I] don't have any money to pay a solicitor over the next six to 12 months anyway'.

Parents presenting for FDR who wish to seek legal advice may not be in a position to cover that cost. Conversely, parents may engage a lawyer but be unable to continue if the duration of the dispute is lengthy.

FDR practitioner and lawyer participants had contrasting views about the need for legal advice on two grounds: first, whether legal advice was required at all, and second, when legal advice should be provided. Some FDR practitioners preferred that legal advice be provided prior to parents engaging in FDR. For others, having lawyers available during the process of FDR but not present at the joint mediation session was preferable. FDR practitioners also suggested that the timing of legal advice in relation to a parent's emotional state since separating was important.

An advantage of parents having legal advice prior to engaging in FDR is that it may prevent the parent from being misinformed. From one FDR practitioners' perspective,

[Parents] . . . get legal advice from the dreaded Facebook . . . or everybody's a family lawyer out there in the world so everyone's got a friend that went through divorce; therefore, their friend is an expert . . . a lot of misinformation. (Faye—FDR practitioner, Location 3)

Joanne (FDR practitioner, Location 2) mentioned the benefits for parents of receiving legal advice prior to FDR:

It's good if people have legal advice because, otherwise, people might come along wanting things from mediation that aren't necessarily possible anyway. So, they might want to think it's okay to shut a parent out forever, that type of thing. It's good if they get legal advice so, I guess, they've got a bit more of a

sound idea of what the law says, and what might be a likely outcome if they took the matter to court.

Samson (FDR practitioner, Location 1) thought that legal advice during the FDR process could be ‘quite confusing’. FDR practitioners at Location 1 felt it was inappropriate to have lawyers available to provide legal advice, suggesting lawyers should not be involved in children’s matters. With the exception of certain cases, FDR practitioners at Location 1 refused to be pressured by parents who were told by lawyers to obtain a 60I Certificate. As Samson (FDR practitioner, Location 1) stated, ‘It’s terribly important preparation for us to prepare them in accordance with our timeline’.

FDR practitioners at Locations 1 and 2 did not encourage the involvement of lawyers in the FDR process because they anticipated that an adversarial approach would evolve. FDR practitioners described their various experiences of lawyer involvement: ‘Lawyers imagine they can win’ (James—FDR practitioner, Location 1), ‘lawyers come in like heavies . . . the dynamics change in the room . . . [they] are a bit clubby’ (Samson—FDR practitioner, Location 1) and lawyers do not like the ‘warm and fuzzy, feeling stuff . . . all that emotional stuff approach’ (Maryanne—FDR practitioner, Location 1).

FDR practitioners at Location 2 who did refer parents for legal advice referred them to legal services according to their gender: ‘We either refer them to [women’s legal service] if they’re female or stick with [community legal service] if they’re male’ (Joanne—FDR practitioner, Location 2). At Location 2, a system had been developed in which practitioners referred parents for legal advice using a card that gave parents access to expedient free legal advice at a local community legal centre. Practitioners faxed the referral on a twice weekly basis to avoid unnecessary delays for parents seeking advice.

FDR practitioners were sceptical about referring parents for legal advice because of differences in the approaches that lawyers used in preparing parents for FDR compared with those of FDR practitioners. For FDR practitioners, the experience of having lawyers involved in the preparation of parents for FDR was not positive. When considering the merit of including lawyers in the preparatory stages of FDR, practitioners expressed several concerns, particularly regarding the behaviour of lawyers and their different approaches to preparation. One FDR practitioner compared the differences between practitioner and lawyer approaches to preparing parents for FDR:

Common interests, lawyers tell them what their rights are and what the likely result is if they go to court . . . lawyers prefer to negotiate from a positional perspective, and that's not good preparation for a mediation to have people know what their positions are . . . lawyers are . . . good at splitting things into two, [and they] will then have a mini court case . . . [it's] no good for kids, I want to tell you. The amount of law that's involved in kids is bugger all. It should be all just common sense . . . Well, our model doesn't include lawyers here at the family relationship centre . . . the parent then says, but my lawyer says that they can . . . we think [and say to the parent] and even though you've got the loveliest lawyer on earth, we think having lawyers raises a whole lot of new issues for the mediation process. . . . the best approach is having the lawyers butt out and let the mediation process actually . . . give it a chance . . . we are confident that we are able to determine if they are getting shit advice from a lawyer [and] we know when [the parents] need it. (Samson—FDR practitioner, Location 1)

The period between separation and engaging in FDR is an important consideration as FDR practitioners work with parents. Although they did not identify

what would be an appropriate period, FDR practitioners perceived that lawyers use pressure to engage parents. In the experience of one FDR practitioner, parents were still adjusting to separation and may not be having contact with their children: ‘They [the parents] are not even ready to have a conversation . . . [if] we have rushed with the client, [they are] the ones that have gone really badly’ (Cathy—FDR practitioner, Location 3).

Lawyers were laconic in their perspectives about the need for legal advice for parents preparing for FDR. Lawyers suggested that all parents have the opportunity to obtain legal advice, even though legal representation may not be possible. Each of the 18 lawyers across the three sites agreed with the need for parents to understand the likely outcomes if they are unable to reach agreement and are required proceed to court. Lawyers were unanimous in their responses, regardless of their location or whether they worked in a community legal centre or in private practice. Melissa (Lawyer, Location 1) typified the responses from lawyers about preparing parents for FDR when explaining her role:

I will explain to them that they need to understand that the FDR practitioner is not there to give them legal advice, is not there to tell them, well, if you go to court ,this is what’s going to happen . . . [but] quite often they’ve already been through the process when they come here . . . I’m not really preparing them because they’re already done it and they’ve already got their section 60I certificate.

Theme 3 has highlighted the differences in perspectives regarding the provision of legal advice to parents as they prepare for FDR. FDR practitioners and lawyers took different approaches to the decision about whether or not to include legal advice. The AGD (2019) has set a protocol for the provision of legal advice in FRCs and highlights

how parents are to be given the opportunity to have timely legal advice and that practitioners and lawyers are to work collaboratively. It indicates that each FRC can determine how they choose to deliver legal advice to parents that attend the centre. Parents in this research sought legal advice predominantly to understand their personal situations from a legal perspective, including process, probability of outcome and cost. However, parents indicated that unless they took out a loan, they were unable to cover the cost of a lawyer initially or to maintain the costs involved. This suggests that parents are not averse to obtaining legal advice as they prepare for FDR but, rather, that the cost is prohibitive. Legal advice is available by referral for parents attending FRCs; however, in practice, whether a parent accesses legal advice may depend on the philosophical stance of the FDR practitioner with whom they are working.

The strong views of practitioners regarding the inclusion or exclusion of legal advice as parents prepare for FDR are of interest. The divergent and disjointed views between FDR practitioners and lawyers is discussed in Chapter 6. Lawyers believed that all parents should be given the option to have legal advice as they prepare for FDR. However, they noted that since the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*, their involvement with parents occurs predominantly once a section 60I certificate has been issued.

Three aspects of incorporating legal advice as a means of further assisting parents to prepare for FDR have been highlighted. First, parents were not averse to obtaining legal advice as they prepared for FDR but may not have been able afford to engage a private legal practitioner. Second, FDR practitioners did not necessarily adhere to the AGD (2019) guidelines on the provision of legal advice to parents preparing for FDR at FRCs. Depending on their philosophical perspective of the value of legal advice, an FDR practitioner may or may not refer a parent for legal advice, which may

determine whether or not a parent receives legal advice. Third, lawyers admitted that their role in preparing parents for FDR has changed, but they remain united that all parents should receive legal advice as they prepare for FDR.

4.1.4 Being heard, being listened to—it's Maslow's stuff

This theme incorporates two aspects. First, as suggested by FDR practitioners, a parent cannot effectively prepare for FDR when their basic physiological and biological needs are not being met. As cited in Saeed (2000), Maslow claimed that human beings pass through a pattern of need development—meeting one need subsequently provides an opportunity for different needs to be met. Once all physical and biological needs are met, an individual can then have their psychological needs met (p. 32).

Second, the need for further support was identified by parents, practitioners and lawyers. FDR practitioners raised concerns regarding the basic physiological and biological needs of parents. A proportion of parents may present with complex needs that interfere with their ability to effectively prepare for FDR. One FDR practitioner explained that preparing parents for FDR included addressing their psychosocial needs:

We prepare them for FDR, but in order to get to that space of being able to self-advocate and be in a good space to be able to come to a meeting and be clear about what they are hoping to achieve in that, if the client identifies a need for any of the things . . . the need for counselling support, for conflict coaching, for information about children's contact service, legal advice, housing support, domestic violence services . . . clients might express a number of needs in order to be in a good space to come to the mediation . . . and we need to have very good linkages and referrals in place for people to be supported with an expectation that they would get the support that they need in order to be able to

come to a mediation and have a good mediation. (Peter—FDR practitioner, Location 2)

At Location 3, to ensure parents can physically participate in FDR, food parcels are distributed to parents when an FDR practitioner deems it necessary. Parents who need transport assistance are provided with petrol or taxi vouchers so they can travel to the FRC. Additionally, if a parent requires childcare to be able to attend the FRC, this is arranged by the FDR practitioner and funded by the FRC in Location 3.

Recognising that parents need a variety of interventions to prepare for FDR, FDR practitioners described their experiences of seeking assistance from programs offered by the FRC or other providers in the same locality. As a result of the changes triggered by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* and the introduction of FDR, Chisholm (2006) suggests that ‘we can now draw on social science expertise’ (p. 1). However, when referring parents to other service providers, parents and FDR practitioners experience delays in service provision. This results in parents proceeding to FDR without the advantage of having interventions deemed necessary by the practitioner. Parents may be referred to a variety of service providers, which may occur simultaneously to a practitioner preparing a parent for FDR. When referring a parent to another service, FDR practitioners have noted delays and inefficiencies in meeting the needs of parents. Louise (FDR practitioner, Location 3) experienced other service providers as having ‘part-time workers, waiting lists and bottlenecks in service delivery’.

Parents may have complex issues that are impediments to them reaching agreements about post-separation parenting arrangements. This has been identified by Hayes et al. (2011) who suggest that ‘separating parents often experience what they call the toxic trio of depression, family violence and substance abuse’ (p. 11). In their report

on Australia's welfare, the Australian Institute of Health and Welfare (2017) have identified that many in the community experience persistent disadvantage and that disadvantage may be higher for those experiencing divorce and separation (p. 47). Therefore, the length of the waiting list at the agency to which a parent has been referred creates a problem in accessing therapeutic intervention in a timely manner. As Louise (FDR practitioner, Location 3) stated:

This doesn't help, as due to the length of the referral waiting list, a parent may not need the service when it becomes available as their appointment for FDR has already occurred . . . I think it was about three or four months, so it's really hard.

Then the parents don't really need it after they've done that.

FDR practitioners were aware of the limitations of external services when referring parents and believed that these services may not be in a position to accept a high volume of referrals or be able to meet the needs of the referral. FDR practitioners suggested that they needed to work collaboratively with external services and have a better understanding of them to meet the needs of parents preparing for FDR:

They're effective if we are working together in a cooperative way with an understanding of what each service delivers . . . understanding about what you actually do, what sort of service you actually provide and how that is going to assist the client and what need it is going to meet for the client. (Kerri—FDR practitioner, Location 2)

Given the 'bottlenecks in service delivery', parents may be inadequately prepared for FDR. Consequently, FDR practitioners, as well as using their FDR skills, used additional time and resources to prepare parents for FDR.

Parents described 'help' as receiving support from FDR practitioners. Help had many meanings, with parent participants providing several explanations as to how

practitioners helped them during the preparatory stages of FDR. Having the opportunity to speak with an FDR practitioner gave parents the experience of being listened to and being heard as well as giving them the opportunity to express their thoughts as they prepared for FDR. From the perspective of parents, being listened to, being heard and having the opportunity to ‘talk it through’ allowed FDR practitioners to provide the appropriate direction and advice regarding the suitability of proceeding with FDR.

Monica (Parent, Location 2) stated that ‘[FDR] practitioners explain stuff’ and that they helped parents feel confident to proceed. She also sought help from an FDR practitioner to ensure she was ‘taking the right approach’ to resolve issues and prepare for FDR:

Like, how can I put it? I know I’m going the right way about this. I just need that support to say, hey, yeah, you are doing right, this is the right way to go about it. You know what I mean? And, really, just that sort of support to back me up . . . and, yeah, I just pray to God that everything just goes brightly for all of us. Because I’m not going to be able to get through this if I don’t have you women to support me and help me through things.

Some parents envisaged that their FDR practitioner would advocate for them. This may be an indication that parents are inadequately prepared and have unrealistic expectations about the role of FDR practitioners. This is evidenced by parents being unaware that FDR practitioners must remain impartial and are required to adhere to the *Family Law (FDR Practitioners) Regulations 2008*.

Michael (Parent, Location 2) was seeking support from an FDR practitioner to ensure that the joint session would proceed in an orderly manner. He hoped that the FDR practitioner would monitor his ex-partner’s behaviour and ensure she followed the agenda, anticipating that the practitioner might tell her, ‘[you] are being an idiot’.

Another parent thought that their FDR practitioner might deliver information to their ex-partner about issues they had unsuccessfully attempted to resolve. The presence of a neutral third party, that being the FDR practitioner, would ensure a forum where ‘it [the mediation] will go a lot better’ (Andrew—Parent, Location 2).

Parents thought that the information provided to them by FDR practitioners was helpful but identified gaps in the information regarding legal advice. Parents sought information from FDR practitioners about topics such as child support and how to summon the courage to manage family violence. Parents expressed that the material provided by FDR practitioners was beneficial, particularly in relation to information that helped them understand the typical behaviours of children experiencing parental separation. Parents also sought support from a variety of sources, including friends, family and work colleagues who had also experienced difficulties reaching agreements with their former partners, as well as professional assistance from counsellors, psychologists and lawyers.

FDR practitioners sought support from colleagues and team leaders primarily about processes and working with complex clients. Prior to gaining their qualifications in FDR, the practitioners in this research had qualified and/or had been working in a variety of disciplines, including psychology, journalism, rehabilitation, police services, family law, criminal law and social work. Some did not have a prior undergraduate degree and one practitioner’s background was unknown. FDR practitioners may be influenced by their prior experiences, indicating the importance of previous qualifications, experiences and the need to provide therapeutic support for parents. FDR practitioners’ decisions about how to work with parents may be linked to the philosophical stance of the mediator (Fisher & Brandon, 2009). FDR practitioners sought the support of their colleagues in case conference forums in which they

discussed with team members their uncertainties with respect to working with parents: ‘If they’re uncertain whether it’s suitable, they would go to a case conference to say, “Should we say this is suitable or not?”’ (Faye—FDR practitioner, Location 3).

Decisions were made on a case-by-case basis—individual FDR practitioners could determine the most suitable model or approach to use when working with parents. FDR practitioners did not elaborate on how they reached this decision other than through group discussions on how best to work with a parent to prepare for FDR. When FDR practitioners attended case conferences or team meetings, ‘numerous conversations occur within the team and with other professionals’ (Alicia—FDR practitioner, Location 2). While respecting each other’s opinions and experience, FDR practitioners determined the best way to move forward with clients, which included referrals and modifying the FDR model to meet the needs of parents. Taking the opportunity to make decisions based on best practice and to discuss cases with other practitioners in a supportive environment allowed FDR practitioners to ‘work on the theory that five heads are better than one’ (Graham—FDR practitioner, Location 3).

It was common for recently trained FDR practitioners to suggest approaches that had been unsuccessfully attempted by experienced practitioners. These contributions were not ignored, and new FDR practitioners were encouraged to put their ideas into practice when preparing parents for FDR:

There’ll be a new staff member suggesting something. I really have to bite my tongue from saying, ‘oh, we tried that, but it didn’t work, or we tried, but we found this is better’. There’s nothing to say that why it didn’t work last time isn’t why it would work this time. (Denise—FDR practitioner, Location 3)

FDR practitioners sought support to devise models that were flexible to meet the needs of parents. For example, Alicia (FDR practitioner, Location 2) commented, ‘how

our model looks like and where we can effectively stretch it [so that as FDR practitioners] we can be extremely flexible for clients'. FDR practitioners sought the support of their colleagues and team leaders on a regular basis to effectively prepare parents for FDR. Many of the practice changes that occur 'do so because of discussions that occurred during staff meetings' (Denise—FDR practitioner, Location 3).

One FDR practitioner at Location 3 highlighted that having a non-autocratic manager allowed each member of the team to express an opinion on matters relating to practice. This allowed FDR practitioners to feel that their ideas were important because each staff member could 'have an opinion and felt listened too' (Graham—FDR practitioner, Location 3). In a supportive environment, FDR practitioners seized the opportunity to discover 'What do they think?' (Faye—FDR practitioner, Location 3).

Lawyers often spoke more about their colleagues than about themselves when talking about support, commenting that their colleagues had experienced 'burn out' when working with family law clients. Thomas (Lawyer, Location 3) shared his experience of working on a family law case that resulted in him having a six-year break from law before he felt sufficiently recovered from the emotional strain. Lawyers also spoke about their concerns, including the lack of resources in the family court, the insufficient number of qualified family lawyers and the complexity of parents' issues. To 'self-support', Harry (Lawyer, Location 3) described how he now found it difficult to work with 'crying, non-logical parents' and had, therefore, decided he would no longer work in matters involving children. As suggested by Rogers and Gee (2003), 'working with high conflict, psychologically vulnerable parents is extremely demanding, emotions can be extremely intense, with the professional inextricably drawn into the black hole of the dispute' (p. 279).

Although the AGD (2019) provides a process to meet the needs of parents unable to reach their own agreements, parents have expressed that other assistance is required, particularly support from practitioners as they prepare for FDR. Information that outlines the assistance available to parents at FRCs includes words such as ‘advice’, ‘assistance’ and ‘obligations’. However, parents in this research identified that they needed additional support, which was described in words such as ‘being heard’, ‘being listened too’, ‘help’ and having an opportunity to ‘talk through’ their concerns.

Parents placed importance on the role of the FDR practitioner; however, that reliance may be unrealistic and uninformed. At the time of the research interviews, FDR practitioners indicated that the preparation process was complete and that the next step was for parents to meet, along with the FDR practitioner, at the joint FDR session. However, parents remained dependent on the FDR practitioner for emotional support. In contrast, parents alluded to their desire for FDR practitioners to be autocratic and hold their former partners accountable for adhering to the agenda and behaving appropriately. Expectations such as these may indicate that parents are unrealistic about the role of FDR practitioners and are unable to self-advocate, thus are inadequately prepared for FDR.

The experience of FDR practitioners needing support and, in particular, ‘feeling listened too’ was similar to that of parents. Of interest is that parents sought the opportunity to be listened to by FDR practitioners, while practitioners sought opportunities to be listened to by colleagues and team leaders. Parents deferred to FDR practitioners about how best to proceed; similarly, FDR practitioners deferred to their more experienced colleagues during case conferences and team meetings about how best to proceed with particular parents. While parents hoped FDR practitioners would align with them so that together they could coerce former partners to behave

appropriately during joint sessions, FDR practitioners expected their team members to align with them when making decisions about their cases.

Parents and FDR practitioners may require more support than what is currently available to help them progress through the FDR process. By the time of the joint FDR session, some parents are still unable to self-advocate and remain reliant on the FDR practitioner. To a degree, FDR practitioners are also unable to self-advocate as they rely on the ‘group think’ (Janis, 1972) of their team when needing to make decisions about how to manage complex cases. FDR practitioners strived for consensus within team meetings. Potentially, a parent’s progression may be delayed if decisions cannot be made until scheduled case conferences or team meetings.

Lawyers did not elaborate on how they would seek support but reflected on the personal impact that family law clients had on them and made decisions such as avoiding working with ‘emotional’ parents.

4.2 Interpretative Summary of Chapter 4

In this chapter, I provided an understanding of the experiences of parents, FDR practitioners and lawyers as they prepared for FDR. In the literature to date, there has been little exploration of the experiences of parents, FDR practitioners and lawyers as they prepare for FDR. The objective of Chapter 4 was to explore the experiences of the current FDR process from the perspectives of parents, FDR practitioners and lawyers, which relates to my first research question. Participants seized the opportunity to effectively prepare for FDR. They were compliant with the AGD (2019) guidelines when participating in FDR. However, their perspectives on what and how that occurs across the three locations varied significantly.

Four themes emerged from my analysis of the data, reflecting the experiences of parents, FDR practitioners and lawyers as they prepare for FDR. ‘Seeking change’

relates to the catalyst for parents engaging in FDR. ‘Learning one or two things is . . . good enough’ was concerned with the contrasting views about education sessions in which parents participate as a step in their preparation. ‘Legal advice: costs to start, costs to continue’ again highlighted the differing perspectives of participants, this time in relation to the provision of legal advice during the FDR process. In the final theme, ‘Being heard, being listened to—it’s Maslow’s stuff’, the concept of Maslow’s stuff was identified by FDR practitioners who felt that parents’ basic needs should be met by the FRC as an initial step in preparing parents for FDR. FDR practitioners and lawyers also identified colleagues as needing further support when working with complex parents.

Parents sought support from FDR practitioners, and FDR practitioners sought support from colleagues and team leaders. Lawyers did not allude to seeking support; however, they recognised the impact of working with complex family law clients and that further resources and training may be beneficial. The level of support needed by parents and FDR practitioners indicates that the current FDR process is onerous.

Further support for parents may ensure that they are well informed about the role of FDR practitioners and prevent them becoming reliant on practitioners. Given the recognised role of FDR practitioners within the current system, there is merit in introducing an additional role that has some component of therapeutic support or skill building to ensure that parents are able to self-advocate. Similarly, FDR practitioners indicated the need for support and the opportunity to discuss with colleagues how to manage complex parents. Here, too, is the need for additional support for FDR practitioners. Equally, lawyers recognised the adverse effects of working with disputing parents and shared examples of significant personal impact.

Parents and FDR practitioners had contrasting views on the inclusion of education sessions as part of the current process. Parents found benefit in sharing their experiences and hearing the experiences of other parents in a group setting. In contrast, FDR practitioners focused on providing information about the developmental needs of children and how children are affected when parents are in entrenched conflict. Interestingly, FDR practitioners at Location 1 had noticed that some parents were illiterate or unable to understand printed information; however, they continued to provide them with printed information in the belief that it was imperative for them to understand the effects of conflict on children. FDR practitioners at Location 2 catered for the cultural needs of their parents, and practitioners at Location 3 were working on the development of social media as a means of providing education. This may reflect that FDR practitioners are beginning to recognise that how they currently deliver education is insufficient and it may be more effective to include components of what is available at each of the three sites. I have reflected on the literature by Marcy (2001), who suggests that adults have different ways of learning, which may account for the differing views of parents and FDR practitioners on education sessions. Conversely, it could indicate that parents place greater value on a mixed-gender therapeutic group, while FDR practitioners place greater value on a didactic approach and have limited ability to consider content other than the developmental needs of children and the effects of conflict.

The third theme in this chapter highlights that legal advice as part of the current preparation process was valued by parents; however, they did not necessarily have the financial resources to pay for it. FDR practitioners varied in their opinions regarding the value of legal advice for parents preparing for FDR as well as the timing of legal advice if they did receive it. FDR practitioners at Location 1 were opposed to the involvement

of lawyers and were prepared to provide their personal views on the value of receiving legal advice. FDR practitioners at Location 2 were not opposed to incorporating legal advice and referred parents to various community legal service providers depending on the parent's gender. Additionally, they expediated the provision of legal advice by having systems in place that eliminated lengthy waiting periods. FDR practitioners at Location 3 were not opposed to incorporating legal advice but left the decision to parents. Lawyers believed it was imperative for all parents preparing for FDR to seek legal advice. They differentiated between legal advice and legal representation, placing more importance on the former.

Chapter 5 explores the needs of participants when preparing for FDR. Regardless of whether they were prepared for FDR, participants found certain aspects of FDR difficult. Challenges included psychological distress, a history of family violence and being on lengthy waiting lists for appointments when preparing for FDR. These challenges are discussed in detail in Chapter 5.

Chapter 5: Suspended in Unfamiliarity

Knowledge is essentially practical, a matter of know-how rather than knowing that: understanding is a matter of being competent to do certain things, to engage in certain practices. (Mulhall, 2013, p. 81)

5.1 Introduction

In Chapter 5, I present three major themes relating to the experiences of uncertainty and unfamiliarity of parents, FDR practitioners and lawyers as they prepare parents for FDR. Although they took advantage of opportunities offered at FRCs to assist in preparation, participants highlighted many aspects of preparation about which they felt uncertain and unfamiliar.

The first theme in Chapter 5 is ‘Are they presenting in a skittish way?’, which explores the psychological distress related to preparing for FDR. Parents, FDR practitioners and lawyers found managing parents’ emotions difficult. FDR practitioners and lawyers suggested the need to modify their practice to cater for psychologically distressed parents and were uncertain about the appropriate methods to assess the degree and management of psychological distress. When assessing for psychological distress, one lawyer considers the question, ‘Are they presenting in a skittish way?’. If this is the case, the lawyer refers the parent to other services for assistance.

The second theme in Chapter 5 is ‘People say that it doesn’t really matter, but it does’. This theme is concerned with the challenges experienced by participants in preparing for FDR, including having to cope with family violence.

The third theme in Chapter 5 is ‘I’m booked, I’m booked, I’m booked’. Once a parent has decided they need assistance to resolve family issues, he or she registers with a private practitioner or an FRC, with the latter involving being placed on a waiting list. Parent participants commented that having to wait long periods for the joint FDR

session often resulted in increased psychological distress and an escalation of existing family issues.

Parents may present for FDR with complex and long-standing concerns that may or may not be the result of the family dispute. Parents coping with separation and participating in FDR, and those assisting parents going through FDR, face increased difficulties if they also have complex and long-standing issues. The process of separation and FDR is unfamiliar to them—it is a process over which they do not have mastery. Parents come to FDR not yet ‘disentangled’ from their worlds. As Heidegger (as cited in Braver, 2014) suggests, ‘our sense of identity, the understanding of who we are cannot be disentangled from the world that is around us’ (p. 32). In the family law context, it is known that parents are likely to have concerns related to financial difficulties, housing, parenting and employment, and they may have serious issues with domestic violence or child abuse (Rodgers et al., 2004).

In the absence of familiarity, differences in our world, our environment and our understanding become apparent. Rather than having mastery over a skill or an experience, our cognitive attention shifts to the task that is unfamiliar or that with which we are struggling. Participants in this research were focusing on factors over which they did not have mastery, particularly psychological distress, family violence and being suspended on lengthy waiting lists.

5.2 Are They Presenting in a Skittish Way?

Parent participants with a background of psychological distress shared their experiences of preparing for FDR. To ensure that the data collected reflected their exact words and expressions, I have included the exact words of participants because, in the words of Ivey (2013), ‘this approach adds value and gives insight into an experience that is not understood, occurs rarely in a widely scattered population’ (p. 1). However, I

acknowledge that ‘data quotes should typically be used sparingly and in an illustrative capacity. The interpretation and explanation should be provided by the researchers rather than expected of the reader from the quotes’ (Tai & Ajjawi, 2016, p. 179).

Parents spoke of their anger, stress, anxiety, heightened emotions, depression and other mental health issues (both diagnosed and undiagnosed). Mental health disorders often pre-existed but, in some cases, there was an escalation of psychological distress as parents prepared for FDR. FDR practitioners and lawyers also spoke of their experiences working with distressed and emotional parents and their feelings of unfamiliarity and uncertainty in appropriately assessing and managing them. Both FDR practitioners and lawyers spoke of modifying their practice to best cater to the needs of parents who were psychologically distressed.

Rather than discussing specific emotions and mental health issues such as anger, stress, anxiety and depression separately, I have grouped them collectively as ‘psychological distress’ for the purpose of this thesis. Instead of viewing psychological distress through a pathological lens, I describe the behaviours associated with it using the words of participants.

As discussed in Chapter 2, ‘Psychological distress may be defined as a state of emotional suffering (and when) both levels of stress and symptoms stay high over time, the issue of whether conditions are distress or disorder remain unclear’ (Horwitz, 2007, p. 283). Similarly, Mirowsky and Ross (2002) suggest that psychological distress can potentially affect day-to-day functioning. Parents in this research experienced reactions similar to those noted by Burke, McIntosh and Gridley (2009), who found that recently separated parents experience financial stress, changes in networks and a mix of emotional reactions

Some parent participants felt angry and belligerent as they prepared for FDR. For some, these behaviours and emotions had existed prior to commencing FDR, while for others, they resulted from the lengthy period they spent on waiting lists. Parent participants who shared their experiences of feeling angry and argumentative towards their former partners indicated that these emotions and behaviours could have been reduced had they been provided with support, counselling and communication skills. To reduce displays of anger during mediation, Andrew (Parent, Location 2) suggested that ‘maybe somebody could help out’.

Conversely, FDR practitioners did not believe that parents would better manage their anger and belligerence if they were provided support. From the practitioner perspective, providing parents with support may not help because parents would still feel angry about their former partners. Maryanne (FDR practitioner, Location 1) commented on factors that determined whether parents expressed anger in the initial session: ‘This may be dependent on the recency of the separation and the emotional journey and when the separation occurred . . . if they have recently separated, there’s a lot of anger’.

Henry and Hamilton (2011) describe parents in entrenched conflict as those who experience difficulty moving on from their resentment of each other and, for these parents, FDR sessions could involve verbal abuse (p. 104). Maryanne (FDR practitioner, Location 1) commented, ‘If [parents] are on that journey where they’re just so angry about the other person, [there is] not a lot you can do . . . you can only do what you can in terms of getting them prepared’.

Lawyers did not detail their experiences of preparing parents who were angry. However, Catherine (Lawyer, Location 3) acknowledged that ‘there are some [parents] who are just so angry, they want their day in court’. Because parents presented for FDR

at various times post-separation, they experienced different emotional responses.

Emotional responses were also dependent on the reasons for separation. Sam (Lawyer, Location 3) commented, ‘Those parents who have experienced infidelity are immediately impacted by the separation and consideration needs to be given to the appropriateness of trying to mediate with parents who are endeavouring to adjust to their current situation’.

Both practitioners and lawyers suggested that parents’ emotions could ‘take over’ and recognised that it was difficult for parents to focus on the needs of their children. When lawyers explain to emotional parents how sessions would proceed, Eliza (Lawyer, Location 3) commented that ‘they have no idea, the parent tries to think about what is necessary; however, the emotions take over again’. Catherine (Lawyer, Location 3) suggested that parents who are experiencing an escalation of emotions may benefit from ‘purging their emotions, giving parents the opportunity to get some emotions out before they sit together in the joint session’.

For parents exhibiting heightened emotions, there was no indication of the appropriate time to commence preparing for FDR following separation. Cathy (FDR practitioner, Location 3) found that it could be ‘two months, three months, six months’. Additionally, even parents that have been separated for some time, they may experience negative emotions when a new partner is introduced. FDR practitioners and lawyers agreed that parents are particularly emotional when separation had recently occurred. Parents are ‘very emotional in the early days of separation, [as] parents are still grieving about the loss of the relationship’ (Alicia—FDR practitioner, Location 2). Similarly, Denise (FDR practitioner, Location 3) suggested that parents exhibit escalating emotions soon after separation and indicated that they ‘need a different approach, as when a relationship has just broken down, they are very raw and emotional’. The effect

of emotions was multifaceted for participants in this research. When parents exhibited negative emotions, practitioners and lawyers had difficulty assessing and managing them to effectively prepare them for FDR. Jasmine (Lawyer, Location 3) suggested,

We need to remain mindful that, when preparing parents for family dispute resolution, we are working with human beings that have emotions and they are at different stages on their emotional journey . . . that is just the reality.

Even so, containing or regulating negative emotions and recognising that parents are at different stages of separation and thus experience varying emotions is challenging for those endeavouring to assist a parent sufficiently so they can prepare for FDR.

Separation was generally acknowledged as a stressful experience and the stresses associated with high conflict were clearly an element in the lives of many of the parents who seek post-separation services such as FDR (Kaspiew et al., 2009).

Although they did not necessarily use the term ‘stress’, parents identified behaviours that could be attributed to the stress of separation, including increased alcohol consumption, insomnia and troubled dreams, fatigue, poor memory and a reduced ability to remember conversations with ex-partners:

I am really badly stressed because I can’t sleep. I can’t sleep at all. I wake up in the middle of night with the bad dreams . . . My sleep, I would say, is bad. I don’t sleep long. If I don’t sleep, I can’t work, so it’s both related. (Jamal—Parent, Location 1)

Fatigue was also a result of feeling stressed. Monica (Parent, Location 2) described preparing for FDR as ‘It’s a lot of worry, a lot of stress and a lot of pressure and time-consuming’ and the resultant behaviours and reactions to stress: ‘It stops you from moving on in life’.

With respect to memory, parents reported forgetting appointments or what sessions were about and attributed their poor memory to the multiple events and tasks they were required to remember while preparing for FDR. Parents noticed that they were often unable to recall significant information, often over a period rather than being episodic. The inability to recall conversations with their former partners was related to stress for Craig (Parent, Location 1):

[She] probably did tell me . . . but my memory is so bad, I can't remember what happened . . . you try to juggle all this stuff and help them and you just take on too much, and your mind gets muddled and you just forget things, like conversations with her.

Parents believed that stress affected significant areas of their lives, such as how they spent time with their children, their physical health and their finances. While acknowledging that participation in FDR was stressful, parents felt that they had no other choice but to engage in FDR to change their current situations.

Impairments most frequently identified by parents as a direct result of stress included being unable to recall what practitioners had told them, the inability to plan and prioritise, lack of clarity, information overload and the inability to keep abreast of the managing the demands of work and the children's needs. Symptoms of stress were significant for parents preparing for FDR. Stress was experienced by parents in two of the three locations—one parent at Location 3 needed medical intervention to assist in managing her stress.

5.2.1 Assessment of psychological distress

To meet funding criteria, FRCs are required to report basic demographic data and service evaluation summaries. However, formal assessment of psychological distress does not occur. Parents presenting for assistance to reach agreements with their

former partners often have high levels of psychological distress. Despite this, one of the most widely used screening measures for psychological distress—the 10-item Kessler Psychological Distress Scale developed by Kessler and Mroczek (1994)—is not implemented. Despite the routine and rigorous screening of all parents regarding family violence, the routine screening of a parent’s psychological level of distress is a contentious issue. Authors such as Lee and Jenner (2010) support the use of screening for psychological distress, particularly for clients in social care and community services.

It is important to note that FRC staff are not trained or required to formally determine the degree of psychological distress experienced by a parent as they prepare for FDR. However, it is recognised that a significant number of parents present with long-standing and situational psychological distress. Given that parents attending FRCs are considered vulnerable and may bring with them complex psychological and psychosocial issues, a generalised psychological screening assessment is warranted. A more accurate assessment of a parent’s psychological distress may enable practitioners to provide suitable referrals to effectively prepare them for FDR.

FDR practitioners’ opinions varied regarding at what point sessions in which a parent is experiencing psychological distress should be discontinued. Alicia (FDR practitioner, Location 2) commented that she might say to parents, ‘You’ve done exceptionally well. Let’s think about when you might like to come back at another time’. Practitioners may stop a particular session and provide further assistance when the parent feels it is appropriate to continue.

FDR practitioners relied on parents to be open about the state of their mental health to assist in the provision of support. Denise (FDR practitioner, Location 3) suggested that a component of her preparation of a parent is to ‘gauge the parent’s knowledge’ about their own psychological distress. In contrast, another practitioner was

doubtful about her ability to evaluate a parent's psychological distress: 'A parent ran out of the session saying, "I'm going to wrap myself around a tree, I'm going to kill myself". That left me in a spin' (Andrea—FDR practitioner, Location 2). Joanne (Practitioner, Location 2) commented,

There have been times where I talk to my team leader and we discuss and assess that someone is going to be okay for mediation, if someone's mental health is okay, but at any moment, their mental health is not okay.

Lawyer participants did not use specific assessment tools to determine whether a parent's psychological distress would affect their ability to prepare, instead indicating that they made a 'legal assessment' of the capability of parents exhibiting psychological distress:

We will make a legal assessment as to whether the parent would be able to understand or cope with the mediation process itself. We then tell the parent what steps they need to take in order to get themselves a little bit and on the right track or better from there. [This could mean] going to see a drug and alcohol counsellor or getting into drug rehabilitation or going to see a mental health professional and getting back on track. Face-to-face consultation is preferable to assessment over the telephone as this will ascertain if the parent is presenting in a normal way or if they are presenting in a skittish way or if they are looking around the room or their speech is not coherent or if they are jumping from one topic to another . . . At that time, we will establish that there is something underlying and it is, therefore, important to get to the bottom if it before we can start the mediation process itself. (Sharon—Lawyer, Location 3)

Practitioners and lawyers all believed that parents in psychological distress should be appropriately assessed. However, each participant group assessed parents

differently, and neither practitioners nor lawyers described a uniform approach to assessment. Despite this, both FDR practitioners and lawyers noted that it was necessary to modify their approaches when working with parents experiencing psychological distress.

5.2.2 Modifying practices

The impact of psychological distress on the behaviour of parents may require FDR practitioners or lawyer to change their approach to preparing a parent for FDR. FDR practitioners and lawyers both indicated that they modified their practices to meet the needs of parents experiencing psychological distress.

Some FDR practitioners approached parents about aligning their FDR sessions with the timing of medication—by doing so, they considered they were preparing parents for FDR at an ‘optimal time with regard to the parent’s mental health and prescribed medication’ (Denise—FDR practitioner, Location 3). Joanne (FDR practitioner, Location 2) occasionally suspended preparing for FDR until the parent was in ‘good mental health and sees a psychiatrist to change medication or to review prescribed medication’.

Being consistently available to support to parents was considered important, although FDR practitioners did not allude to the reason for this. Many FDR practitioners worked part-time and were not necessarily available on days that parents were progressing through the various steps required to prepare for FDR. Denise (FDR practitioner, Location 3) identified this as a concern: ‘Mental health issues are usually the biggest reason why we would keep the same worker’.

Jasmine (Lawyer, Location 3) commented that, even when she did identify that a parent needed additional support, contacting the FRC for help in providing that support was frequently unsuccessful:

This person really needs to get in and get some help; we flag [these parents]; however, the system is swamped by the people that are vulnerable. It is those parents that need assistance that are not being supported, it is not only about the money . . . it is about their inherent vulnerability.

On other occasions, lawyers prepared parents by ‘just talking to them more generally because all they want is some acknowledgement of the pain or the anger that they are trying to get across’ (Nora—Lawyer, Location 3). However, Jasmine (Lawyer, Location 3) believed that ‘the current system does not help vulnerable clients at all’.

Jasmine’s description may best typify the experiences of practitioners and lawyers when endeavouring to assist parents with psychological distress. Modifying their approaches to cater for the needs of parents with psychological distress was ineffective, as was referring parents with psychological distress to other services. Assessing and managing psychological distress was not within the scope of practice of practitioners and lawyers.

FDR practitioners and lawyers felt uncertain about and unfamiliar with assessment and management of parents that presented with issues of anger, stress, anxiety, depression, heightened emotions and other mental health disorders, and managing these issues was the beyond the scope of their skills. If FDR practitioners and lawyers did attempt to refer parents, access to external services did not occur in a timely manner.

5.3 People Say It Doesn’t Really Matter, but It Does

Compulsory FDR was introduced in 2006 with the intent of providing a workable alternative to adversarial court-based procedures. However, family violence matters are often ‘screened out’ because of safety issues, which may, in turn, limit opportunities for parents to reach resolution. Parkinson (2017) suggests that ‘mediation

can only do so much. Some matters are not suitable for mediation . . . because of a history of domestic violence or some other imbalance of power’ (p. 9).

In the following sections, I first describe parents’ perspectives on the ramifications of a history of family violence on preparing for FDR and second, how parents, FDR practitioners and lawyers prepare for FDR when family violence has been identified.

5.3.1 Ramifications of family violence

Participants varied in their views about the potential ramifications of family violence on parents participating in FDR and whether, in fact, it is appropriate to proceed. Parents who had a history of family violence were afraid of the consequences for them or their children should they proceed with FDR; however, they felt they had no other choice. Petra (Parent, Location 3), who had experienced long-term mental and emotional abuse, was concerned that others may not believe that she had experienced family violence:

He’d thrown stuff at me, but he never actually physically hit me. But mentally, yeah, and emotionally, yeah. I mean people say that it doesn’t really matter, but it does that it has been going on for quite some time—a long time. Like I said, he brought me down to such a level, I just thought, and he thought, I couldn’t do it by myself and couldn’t be without him.

According to Field (2006), the process of FDR ‘is an environment in which a context of family violence will almost certainly provide the perpetrator of that violence with the opportunity to deny their victim any potential for self-determination or empowerment’ (p. 36). For this reason, practitioners thoroughly screen for and assess the safety of parents. In 2013, the Family Law DOORS was introduced as a ‘whole-of-family’ risk screening framework and implemented across the family law sector. This

assessment tool has been validated using an Australian sample (McIntosh et al., 2016). However, this tool was used minimally by FRC staff and was not mentioned by any of the participants in this research. Preparation for FDR may be negatively affected by parents having to simultaneously cope with family violence. In this cohort of clients, family violence may be a ‘normative experience, not the exception’ (Cleak & Bickerdike, 2016, p. 23). Service providers should perform a thorough evaluation of the risk of family violence, and practitioners should receive training and be held accountable to ensure that perpetrators of violence are not physically present when negotiating agreements to prevent exposing victims to additional risk.

Parents with a history of family violence were worried about retaliation from their former partners. As well as having concerns about participating in FDR, they were concerned about how they would manage ongoing family violence. Parents contemplated what it might be like to attend FDR and were anxious about whether they could be in the same room as the perpetrator:

I don’t know, I suppose I just realised the fact that I’m going to be sitting in the same room with him . . . I don’t know, sometimes he was pretty scary. But that’s what has to be done . . . I mean, it’s not the way he treats the kids—it’s more me. It’s just, I suppose, getting ready in that respect. (Petra—Parent, Location 3)

Monica (Parent, Location 2), who had been screened and assessed as suitable for FDR, spoke of her concerns about family violence and described that her former partner may attack me in ways where he can have drugs involved and have me arrested. He could do things like that. He could have that mind [where he] could hit me and he could make it very hard for me. You could be driving down the road and he could knock you off the road, this is my case with him . . . and when there’s

drugs and things like that involved, it can change people's outlook of the way they do things and that reacts back on the children's lives as well.

For parents with a history of family violence, preparing for and participating in FDR may result in retribution from former partners. However, the most effective way to prepare parents for FDR when family violence exists remains unclear. Kerrie (Practitioner, Location 2) suggested it was important to understand the family structures of parents who disclosed a history of family violence, which was best achieved by asking 'the hard questions', such as how family violence was affecting the current dynamics between the parents:

If you don't actually have a good picture of what's going on, if you don't have a good picture of the family structure, if you don't know if there's violence and what type of violence, you've got to be prepared to ask those deeper questions—you need a really good understanding of the violence that's impacting on the situation.

When preparing parents with a history of family violence for FDR, Alicia (FDR practitioner, Location 2) considered the fears and safety of parents. Once she becomes aware of the risk of violence, Alicia discusses with parent's safe places they can meet their former partners for the purpose of transferring children:

For some people, yes, there's real fears and there's all of those sorts of things that we manage . . . and then, obviously, all those conversations about where the safe places are to change over—all of those conversations. Who could be the third party and all those things?

For FDR practitioners, focusing on the needs of children is imperative; however, practitioners must also consider screening for family violence, how mediation might work, what is important for parents and how parents may be supported. FDR

practitioners may consider whether joint sessions or ‘shuttle’ formats are most appropriate for FDR. Maryanne (FDR practitioner, Location 1) discussed the most suitable way to conduct the FDR session with parents who were ambivalent about being in the same room as their former partners: ‘We usually spend an hour—I think it is one of the most important things you’ll do if you’re screening not only for domestic violence but how this mediation is going to work.’ Maryanne also suggested that gaining rapport with parents, checking whether an apprehended violence order had been obtained and ascertaining whether it was appropriate to mediate were important steps in a practitioner’s preparation. Additionally, she provides information to parents about what may or may not be appropriate when proceeding to FDR:

But I think the most important thing as a family dispute resolution practitioner is to first gain the rapport of the client when they’re coming in because, quite often, they’re highly emotional. First, we check there’s no apprehended violence order and whether it is appropriate to mediate and about the confidentiality and the exceptions to it. So, we’re preparing them . . . we are getting information but also talking to them about what might or might not be appropriate in mediation.

Liz (Lawyer, Location 2) suggested that parents with a history of family violence should use shuttle or telephone mediation rather than facing each other in court. Nora (Lawyer, Location 3) indicated that it was the role of practitioners to ‘allow’ parents to have a voice and suggested that practitioners may be reluctant to work with parents who had experienced family violence:

Obviously, that’s the job of the [FDR] practitioner to monitor that and to work with that to make sure both parents have a voice. Sometimes there’s reluctance and obviously when there’s family violence issues, that’s something people just don’t want to go anywhere near.

In Robyne's experience, parents with a history of family violence often make compromises if they are not in a financial position to proceed to court:

Because I've got plenty of clients that walk in my door and they are agreeing to things as I said, shared care for young children, when there's been significant violence. Often, they're doing that because the only alternative for them is court [and] they cannot afford that. (Robyne—Lawyer, Location 1)

While parents spent time thinking about what it would be like to attend joint sessions with violent former partners, FDR practitioners and lawyers spent time thinking about what would be appropriate in relation to assessment and ensuring that parents remained focused on their children. From a lawyer's perspective, forms of mediation that eliminate the need for parents to be physically present with their former partners, such as telephone or shuttle mediation, may be more appropriate for parents with a history of family violence.

The effects of family violence were a concern for parents as they prepared for FDR. Although family violence usually preceded FDR, parents were concerned about the potential ramifications for them after completion of the FDR process.

Despite the potential impact of family violence, FDR practitioners in this research continued to cite examples such as 'we refer them to counselling' and 'we talk about safe places to hand over children'; this implies that, even when parents have disclosed a history of family violence, practitioners continue to prepare them for FDR. All parents interviewed in this research had been assessed as suitable for FDR by practitioners. One parent who had been the victim of family violence and was attempting to resolve her parenting arrangements summarised her situation aptly when she suggested that the experience was 'scary' (Louise—Parent, Location 3).

FDR practitioners were uncertain how to prepare parents with a history of family violence for FDR. Victims of violence often ‘slip through the net’ and proceed to joint sessions with their former partners.

5.4 I’m Booked, I’m Booked, I’m Booked

When they register for FDR at an FRC, parents are placed on a waiting list. The three participant groups had similar experiences and identified three concerns in relation to waiting lists: first, the inequitable fee structure; second, the lengthy period parents spent on waiting lists; and third, the adverse effects of being suspended on waiting lists while preparing for FDR. FDR practitioners and lawyers provided strategies they believed would assist in rectifying these issues.

5.4.1 Inequitable fee structure

Each of the three participant groups expressed concern about the FRC fee structure, suggesting that it affected the length of time parents spent on waiting lists. Fees for FDR vary between FRCs and are typically determined by a parent’s financial situation, particularly if they are on a low income or experiencing financial difficulty. Parents on a gross income of less than \$50,000 or those who receive government health or welfare benefits may receive free services (AGD, 2019).

Parents understood the correlation between reduced fees and lengthy waiting lists. However, Andrew (Parent, Location 2) believed that even with reduced fees, a lengthy waiting period was undesirable: ‘If you want it for free or whatever . . . it has been weeks and weeks that ours has been drawn out’. Free and low-cost services are associated with drawbacks. FDR practitioners suggested that many parents accessing FRCs to prepare for FDR are on low incomes. Therefore, difficulty meeting the demands for service provision was to be expected. Denise (FDR practitioner, Location

3) suggested that ‘the majority of our clients are under the threshold . . . so it’s about providing the service to everybody’.

Parents commonly objected to having to pay the subsidised fees. Graham (FDR practitioner, Location 3) believed this was more prevalent for those parents who were responding to the invitation to participate in FDR:

The first person, if they’re the ones that initiate the procedure and we say that your fee could be \$30, they’re less likely to—I’ll use the word ‘complain’—can’t think of another word. Whereas, when we contact the second party, if they’re in that high-income bracket, quite often, they are the ones that object, like, ‘You’ve asked me to come here, the other party’s initiated this and I have to pay a fee?’ It’s more an affront to them, I think, rather than the actual \$30. It’s more a matter of principle, I guess.

In contrast, FDR practitioners found that a proportion of parents could easily afford to pay for services but expected to receive them at the reduced fee. Graham (FDR practitioner, Location 3) described this experience as frustrating when a parent ‘is earning \$100,000 and yet objects to paying a \$30 session fee’.

The voluntary, non-enforceable nature of fees means that the majority of parents can access services at low cost, regardless of their financial situation. Because there is no policy of fee enforcement at FRCs, parents can opt out of paying fees; however, this prolongs the time they spend on waiting lists. Those who can afford to pay a private FDR practitioner may do so to gain quicker access to services. Additionally, parents may have access to ‘in excess of one hundred hours in the community sector for a minimal or no fee as the practitioner’s hours are not logged’ (Graham—FDR practitioner, Location 3).

Sharon (Lawyer, Location 2) believes there is inequity for middle-income earners in relation to costs. She stated that if she were a client, she would experience this inequity because her income was too high to make her eligible for free legal assistance but too low for her to afford the cost of private legal advice (around \$2000); hence, she would pay more than parents on a lower income. Susan (Lawyer, Location 2) felt that the ‘lengthy waiting lists are exacerbated by parents not being required to pay a reasonable fee for service’.

The length of the waiting list may be reduced if those who could afford to pay fees did so, and those who could not afford to pay fees received subsidised fees for private FDR.

5.4.2 Lengthy periods suspended on waiting lists

A further aspect of unfamiliarity and uncertainty while preparing for FDR was managing the waiting list at FRCs. Participants across all three locations were concerned about the length of time parents spent on waiting lists and identified that the period of waiting for an FDR session was problematic. Despite this, parents had developed a sense of acceptance and complacency.

Parents commonly experienced having to wait several months for a session—appointment times varied from three to five months after first registering for FDR. For example, Peta (Parent, Location 3) was on a waiting list from December to May, while Andrew (Parent, Location 2) was on a one from January to March. Andrew described his experience of securing an appointment: ‘[The FDR practitioner was] looking at his diary going, “I’m booked, I’m booked, I’m booked, I’m booked, I’m booked” . . . and I’m sure he’s not the only mediator here that’s booked’. Andrew, who suffered from depression, described his experience of delays: ‘I felt like I was slipping back into that

dive and then dragging the process out . . . we'd be going on close to just under three months I wouldn't have seen my son'.

Christine, another parent, shared how she 'tried to cope with it the best way you can'. Parents were dissatisfied with the time spent being suspended on a waiting list. Despite this, parents understood that lengthy waiting periods should be expected in the case of a subsidised service with a high volume of clients.

In contrast, FDR practitioners had diverse views about waiting lists. Cathy (FDR practitioner, Location 3) suggested that there was some merit in parents being suspended on a waiting list while preparing for FDR: 'The length of time in accessing appointments is good . . . there is time there, but it's time that parents can prepare, it is a time for them to reflect'. Samson (FDR practitioner, Location 1) advised parents that 'this takes the amount of time that it needs to take' and described his approach to parents who would request an appointment for the following week:

We slow the process down and try to get people to think about it in different ways . . . the best way to prepare a parent is get them off their rights and to explain to them that under the Family Law Act, they don't have any rights, their kids have rights . . . all that sort of stuff.

Some FDR practitioners took an autocratic approach and intentionally suspended parents on a waiting list because they found that the behaviour of parents improved when they were compelled to wait for an FDR session.

Lawyers commented that parents on waiting lists were those who had been unable to resolve conflicts about post-separation parenting arrangements and were, therefore, inherently vulnerable. Lawyers suggested that parents, regardless of their vulnerability, are expected to wait without legal intervention. Any legal advice that had been previously provided would be void once parents made an appointment to engage in

FDR. Lawyers were also concerned about the ‘domino effect’ on the court system. Melissa (Lawyer, Location 1) had similar views to parents in relation to being on waiting lists with no intervention:

They [parents] have so many hoops to jump through. The time you have your actual family dispute resolution meeting might be two or three months. From the time that the first party actually goes to the centre and says, ‘I’d like you to try and organise some family dispute resolution’ . . . by the time they both have their intake interviews, organise that and then get the family dispute resolution meeting set up, it can be two to three months.

5.4.2.1 Strategies to manage lengthy waiting lists

Parent, FDR practitioner and lawyer participants all made suggestions about how the waiting list could be better managed. Each participant group provided strategies that would enable parents to start preparing for FDR much earlier than they can under the existing framework. Petra (Parent, Location 3) believed that the best way to reduce waiting times was for parents to be able to access services earlier, even if that were to only happen in what she described as an ‘ideal world’:

In an ideal world, we wouldn’t even have to be here. Parents would just talk to each other and deal with what they have to deal with—with the children and that sort of stuff. But that’s never going to happen, is it? But just for it to be quicker. I think it just needs to be quicker.

The most effective ways to manage waiting lists and start preparations for FDR remain elusive. Regardless of the model, FDR practitioners suggested that, unless additional resources were provided, difficulties would remain. Faye (FDR practitioner, Location 3) made the following suggestion:

Well, I think there'd be two models. I think if I was in a community sector model where it's well resourced, time is not the issue, you could spend as much time with the client as you like, make as many calls to the client as you like, so therefore you—I would not have them on a holding pattern, I'd have them—I'd probably manage that—I'd want to manage that better. I would not want a waiting list to that degree. So, I'd be getting people in, getting intake, getting a letter done, getting those through quickly, who can get through quickly. Those who needed more time, making sure time is allocated for that. I would prioritise a bit more.

FDR practitioners were uncertain about what could be done to reduce the length of time parents spent on waiting lists: 'They are a problem everywhere . . . I am not sure what can be done' (Cathy—FDR practitioner, Location 3). Currently, parents on waiting lists are managed by 'duty calls', which are undertaken by FDR practitioners to manage the waiting list by maintaining a parent on a waiting list, but if the parent rings the practitioner, you try and settle them down or refer them on or things like that. They sit on a waiting list and there is a process of picking them up from the waiting list and ringing and checking in, making notes that they're going okay. I ask them about things that are happening. It's like a duty thing to keep them on hold. (Faye—FDR practitioner, Location 3)

Parents are provided services depending on the date of their intake, although they are also prioritised on 'individual merit' (Alicia—FDR practitioner, Location 2). If safety is a consideration, practitioners have the ability to prioritise that parent, although the process for making that determination is complex. Alicia (FDR practitioner, Location 2) described the prioritising of parents:

It really gets quite complex about how you prioritise—and you don't want to say deserving of the service or not as deserving of the service. I mean, they've all come through because they've got an issue that needs to be resolved.

Managing the waiting list was described as putting parents 'into a holding pattern'. Faye (FDR practitioner, Location 3) described her experience of lengthy waiting lists:

I just feel as if people are on a waiting list and its sort of like this sense of, I'm on a list, but goodness knows when it will happen. It's like, how do we hold people? And for the clients, as you would understand, this is a vulnerable, conflicted, emotional time. Had things got in a bit earlier, perhaps, Dad mightn't have smashed up something because he's so frustrated that he hasn't seen his kids.

Uncertainty about how to manage waiting lists also related to the concern that practitioners had regarding the negative effects of lengthy waiting lists on children as well as on parents.

5.4.3 Effects on parents of being suspended on waiting lists

Previous studies on service delivery have not dealt with the effects of waiting lists on parents. Interviews for this research were conducted at three sites in three separate states. Parents' and FDR practitioners' views on needing to address the length of waiting lists were similar at each location. The length of waiting lists was a concern for each participant group and had implications for the effective preparation of parents. Conflicts with former partners continued during the period of being on waiting lists. Andrew (Parent, Location 2) experienced 'more stress and anguish . . . [we are] arguing over little things now'.

For FDR practitioners, there was a concern that both parents and children may be negatively affected as a direct result of spending lengthy periods on waiting lists.

Alicia (FDR practitioner, Location 2) had over 80 parents on her waiting list: ‘How the children and families are managing while they wait and the emotional and psychological harm that is often happening because Mum and Dad are in significant conflict’.

Lawyer participants suggested that the current preparation of parents is flawed and agreed with practitioners that being suspended on waiting lists may have a negative impact on parents. A fundamental flaw of providing a free service is the delay in the provision of services that are in the best interests of children. Some parents attend FDR with heightened emotions and being suspended on a waiting list may cause these emotions to ‘fester’ (Catherine—Lawyer, Location 3).

It was thought that being able to attend an FDR session within a few weeks of registering would be more appropriate so that parents could resolve their issues quickly instead of enduring ongoing conflicts. Jasmine (Lawyer, Location 3) believed that parents who need assistance and those who are ‘inherently vulnerable’ should take priority over cost. The experiences of participants in this research contrasted with those in the study by Kaspiew et al. (2009), who found that while parents were not always satisfied, they received the assistance they needed, with most reporting that the FDR and FRC processes were relatively prompt, very affordable, fair and of good quality.

Uncertainty about how to manage the numbers of parents on waiting lists and the length of time people spent on them was a concern for each participant group. Across all three sites, parents were expected to wait for a period ranging from three to five months. During this waiting period, parents were not provided with interventions but were kept in ‘a holding pattern’. Parents, FDR practitioners and lawyers all suggested strategies that might help to reduce the length of time parents had to wait for FDR such as equitable fee structures and providing interventions earlier depending on

parental needs. However, each participant group was uncertain about the most suitable approach or how to make improvements to the current process.

5.5 Interpretative Summary of Chapter 5

FDR practitioners and lawyers are faced with a large number of parents—often with complex issues—seeking assistance with FDR. There is uncertainty in preparing for FDR with respect to three primary areas: psychological distress of parents, history of family violence and management of the waiting list.

Prior to proceeding with FDR, an assessment of parents is undertaken to determine whether FDR is appropriate. FDR practitioners must be satisfied that parents are able to negotiate freely without being compromised by certain factors outlined in the regulations. These factors include a history of violence, the safety of all parties, the equality of bargaining power, the risk of child abuse, the emotional, psychological and physical health of people involved and any other matter that the practitioner considers relevant to the proposed FDR session under the *Family Law Act 1975* and the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*. While safety concerns were formally assessed, assessment of psychological distress was not performed by either FDR practitioners or lawyers interviewed for this research.

Each parent in this research had been assessed as being able to proceed to FDR, regardless of psychological distress or, for some, a history of family violence. As well as psychological distress or family violence, parents were further jeopardised by being placed on lengthy waiting lists. During this waiting period, parents were contacted periodically by telephone. Parents, FDR practitioners and lawyers provided examples of experiencing uncertainty and unfamiliarity with appropriately managing parents' psychological distress, family violence issues and, given the excessive numbers of parents seeking assistance, the waiting list.

Parents in this research experienced anger, stress, anxiety, depression, heightened emotions, family violence and an inability to reach resolution with their former partners. Parents identified that they were seeking assistance to communicate and negotiate with their former partners because they could not disentangle their former partners from their everyday existence.

For participants in this research, the experiences of preparing for FDR contrasted with the intentions of the guidelines established by the AGD (2008). Prior to providing services, FDR practitioners are required to determine whether FDR is appropriate. Although they had completed the necessary procedures, participants expressed uncertainty and unfamiliarity about significant aspects of the preparatory process, suggesting that they focused on activities that were difficult to 'master'.

Parents, FDR practitioners and lawyers at each of the three sites experienced uncertainty and unfamiliarity in the FDR process. This implies that psychological distress, family violence and long waiting lists indeed affect the preparation of parents for FDR.

Chapter 6 discusses three main aspects, each of which highlights a divergent and disjointed perspective on how well parents are prepared for FDR. First, the perspectives of parents, FDR practitioners and lawyers are discussed in relation to how well they believe parents are prepared for FDR. Second, participants' suggestions on how to better prepare parents for FDR are provided. Third, tensions that exist between practitioners and lawyers because of their divergent and disjointed views are highlighted.

Chapter 6: Divergent and Disjointed: Perspectives of Parents, Practitioners and Lawyers

The real voyage of discovery consists not in seeking new landscapes, but in having new eyes.

—Marcel Proust

6.1 Introduction

Chapter 6 is the final chapter that provides a thematic analysis of the experiences of parents, practitioners and lawyers in preparing for FDR. Chapter 4 explored the current process of FDR from the perspectives of the three key players involved: the parents themselves and the FDR practitioners and lawyers who assist them. Chapter 5 highlighted the challenges participants faced in preparing for FDR. Chapter 6 discusses themes that are relevant to how well parents, FDR practitioners and lawyers consider parents are prepared for FDR.

Chapter 6 discusses four themes. The first explores the perspectives of parents on how well they consider themselves prepared for FDR, while the second and third explore the perspectives of FDR practitioners and lawyers, respectively, on how well they believe parents are prepared for FDR. Suggestions from each participant group about how parents may be more effectively prepared are provided. The fourth theme involves the contrasting views of practitioners and lawyers on preparing parents for FDR, which is of particular interest because FDR practitioners and lawyers are encouraged to work collaboratively with each other (Rhoades et al., 2008). However, their divergent and disjointed perspectives may negatively affect parents' preparation for FDR.

The experiences of parents, FDR practitioners and lawyers in relation to preparing for FDR have not been explored since the introduction of the *Family Law*

Amendment (Shared Parental Responsibility) Act 2006, resulting in the presumption that parents are effectively prepared for FDR. The experiences of preparing for FDR at any of the three FRCs and the meanings participants attributed to preparation were unique. Interpretations were similar across the three groups of participants. In the first three sections, I discuss the experiences of parents, FDR practitioners and lawyers, respectively; this is followed by a brief discussion on the disparity between FDR practitioners and lawyers regarding preparation of parents for FDR.

6.2 Parents' Perspectives on Preparation

When discussing how prepared they felt for FDR, parents described various tasks they had completed prior to the joint session, including those they believed would help in their preparation for FDR. Tasks included making lists to take with them to the session, practising what they intended to say to their former partners, going over notes regarding what they did and did not want to bring up in joint sessions, practising having an open mind, ensuring they understood their legal rights, keeping a diary and being prepared for the limited time available during the joint session. Parents had various responses to how well prepared they felt: 'About as prepared as you can be' (Andrew—Parent, Location 2); 'I'm more prepared this time' (Jane—Parent, Location 3); 'Prepared? Not really—I haven't prepared myself in any way' (Craig—Parent, Location 1); 'When it comes to preparing for something, I am quite anxious. I think I'm prepared, even though I haven't spoken to him really for almost two years' (Petra—Parent, Location 3); 'I wasn't prepared to come here today because I didn't know what it was for' (Peter—Parent, Location 3); and 'I think I am pretty comfortable where I'm at with it, or, I feel I'm prepared enough' (Rita—Parent, Location 2).

6.2.1 Concerns about the other parent

After reflecting on their own preparation, parents were concerned about how their former partners may or may not be preparing. Parents also worried about how the other parent might behave in joint sessions. Generally, they based their appraisals on their previous experiences of the relationship. Parents described their former partners' behaviours using various terms, including 'calculating', 'spiteful', 'confrontational', 'unreasonable', 'will exhibit screaming as a means of communication', 'boisterous and has a loud manner', 'does not plan for anything' and 'the sessions will be intense'.

Andrew (Parent, Location 2) described the impact of these behaviours as 'not facilitating resolving an argument as each parent is trying to hurt the other and the conversation becomes nasty'. Peter (Parent, Location 3) explained that 'expecting to get her way results in [me] feeling uncomfortable whenever I go into the room'. Another parent described a former partner as 'calculating' because everything was written down. Charles (Parent, Location 3) explained that his former partner had a 'spiteful nature' and 'will push things to the end—I've got a good feeling that it's going to end up going to court, but I'd like to avoid it'. Parents who are preoccupied with anticipating how their former partner might behave in the joint session may have a compromised capacity to use the new information and skills provided to them.

Parents also cited examples of unsuccessfully attempting to engage their former partners in FDR. Jane (Parent, Location 2) said, 'I contacted him, and he refused my contact, so we didn't go any further'. John (Parent, Location 3) shared a similar experience of multiple attempts to contact his former partner: 'I've asked her several times, I've written her half a dozen letters. I just had no response. The only response I get is negative'. Craig (Parent, Location 1) reflected on his previous attempts to discuss matters with his former partner:

We would speak and end up in arguments at the end—I couldn't get my point across because she just kept cutting me down and so you go, whatever, and hang up because you couldn't be bothered getting stressed out anymore by talking to her.

Previous attempts at FDR did not increase parents' confidence that the current FDR process would occur without controversy or have a different outcome. Rita (Parent, Location 2) shared her experience, stating that her previous attempt at FDR had been unsuccessful as her former partner had left the session prior to completion. From her perspective, the other partner was a 'me-me-me person—he didn't like the fact that it wasn't about him, it is about the kids'.

Despite their previous attempts, parents had engaged in the process without feeling confident that their former partners would respond to their invitation to participate on this occasion. Parents who had instigated the process were aware that staff at the FRC would formally invite the other parent to participate. This prompted a sense of hypervigilance and an expectation that the other parent's behaviour would change as a result of receiving the invitation to participate. Assuming that her former partner had received the invitation to mediate, Jane (Parent, Location 2) stated, 'He was a bit narky toward me on the weekend, I don't want to approach it . . . I will wait and ask the practitioner if he has made contact'.

Initiating parents predicted the expected behaviour of responding parents not only in the preparatory stages of FDR but also at the joint sessions. From the initiating parents' perspectives, it was difficult to anticipate how responding parents would behave at the joint sessions because their behaviours could be unpredictable. Unpredictability of behaviour was related to previous interactions with former partners who, on many occasions, had exhibited inappropriate behaviours.

Charles (Parent, Location 3) remarked that his former partner's behaviour was 'difficult to anticipate'. Monica (Parent, Location 2) wondered 'what mood or what frame of mind he's in on that day . . . he can be a mind-playing person'.

From their previous experiences of preparing for FDR, initiating parents anticipated that the process would not progress smoothly because they expected responding parents to cancel and rebook appointments, sometimes repeatedly. Cancelling and rebooking of appointments was a direct result of responding parents not being able to commit to and keep appointments, resulting in initiating parents 'feeling exhausted with the process' (Allyson—Parent, Location 3).

Assumptions by parents about the behaviours of their former partners were based on their previous interactions, both during their relationships as well as previous failed attempts at FDR. Parents had different perspectives on engaging in and preparing for FDR, which may be according to whether they initiated or responded to the process. Henry and Hamilton (2011) conducted research at FRCs in Western Australia and found that FDR practitioners frequently observed that parents who had been invited to participate were more likely to be abusive and resistant to mediation. In contrast, initiating parents were more open to mediation and were motivated to compromise and construct parenting agreements.

Parents who had initiated the FDR process felt differently about the FDR process compared with how they expected responding parents to feel about it. Despite its similarities to the study presented in this thesis, the findings of the exploratory research conducted by Henry and Hamilton (2011) were different to those of my research. Initiating parents in my research were concerned that responding parents may become angry or abusive during the joint session, use strategies to impress the practitioner, walk out of the joint session or not attend the session at all.

In contrast to the findings by Henry and Hamilton (2011), responding parents in my research were equally concerned about the behaviours of initiating parents. These included concerns about manipulative behaviours, the initiating parent providing evidence in the joint session about the responding parent's inadequacies, the initiating parent having the opportunity to 'tell their story' first and having to proceed to court if FDR was unsuccessful. Parents described behaviours that would be normally be associated with preparing for court proceedings, rather than those associated with preparing for FDR. Responding parents were surprised and worried about what had necessitated engaging in FDR.

Parents who had previously engaged in FDR did not feel any better prepared for the current attempt. However, Allyson (Parent, Location 3) recognised that she was 'more anxious and more fearful of the process at the first attempt'. Allyson shared her experience of feeling prepared for the session but unprepared for the emotional aspects of FDR:

To be personally and emotionally prepared, it's difficult to come and discuss things that you've obviously got issues about and they're very close to your heart . . . the children . . . when there's a disagreement between the two parties . . . and then there's a disagreement going on. It's very hard to be prepared to come and say this is how I feel, and this is what I think—I find it hard to deal with.

Parents provided few comments on what they thought would help them be more effectively prepared.

6.2.2 Further preparation—parents' thoughts

Although they did not describe 'the how', parents did think about 'whether you could have a set of steps that would ensure that someone is fully prepared' (John—Parent, Location 3). Preparation may be dependent on the individual and may be

influenced by ‘whether a parent has or has not accepted that the relationship’s over’ (John—Parent, Location 3). For Charles (Parent, Location 3), ‘having good support and having others to help me out’ influenced how prepared he felt for FDR. Given the diversity of parents’ responses on how well they believed they were prepared for FDR, it was not possible to synthesise their responses.

6.3 Practitioners’ Perspectives on Parents’ Preparation

Similar to parents, FDR practitioners also had diverse views on how well they thought parents were prepared for FDR. They also highlighted differences in preparation between initiating parents and responding parents.

FDR practitioners commented that all parents are taken through the same preparation process, regardless of whether they are the initiating or the responding parent—they go through the same interview process and attend the same information session, education session and premediation appointment. However, FDR practitioners perceived that there is a difference in how parents prepare themselves and believed that initiating parents tend to be more motivated than responding parents. There could be many reasons for this. Graham (FDR practitioner, Location 3) stated that parents make comments such as, ‘I just want to show the world that the other person is such a bad parent, right through to wanting to resolve things’.

FDR practitioners commented that initiating and responding parents often have different attitudes towards FDR and encouraged responding parents to recognise its value. Samson (FDR practitioner, Location 1) commented, ‘[We] try and go through a process whereby we convince them that this is how much they have got to gain by attempting this process’. Graham (FDR practitioner, Location 3) found that parents can ‘ring us and be quite hostile at times’ and that parents may believe that they are ‘being punished by being made to come here’.

FDR practitioners commented that initiating parents tend to be more prepared than responding parents. When this occurs, Joanne (FDR practitioner, Location 1) may choose to ‘delay the mediation in order to be more effectively prepared for FDR’. However, FDR practitioners did not provide suggestions about the types of additional preparation that may be effective or how they enhanced the preparation of responding parents. Graham (FDR practitioner, Location 3), commented that once responding parents attended the preparatory sessions offered to them, ‘it’s not unusual for their attitude to change’.

Samson (FDR practitioner, Location 1) commented that responding parents can be ‘reluctant’ and that they may say things like ‘what’s the bitch want now?’ He went on to comment that responding parents are

often male and when [they] haven’t initiated the process, they get pretty annoyed about the fact that somebody else has taken control over the process. So, people who are really interested in control, which is a lot of what we’re having to deal with, they need to be in control, and they are very difficult to prepare.

Interestingly, 13 of the 18 parents in this research were those who initiated the process of FDR and, of those 13, nine were female. This does align with Samson’s perception that responding parents are often male.

Samson (FDR practitioner, Location 1) went on to suggest that responding parents were often suspicious and that FDR practitioners ‘have to do a lot of conversion work’. While he did not elaborate on the term ‘conversion work’, this may be similar to what other FDR practitioners described as being their focus in the education sessions, which was to change parents’ thinking. The term ‘conversion work’ implies that FDR practitioners endeavoured to change parents’ thinking and behaviour as part of their preparation of parents for FDR. Practitioners suggested that parents could change their

thinking and behaviours as a result of the education sessions and witnessed evidence of this when educating parents about the developmental needs of children and the impact of conflict. In other words, practitioners encouraged parents to focus on the needs of their children rather than on their conflicts with former partners.

6.3.1 Further preparation—practitioners’ thoughts

FDR practitioners reflected on what would more effectively prepare parents for FDR—some believed that some parents would never be prepared for FDR, while others believed that parents needed to change their values, behaviours and focus. FDR practitioners suggested that the inclusion of interventions such as conflict coaching, counselling and child-inclusive practice may be beneficial when preparing parents.

FDR practitioners believed it was important for parents to have resilience and the capacity to effectively prepare for FDR. Additionally, they hoped that parents would show respect and be open to communicating with their former partners. Given that parents often do not communicate with former partners for lengthy periods, these attributes were considered important. Louise (FDR practitioner, Location 3) felt that if parents exhibited these behaviours, it would enable them to ‘gain negotiation skills and adequate time to hear the other parent’s perspective’. FDR practitioners commented that parents presenting with complex issues expected to speak with their former partners about arrangements for their children. Alicia (FDR practitioner, Location 2) remarked that parents may ‘not [have] communicated for over three or four years’ and that there are a proportion of parents that will never be effectively prepared for FDR. While she did not specifically provide a reason for this, Alicia identified that parents who have complex needs are ‘not so well prepared’.

In the experience of FDR practitioners, being prepared is dependent on many things, including the individual characteristics of parents who are desperate to mediate

or who present with complex issues such as mental health disorders, drug or alcohol abuse or a history of family violence. As suggested by Astor (2010),

Family dispute resolution is no longer solely a forum for those who value consensual decision-making and have chosen to be there, but a gateway through which all who wish to go to court must pass. Parents may therefore be struggling with grief, anger, depression, mental ill health, addictions or other factors. (p. 63)

In other words, parents may be unable to see beyond their conflicts with their ex-partners to address the best interests of children because they are enmeshed in grief, anger or depression.

FDR practitioners believed that not all parents in dispute have complex issues but that they typically worked with parents who have been unable to resolve issues without assistance. Reflecting on these situations, Louise (FDR practitioner, Location 3) suggested that there is nothing that can be done for those parents who ‘are just angry about this one situation’. Joanne (FDR practitioner, Location 2) commented that ‘we can offer them water [but] we can’t make them drink’.

For a proportion of parents, issues remain unresolved, preventing them from reaching agreements. Therefore, the degree of preparedness is often reflected by parents’ willingness to engage in the process. Additionally, ‘parents present differently, and each family relationship centre also prepares differently’ (Helen—FDR practitioner, Location 1).

The steps involved in the process of FDR may not be conducive to resolving issues. Samson (FDR practitioner, Location 1) suggested that more time should be spent preparing to ensure that when parents come together they are in a position to communicate and negotiate effectively: ‘[The process is] all skewed . . . an hour

beforehand and then two to three hours of mediation . . . really, it should almost be ticking boxes by the time you get to the mediation’. Gemina (FDR practitioner, Location 1) had similar views: ‘Within the family dispute resolution field, there needs to be more emphasis on preparation’. For Fiona (FDR practitioner, Location 3), ‘A hell of a lot of work [needs] to be done in that area, from solicitors to community knowledge’.

FDR practitioners across the three locations identified interventions that may assist a parent to effectively prepare. FDR practitioners at Locations 1 and 3 spoke of the benefits of ‘conflict coaching’; however, this was a relatively new approach and had not been established at all three locations.

6.3.2 Conflict coaching

Conflict coaching was seen as an intervention that may assist parents in preparing for FDR. FDR practitioners at Location 3 commented that the opportunity to access further training and develop a conflict coaching program could help meet the needs of individual parents. At the time of the interviews for this research, FDR practitioners at Location 3 were about to undertake training in conflict coaching. The manual had arrived on that day and practitioners were ‘a little excited . . . [I will] get to have a read and prepare’ (Cathy—FDR practitioner, Location 3). Training was aimed at providing support for parents while they prepared for FDR. Minimal research examining how and why conflict coaching might work has been conducted. However, by the completion of the training, FDR practitioners hoped to develop a program that meets the needs of parents. Practitioners at Location 3 believed that training in conflict coaching would equip them to assist parents in preparing for FDR. Although it was not considered a required skill for FDR practitioners nor was it a current step in the

preparation of parents for FDR, practitioners acknowledged they needed additional skills to do ‘counselling type coaching’ (Samson—FDR practitioner, Location 1).

FDR practitioners envisaged that being trained in conflict coaching would equip them to assist parents dealing with communication conflicts, to help parents with ‘how to say stuff’ (Samson—FDR practitioner, Location 1) and to work with them ‘when parents push the other parent’s button and they fall in a heap’ (Gemina—FDR practitioner, Location 1).

Learning skills in conflict coaching would assist practitioners to prepare parents more effectively and to ‘look after them’ and be able to ‘offer them counselling and coaching prior to the joint session, but mainly to support the main mediation process’ (Gemina—FDR practitioner, Location 1).

If a parent was deemed to need further support, practitioners would undertake premediation sessions with them. Cathy (FDR practitioner, Location 3) described premediation sessions: ‘It is really about conflict coaching; it is really about helping them draw out what it is they are in dispute about’.

FDR practitioners valued the opportunity for conflict coaches to be available for individual parents. Understanding that components of conflict coaching were available at several FRCs, the opportunity to offer conflict coaching to parents during the preparation stages of FDR and to have a standalone conflict coaching program would ‘be great’ (Cathy—FDR practitioner, Location 3). To prevent conflicts of interest, FDR practitioners recognised the need for previous partners to each be assigned a different conflict coach, meaning there would need to be at least two conflict coaches at each FRC: ‘Probably one each, we need two in the building for the obvious reasons, we can’t send both to the one’ (Lyn—FDR practitioner, Location 1).

FDR practitioners believed that conflict coaching may be beneficial for vulnerable parents but did not identify how they would determine whether a particular parent needed further intervention. Similar to their perspectives on the need for counselling, practitioners did not identify how they would assess the need for parents to be referred for conflict coaching and whether only one or both parents should receive conflict coaching. This research project did not cover the period of the joint family mediation session or afterwards. Given that exploration of this topic is outside the scope of this research project, future research could explore whether conflict coaching assists parents to prepare for FDR more effectively.

6.3.3 Counselling

Parents may voluntarily engage in counselling or be referred for counselling, either at the FRC or externally, prior to engaging in FDR. The objective of counselling is to provide parents with new insights to help clarify their situations and work towards desired change. FDR practitioners cannot provide therapeutic interventions such as counselling as part of their role. FDR practitioners sometimes referred parents to counselling to help them cope with the effects of separation. Additionally, practitioners suggested counselling provides parents the opportunity ‘to assist in slowing down the process of FDR’ (Lyn—FDR practitioner, Location 1).

FDR practitioners described how they referred parents to counselling who they believed were not in a position to commence FDR. If parents are perceived as being unable to self-advocate, practitioners may refer them for counselling, which may delay the joint session. With a signed information release, practitioners can consult with counsellors about counselling sessions conducted with parents. Helen (FDR practitioner, Location 1) suggested that counsellors, ‘although not stating that the parent is not able to proceed with mediation, may influence the practitioner and the parent by

indicating that the parent is not ready yet'. After information is relayed from counsellors to parents and FDR practitioners, practitioners may discuss with parents their views on the counselling sessions and decide the appropriate time to proceed to FDR. Therefore, FDR practitioners provide

an opportunity prior to the mediation to perhaps get some counselling from our counsellors that actually prepares them for mediation . . . it can be counselling generally . . . or just cutting to what happens. I've had some really good feedback from some clients and seen a real shift in the room when they've been to counselling. (Helen—FDR practitioner, Location 1)

FDR practitioners experienced frustration when parents referred to counselling failed to attend and struggled to comprehend why parents did not participate in subsidised counselling, which is provided as part of the preparation for FDR. Gemina (FDR practitioner, Location 1) described the cost of subsidised counselling as 'chicken feed'.

FDR practitioners indicated that parents presenting for FDR may need help to cope with the emotions resulting from their relationship breakdowns as well as the issues that prompted them to engage in FDR. While FDR practitioners spoke about assessing parents prior to referring them for counselling, they did not elaborate on how assessments were made, whether assessments were conducted on both parents and at what stage in the FDR process assessments occurred. As discussed in Chapter 5, when FDR practitioners referred parents to external services, they experienced 'bottlenecks in service delivery', indicating that even with a referral, parents may not receive the benefits of counselling until after the FDR process. This indicates that even in cases where a significant need for counselling has been identified, parents may remain poorly equipped to cope with the FDR process.

6.3.4 Child-inclusive practice

FDR practitioners at FRCs adopt a child-focused approach to preparing parents for FDR. The *Operational Framework for Family Relationship Centres* (AGD, 2019) provides guidelines relating to practitioners and parents working in the best interests of children.

At two of the three locations in this research, child-inclusive practice was an option to further assist parents preparing for FDR. In general terms, child-focused practice means directing discussions towards focusing on the needs of children. Child-inclusive practice is described as directly involving the child in processes that may affect them (McIntosh, 2007). In child-inclusive practice, a qualified practitioner spends time with the child to understand his or her views, subsequently providing feedback to the child's parents. Child-inclusive practice is not a designated step in preparing parents for FDR. FDR practitioners in this research used the terms 'child-inclusive practice' and 'child-informed practice' interchangeably. Some FDR practitioners believed that 'child-informed practice' was a more appropriate term because the term 'child-inclusive practice' could imply that the child is included in the mediation process, potentially leading to confusion for parents.

Child-inclusive practice, developed by McIntosh, Kelly and Johnston (1998), is a process of developmental consultation and therapeutic conversation, and its primary goal is to re-establish and maintain a secure emotional base for children post-separation. The model requires two skilled professionals: a practitioner who works with parents in the resolution of the dispute and a consultant who meets with and assesses the child and provides feedback on the child's perspectives to the practitioner and parents. Child-inclusive practice can 'result in more developmentally appropriate parenting arrangements which are workable and durable' (Cooper & Brandon, 2008, p. 106).

FDR practitioners across the three sites thought about the concept of child-inclusive practice differently. Regardless of whether they used the term ‘child-inclusive practice’ or ‘child-informed practice’, FDR practitioners had firm views on if and when the intervention should be provided for parents. The intervention provides the opportunity for parents with children over the age of five years to participate in child-inclusive practice prior to the joint mediation session. Currently, the FDR process at FRCs includes an initial appointment followed by premediation and joint mediation. Child-inclusive practice may be included ‘for those who are really stuck [and] is helpful to even prepare them further’ (James—FDR practitioner, Location 1). Following assessment and determination of suitability to proceed with child-inclusive practice and once a session has been conducted, information obtained from children is relayed to parents. FDR practitioners remarked that children were not typically concerned about where they should live but wanted to ‘stop the fighting’ or might say ‘I am sick of the change—you are arguing about what’s going to happen and where I am going to live’ (Maryanne—FDR practitioner, Location 1).

Child-inclusive practice or child-informed practice focuses on helping parents to ‘hear the voices of their children’. Carson, Dunstan, Dunstan and Roopani (2018) found that many children and young people report a lack of communication from parents and family law services and feel excluded from decisions that affect them, particularly in relation to parenting arrangements. Carson et al. (2018) suggest that their study highlights the need for more child-inclusive processes across the family law system.

Gemina (FDR practitioner—Location 1) believed that child-inclusive practice should be provided to most parents and encouraged all parents to participate. Although some parents may not be considered suitable for child-inclusive interventions, Gemina believed that

at some level [they] can still take it, even if you think the kid's going to get punished. They're not the right parents to have a message about what the kids think . . . that's opening the door up for the right person to educate them and just give them a few simple, safe messages from the children. Not something where the kid's going to get crucified. I just think, for me, child-inclusive practice is just about right in just about every situation. You can just be very mindful of the constraints on it and behave accordingly.

FDR practitioners' thoughts about the suitability of child-inclusive practice varied across the three sites. At Location 1, referring parents for child-inclusive practice was done at the discretion of the child consultant, a practitioner with specialist training in child-inclusive practice. Child-inclusive practice was not regarded as a suitable intervention at Location 2: 'We don't do that here' (James—FDR practitioner, Location 2). In contrast to this, a limited child-inclusive service was offered at Location 3. Two FDR practitioners at Location 3 had been trained to provide child-inclusive practice, with practitioners preferring to introduce the intervention when the children are 'a bit older [and] need or want a say in the outcome of parenting arrangements' (Graham—FDR practitioner, Location 3). At Location 3, approximately three child-inclusive practice sessions had occurred in the previous 12 months, even though two FDR practitioners were trained to conduct sessions. While recognising the benefits of child-inclusive practice, practitioners at Location 3 found that, in their experience, one parent may be interested in pursuing it, but the other parent may believe that the interested parent would influence what the child might say to the child consultant.

There were several disparities between the three FRCs in using child-inclusive or child-informed practice when preparing for FDR. Location 1 promoted child-informed practice with little restriction to parents, noting that it may be appropriate for

parents to hear what they called ‘hard messages’ (Gemina—FDR practitioner, Location 1). FDR practitioners at both Locations 2 and 3 did not advocate for child-inclusive practice when preparing parents for FDR, although those at Location 3 were not averse to the process. Of interest is that FDR practitioners at each of the three locations did not believe child-inclusive practice was suitable for children under the age of five, although they did not provide their reasons for this.

Similar to their approaches to other interventions such as counselling or conflict coaching, FDR practitioners did not indicate how they decided whether it was necessary to refer parents for child-inclusive practice when preparing them for FDR. However, FDR practitioners did seek various interventions in addition to what the current FDR process provides for parents.

6.4 Lawyers’ Perspectives on the Preparation of Parents

Lawyers believed that the objective of the *Family Law Amendment (Shared Parental Responsibility) Act* 2006 is to reduce the need for parents to enter a legal process. Regardless of whether they worked in a community legal setting or in a private capacity, lawyers at all three locations believed it was imperative for parents to receive legal advice. Lawyers encouraged parents to focus on the needs of their children: ‘Having legal advice would enable a parent to be prepared—if they understand what the child’s needs are, in my view, those parents have been the best prepared’ (Richard—Lawyer, Location 2).

According to lawyer participants, parents who do not receive legal advice have a poor understanding of how the law operates in relation to post-separation parenting disputes. Lawyers’ perspectives on the need to incorporate legal advice was discussed in Chapter 5. However, it is revisited here as lawyers believed that legal advice is an essential tool in the preparation of all parents for FDR.

Richard (Lawyer, Location 2) believed that FRCs ‘do not advocate for parents to get legal advice’. Melissa (Lawyer, Location 1) thought that FRCs discouraged parents from engaging lawyers:

Keep the parents away from lawyers and keep them out of court. If the lawyer becomes involved, you are more likely to end up in court. That what I think and whether or not you would ever see centres actively promoting clients receiving legal advice prior to coming to a session, I don’t think so.

FRCs do not advocate for lawyers to be involved in the FDR process; however, according to Trish (Lawyer, Location 2), ‘In the community, the generalised population’s view of lawyers is that we are the experts, which is fine because that is how it is’. Robyne (Lawyer, Location 1) suggested that parents often resort to receiving advice about the law from ‘a neighbour who has been through divorce or Joe up the road or whatever . . . we always advocate for people having legal advice first-hand before they go to mediation, but I think that happens reasonably infrequently’.

Additionally, the belief remains that ‘in the mind of the [FDR] practitioners, going to a solicitor disengages parents from the resolution process’ (Melissa—Lawyer, Location 1). Similar to FDR practitioners, lawyers found that some parents are particularly challenging and, in effect, will never be prepared for FDR. There are parents who ‘don’t get ready’ (Sam—Lawyer, Location 3) or ‘really have no concept of what it’s about. They have no concept of seeing it any other way than the way they see it’ (Jasmine—Lawyer, Location 3).

The difference between parents who can effectively prepare for FDR and those who cannot was summarised by Thomas (Lawyer, Location 3): ‘There are some clients who simply just need help in going through the process’.

Parents may seek the assistance of a lawyer following unsuccessful attempts at dispute resolution. Some parents had engaged in several attempts at FDR. For parents who had made multiple unsuccessful attempts at FDR before seeking advice from a lawyer, Melissa (Lawyer, Location 1) had experienced parents saying to her, ‘I don’t want to keep having to go back every 12 months to go through this process that I find distressing’.

Sonia (Lawyer, Location 2) worked with Aboriginal parents and had found that they preferred to work with Aboriginal FDR practitioners. In her experience, it was important for parents to have the opportunity to build trust and respect with those assisting them; however, this could be challenging. Sonia suggested that many Aboriginal families in small communities are related and that connections exist between extended family members:

In terms of an Indigenous community, where everyone is related, we get a lot of so-and-so cannot work with so-and-so because they are family. We get a lot of that, even in our office because we’ve got Indigenous support workers, and sometimes they cannot work with certain clients because they are family. So, it’s difficult in that sense. If you’ve got a limited number of services that can help, there is going to be that conflict of interest. Where else can the client go?

(Sonia—Lawyer, Location 2)

Citing further examples, lawyer participants had found that some parents were more difficult to prepare, and some may never be effectively prepared. Parents were described as being ‘unable to hear what the other parent was saying because they had been shut out or they had their blinkers on’ (Robyne—Lawyer, Location 2) or ‘not in the right frame of mind’ (Richard—Lawyer, Location 2). Sonia (Lawyer, Location 2) described some as

high-conflict parents as they do not understand and do not know how to relate to the other parent . . . parents that come in and are in a flap and need to be calmed down and parents who after receiving the invitation to mediate just go, ‘Oh, I don’t want to do that’ and just turn up on the day and don’t take anything away from [the] information session.

For lawyer participants there are ‘some people that you could prepare until the cows come home and they won’t make any difference’ (Jasmine—Lawyer, Location 3) and those parents who are ‘just not mentally capable at the time’ (Eliza—Lawyer, Location 3). Similar to practitioners, lawyers also commented that some parents may not be effectively prepared.

Parents presenting with complex issues need additional assistance to progress through the FDR process. Rogers and Gee (2003) suggest that while some clients are assisted by traditional interventions, high-conflict clients take up disproportionate amounts of resources and prove resistant to traditional forms of intervention (p. 268).

6.4.1 Further preparation—lawyers’ thoughts

From the perspectives of lawyers, parents are not effectively prepared for FDR for the following reasons: ‘Parents’ expectations are not managed . . . parents who have no insight and are not capable of gaining any insight’ (Sam—Lawyer, Location 3); ‘those who are less prepared are those with little education’ (Jasmine—Lawyer, Location 3); ‘parents that are ill-prepared, they are not in the right space, I guess, to make perhaps good decisions’ (Nora—Lawyer, Location 3); and ‘with the current family relationship centre process . . . many are falling through the gaps’ (Sharon—Lawyer, Location 2).

Melissa (Lawyer, Location 1) suggested that the current system does not effectively prepare parents for FDR: ‘I don’t think it’s really fixed it to be honest, that’s

how I feel, I don't feel like there's any less work now than there was before'. Richard (Lawyer, Location 2) believed that the current system needed to be 'reverse engineered' to ensure effective preparation of parents. Lawyers thought that parents whose matters were unresolved should receive consistent advice to understand the differences between a parenting plan and a parenting order and to have a greater understanding of child development needs. Melissa (Lawyer, Location 1) remarked that, during the process of FDR, parents need to be aware of

what the law says about parenting—these are the types of things courts will take into consideration, these are the issues that are relevant to your family dynamic, these are the things we need to talk about and be clear about.

According to Cooper and Brandon (2008), 'Lawyers can prepare their clients to participate in interest-based negotiations by discussing their legal positions and encouraging them to think beyond these . . . to work towards child-focused parenting arrangements' (p. 112). All lawyers believed that the provision of legal advice was the most effective way to prepare parents for FDR.

6.5 Tensions Between the Roles of Practitioners and Lawyers

This subtheme highlights differences in the experiences of preparing parents from the perspectives of FDR practitioners and lawyers. There have been significant changes to the ways in which parents attempt to reach agreement and how this is managed, as well as changes in the roles of those who assist parents to reach agreement. FDR is a complex process undertaken with parents who are highly emotive and who may bring with them complex and long-standing issues to be resolved in a relatively short time frame. In this setting, FDR practitioners and lawyers have different roles. FDR practitioners and lawyers in this research project had divergent and disjointed

views on the best ways to effectively prepare parents for FDR and to execute parenting plans.

FDR is dependent on parents' capacity to negotiate with each other using the assistance of a practitioner to manage these negotiations. Given that parents have undertaken the process of preparation, there is an assumption that they have the capacity to advocate for their own needs and interests in joint FDR sessions. It is also assumed that FDR practitioners and lawyers will work collaboratively to support and assist parents to reach agreement.

6.5.1 Practitioners' and lawyers' behaviours may mirror those of parents

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* requires many things of parents. Amendments to the *Family Law Act 1975* also led to changes in the roles of practitioners and lawyers. Therefore, the successful preparation of parents seems dependent on the contribution of knowledge and skills from both professional groups.

However, the relationships between FDR practitioners and lawyers mirrored the relationships between some of the parents in this research. Rhoades et al. (2008) found that there are areas of potential conflict and sources of tension that may inhibit positive working relationships between FDR practitioners and lawyers, including 'confusion about role boundaries, hierarchical approaches to the inter-professional relationship, lack of respect for the other profession's skill base, and poor understanding of the other profession's responsibilities and work practices' (p. 1). FDR practitioners and lawyers in this research were distrustful and disrespectful of the other profession's expertise and 'pulled against' rather than 'pulled together' to effectively prepare parents for FDR.

FDR practitioners believed their role involved 'eliciting a lot of information, but also to listen and to look . . . picking up on things about [parents'] emotional side or if

there are safety issues' (Maryanne—FDR practitioner, Location 1). When thinking about his role in preparation of parents compared with that of lawyers, Samson (FDR practitioner, Location 1) commented,

We try and prepare the parents to look for common interests, while a lawyer will prepare them by telling [parents] what their rights are and what the likely result will be if they go to court . . . they want to negotiate positions . . . so that's not good preparation for parents to know what their positions are. Lawyers, you can see them seething . . . suddenly they have lost control . . . they are being asked to support their clients in a different process . . . they roll their eyes . . . they roll their eyes at me . . . it is a joke . . . Lawyers are people who know things . . . a lawyer thinks they are God . . . they think lawyers are the be-all and protector.

Maryanne (FDR practitioner, Location 1) suggested that lawyers perceive the work that practitioners do as 'Oh, I couldn't do all that warm fuzzy stuff'.

Andrea (Lawyer, Location 3) identified the attributes she believed a practitioner needs to work with parents:

They need [to be] a skilled mediator . . . if you don't have a mediator that is really competent, that is going to have a really big impact on the issues and the ability of people to get a resolution . . . one that hasn't got their own agenda, that is able to listen, that has techniques to engage people, because it's very hard to keep up in the mediation that goes for two to three hours, to keep focused, remember what people have said or when someone else has gone off track . . . yeah, you can have people with different skills. A lawyer or a social worker or a counsellor come at it from different angles.

FDR practitioners and lawyers in this research did not exhibit the behaviours reported by Rhoades et al. (2008), particularly regarding the appreciation and respect of

the other profession's contribution to assisting parents with FDR. According to Brandon and Stodulka (2008), 'practitioners are likely to be influenced by their professional background, their training, skill level and their framework for practice. They may have different perspectives that influence their style and may not always be consistent in every case' (p. 209) and 'Family lawyers play an important role in supporting and advising their clients before, during and after a dispute resolution process' (p. 206). Of interest is the differences between the perspectives of FDR practitioners and lawyers regarding parenting plans.

6.5.2 Differing views on parenting plans

Parents are encouraged to reach agreement about post-separation arrangements for their children and to document this agreement in a parenting plan. Parenting plans deal with issues such as where children will live, how they will spend time with parents and other important matters. Parents who have come to an agreement on their own accord or with the assistance of lawyers or practitioners may decide to put the terms of their agreement in writing.

Under section 63DA of the *Family Law Act 1975* (Cth), practitioners are required to discuss with parents the option of writing up agreements in the form of parenting plans and to inform parents about what information should be included in a parenting plan. Written agreements that are dated and signed by both parents satisfy the requirements of parenting plans. However, Britton and Johnson (2012) suggest that 'this population [of parents] is one in transition, transitioning relationships, accommodation, family structure and employment. In addition to this, their children are growing and developing so their needs and circumstances are also changing' (p. 17). FDR practitioners in this research encouraged parents to develop shorter-term parenting plans to give them the opportunity to trial the agreement they had reached and to include

phrases that encouraged parents to respect each other. However, as Brandon and Stodulka (2008) suggest, ‘To expect parties to always treat each other respectfully in these circumstances is naïve’ (p. 200). Lawyers in this research found that parenting plans developed at FRCs were often ineffectual as they included phrases that implied that the agreement was of short duration. Lawyers also suggested that the wording of parenting plans developed at FRCs had no substance:

So, we do this for the next 12 months and then we’ll review it at the next session . . . we told each other that we’ll respect each other, and we’ll do all this. From a legal perspective, it doesn’t mean anything. (Melissa—Lawyer, Location 1)

Therefore, FDR practitioners and lawyers have varying views on two aspects of parenting plans: its duration and the language used. These differing views may be ‘challenging [because] the disciplines [of social science and law] use very different philosophical approaches and have different constraints on the application of the truths’ (Beck et al., 2009, p. 451). FDR practitioners and lawyers had different perspectives on how agreements between parents should be worded as well as the duration of the agreement. Additionally, instead of viewing their different approaches as being complementary to each other, practitioners and lawyers in this research believed that the other profession’s approach was detrimental to preparing parents for FDR.

6.6 Interpretative Summary for Chapter 6

Parents, FDR practitioners and lawyers have divergent and disjointed perspectives on the experience of preparing for FDR. Of interest is the distrust and disrespect that FDR practitioners and lawyers have for each other’s profession. In Chapter 6, the experiences of each group were explored, including their perspectives on how prepared parents are for FDR and other interventions that may assist parents to effectively prepare for FDR.

In the parent cohort, initiating parents had different perspectives on preparation to responding parents to the extent that it is difficult to reach a conclusion about how well parents feel they are prepared for FDR. When reflecting on what they believed would more effectively prepare them for FDR, parents were unable to make any significant suggestions that could further assist in their preparation. There are two possible reasons for this: first, parents may be reliant on ‘experts’ to help them, and second, they may no longer have faith in the process of FDR or their former partners to resolve disputes.

FDR practitioners were equally elusive about how well parents were prepared for FDR. However, FDR practitioners highlighted the differences between the preparation of initiating parents compared with responding parents—parents who initiated the process were more inclined to be motivated to proceed compared with those who responded to the invitation for FDR. FDR practitioners used a term they called ‘conversion work’ to highlight the work they considered necessary to effectively prepare responding parents for FDR. Essentially, ‘conversion work’ reflected the need for FDR practitioners to encourage parents to focus on the needs of the children rather than on disputes between the parents. However, FDR practitioners also suggested that there are a proportion of parents who may never be prepared for FDR, regardless of the assistance they receive.

Lawyers considered that parents are currently ineffectively prepared for FDR. Parents are not necessarily provided legal advice, which lawyers considered necessary for preparing parents for FDR.

Parents did not provide suggestions as to what would more effectively prepare them for FDR. FDR practitioners suggested that the addition of interventions such as

conflict coaching, counselling and child-inclusive practice may be of benefit to parents preparing for FDR.

How well parents are prepared for FDR remains unclear. The experiences of parents, FDR practitioners and lawyers were incongruent; therefore, it is not possible from these findings to determine how well parents are prepared for FDR. The experience of preparing for FDR was different for each participant group, although FDR practitioners and lawyers agreed that there are a proportion of parents that cannot be effectively prepared for FDR.

Of interest is that FDR practitioners suggested interventions to assist in preparing parents for FDR that were not necessarily available at FRCs nor recognised as steps in the FDR process. Lawyers suggested that the inclusion of legal advice would be beneficial for parents, but that this does not necessarily occur. Both FDR practitioners and lawyers advocated for the inclusion of counselling, conflict coaching, child-inclusive practice and legal advice to aid parents in preparation.

The philosophical stances of FDR practitioners and lawyers may influence their various suggestions regarding helpful interventions. However, both FDR practitioners and lawyers recognised that parents require more preparation and more therapeutic intervention than is currently provided. Rogers and Gee (2003) suggest that, in high-conflict cases, ‘traditional forms of intervention are “dead horse” strategies . . . and the quicker we realise this, dismount and begin to try something different . . . the more effective and useful our interventions are likely to be’ (p. 279). An overarching goal for both disciplines in the family law arena is to provide programs and make decisions that are in the best interests of children. Therefore, Beck et al. (2009) suggest that FDR practitioners and lawyers ‘continuing to work together to solve differences and increase mutually beneficial knowledge is essential to both disciplines’ (p. 454).

Chapter 7 is the final chapter in this thesis and provides an interpretation of the data relating to the experiences of parents, FDR practitioners and lawyers as they prepare for FDR.

Chapter 7: Divergent and Disjointed Perspectives on Preparation

When we are no longer able to change a situation—we are challenged to change ourselves.

—Viktor E. Frankl

Much has been written on the introduction of changes to family law and the negative effects on children when parents continue in entrenched conflict. Although FDR was implemented 12 years ago in Australia, the experience of preparing for that process from the perspectives of parents, FDR practitioners and lawyers has been overlooked. My research contributes to the academic discussion on this topic and provides valuable insights about preparing for FDR, particularly in regional Australia. I included parents, FDR practitioners and lawyers in the research as I believe each play a pivotal role in preparation. Parents do not prepare for FDR in isolation—they are supported by FDR practitioners and lawyers.

This research was informed by a qualitative phenomenological approach and data were gathered using in-depth interviews to explore and understand the lived experiences of parents, FDR practitioners and lawyers preparing for FDR. By openly revealing their experiences, new knowledge was gained about the meaning of FDR preparation for participants. Following in-depth interviews with 18 parents, 16 FDR practitioners and 18 lawyers across three regional locations in Australia, I engaged in thematic analysis to highlight the following three research questions:

1. What is the experience of preparing for FDR in the current FDR process from the perspectives of parents, FDR practitioners and lawyers?
2. What are the needs of parents, FDR practitioners and lawyers when preparing for FDR?

3. How well are parents prepared for FDR from the perspectives of parents themselves and those of FDR practitioners and lawyers who assist them?

7.1 Heideggerian Approach to the Research Project

Underpinned by Heidegger's interpretative philosophy, a qualitative, phenomenological approach facilitated the exploration of the emic perspectives of parents, FDR practitioners and lawyers in regional Australia regarding preparation for FDR. An exposition of the everyday ordinary existence of parents, FDR practitioners and lawyers provided the opportunity to inductively elicit meanings from their perspectives. As suggested by Friesen, Henriksson and Saevi (2012) 'to reveal meaning is arguably interpretive phenomenology's greatest asset' (p. 33). As an approach, phenomenology attempts to understand the hidden meanings and the essence of an experience, as well as how participants make sense of an experience (Dowling & Cooney, 2012). Glesne (2015) suggests that 'whether it is called phenomenological, hermeneutic phenomenological, or interpretive phenomenological research, this approach is based on the philosophies of Heidegger and others to explore the lived experiences of research participants' (p. 290). Heidegger (as cited in Cerbone, 2008) defines 'interpretation as a concept closely intertwined with understanding, making explicit that which was already implicitly present in understanding' (p. 62).

I sought to conduct an in-depth inquiry to understand the experiences and perspectives and to examine similarities and difference across the three participant groups. To do so, I interviewed parents, FDR practitioners and lawyers at three sites, one in NSW, one in Queensland and one in Victoria. Undertaking interviews at three FRCs and at lawyers' private offices enabled me to capture how the phenomenon was experienced in the context in which the experience takes place (Giorgi & Giorgi, 2003). From an infinite number of narrative possibilities, each of the 52 interviewed

participants chose their particular narrative as being representative of their experienced truth (Pollio, Henley, Thompson, & Thompson, 1997).

I approached this research informed by the three philosophical tenets of Heidegger described in Chapter 3: '*augenblick*', 'familiarity' and 'unveiling the taken for granted'.

7.2 Reflecting on the Findings

To address the gaps identified in the literature, I developed three research questions, each of which reflects a comprehensive endeavour to hear the voices of parents, FDR practitioners and lawyers in regional Australia. The findings of this study serve as a platform for a number of recommendations I have proposed that relate to further research, policy development and practice issues for the field of FDR.

In Australia, 70% of separated parents are able to amicably reach post-separation agreements without assistance (Neilsen & Norberry, 2006). However, those who use the family law system may be troubled and present with complex issues (Kaspiew, 2005), including mental health issues, family violence and drug abuse (Hayes et al., 2011). My research explored the experiences of parents, FDR practitioners and lawyers in the current process for preparing for FDR, what they needed to help them prepare and how prepared they felt in the process. In the following section, I discuss the three major findings of this research.

7.3 Help Getting Through the Current Process of Family Dispute Resolution

Having put their trust into the community FDR process, parents, FDR practitioners and lawyers all participated in the required steps of FDR and took every opportunity to gain support. Since 2006, 65 FRCs have been established across

Australia to assist parents; however, participants in this research indicated they required further ‘help to get through’ the current FDR process.

7.3.1 Seeking change

For parents, the impetus for engaging in FDR was to seek a change to their current situations. Parents believed that FDR provided a forum in which they, with the assistance of professionals, could meet with their former partners and reach post-separation agreements that would transform their lives. Parents seized opportunities to return to or create a world in which there was stability and equilibrium as a result of reaching an agreement with their former partners.

In the pursuit of change, parents sought help to resolve parenting disputes around values and routines, dietary and medical decisions, suitability of clothing and adornments such as piercing or hairstyles and other child-related concerns. Parents seized the opportunity for assistance in discussing day-to-day parenting matters that would normally be discussed by parents who had the ability to communicate and negotiate. To enable this, parents could access over 100 hours of subsidised community services and had the option of declining to pay a \$30 fee. Therefore, they could have unrealistic expectations of what this ‘help’ would achieve and become disillusioned if expectations were not met. A proportion of parents believed that any agreements reached at the joint session would be legally binding and that written documents would secure the parenting arrangements.

The ‘help’ required by FDR practitioners and lawyers was different to that required by parents. FDR practitioners sought help from colleagues, with one suggesting that working collectively is preferable to working in isolation when making decisions about cases. At times, FDR practitioners did not feel competent and confident when determining how best to manage complex cases, with several FDR practitioners at

Location 2 describing how they frequently needed to ‘stretch the model’. The need for experienced FDR practitioners to seek help with managing parents with complex issues and to adapt the FDR model may indicate two things: first, the complex nature of parents that present for FDR, and second, the gap between FDR practitioners’ current skill sets and the presenting needs of parents. Lawyers were more inclined to talk about their colleagues’ experiences of needing help rather than their own. However, one lawyer spoke of ‘burn out’ when working with family law clients, another indicated the need to take six years away from the legal profession before he had sufficiently recovered from the emotional strain of a case and a third mentioned the desire to avoid ‘crying, non-logical parents’.

Although FRCs and FDR exist to assist parents at all stages of their relationships, the findings of this research suggest that FDR practitioners and lawyers also need help to assist parents. Given the complex nature of disputing parents, FDR practitioners and lawyers may not be sufficiently equipped to manage the multifarious issues presented. Parents may be vulnerable, but given the complex nature of dispute, so are FDR practitioners and lawyers, and they may need support to prevent compassion fatigue or, as one lawyer from Location 3 suggested, ‘burn out’.

7.3.2 Education sessions

Group education sessions currently focus on the needs of children, parenting plans and assisting parents to obtain the best outcomes from FDR. Even so, parents in this research had different needs. Parents valued the support, empathy and sense of universality provided by other parents in group sessions. This helped them feel less alone, become aware of services available and, to an extent, understand emotions experienced by parents of the opposite gender, providing them with insights to how their former partners may be feeling. This collegial support was emphasised by parents

across all three locations. Parents had a better understanding of what their former partners might be experiencing and increased awareness of the effects of their actions.

However, from the perspectives of FDR practitioners, education sessions have a different focus. McIntosh and Long (2005) argue that dispute resolution services have the potential, the opportunity and the responsibility to influence the psychology of family restructuring and suggest this can be achieved by using targeted, evidence-based education strategies. Research conducted by Bacon and McKenzie (2004) suggests that providing an education session prior to the joint session is beneficial, while McIntosh and Deacon-Wood (2003) argue that education sessions have limited benefits. For FDR practitioners in this research, the primary purpose of education sessions is to educate parents on the developmental needs of children and the negative effects of conflict on children. FDR practitioners believed that this information helped parents shift their focus away from their own conflicts and unmet needs to the needs of their children. FDR practitioners also identified that a proportion of parents were illiterate, and others were 'unable to understand' the information provided by practitioners.

Research conducted by Berry et al. (2010) found that parent-child relationships improved following a brief post-separation parenting education program. New knowledge arising from this research highlights the value of parents having the opportunity to speak with other parents, share their experiences of separation and their inability to reach agreements and understand emotions experienced by the opposite sex; however, the appropriate timing of education sessions was not established.

Parents and FDR practitioners had contrasting views of education sessions. Parents found value in sharing their experiences of separation with like-minded people, while FDR practitioners viewed education sessions as helping parents 'shift their thinking' by informing them about the developmental needs of children and the effects

of conflict on children. Education sessions in the current FDR process do not necessarily meet the needs of parents; therefore, some parents will remain ineffectively prepared.

Lawyer participants commented little about education groups. However, they believed that the need for parenting education was increasing because of the prevalence of high-conflict parents who have difficulty with parenting and relating to each other.

7.3.3 Access to legal advice

Parents, FDR practitioners and lawyers varied in their views about the value of legal advice. Parents regarded legal advice as beneficial, but those who received legal advice found it was expensive to start and continue. Practitioners may refer parents for legal advice but were often reluctant to do so because of their philosophical views. FDR practitioners at Location 1 tended not to refer parents to lawyers because they believed legal advice was redundant. Interestingly, three of the five FDR practitioners at Location 1 had been lawyers prior to training as FDR practitioners—two of these had more than 30 years' experience in family law and the third had been a family law specialist. According to Fisher and Brandon (2012), the philosophical stance of practitioners may be influenced by prior training. I believe this is a significant finding because FDR practitioners at Locations 2 and 3, none of whom had a legal background, were more accepting of lawyers. This finding suggests that cost is not the only factor that determines whether parents seek legal advice—the philosophical stance of the FDR practitioner may also influence the decision about whether a parent is referred for subsidised legal advice. Lawyers all believed that parents could not be adequately prepared for FDR without legal advice and considered it imperative that parents understood the consequences of not reaching post-separation agreements regarding their children.

7.3.4 Psychosocial support

FDR practitioners at Location 2 and particularly at Location 3 felt that it was important to meet the physiological and psychosocial needs of parents, suggesting that part of preparation for FDR was ‘Maslow’s stuff’. FDR practitioners at Location 3 primarily had social work or social welfare backgrounds. The approach to preparing parents was influenced by the FDR practitioner’s philosophical background.

The first finding in this research suggests that parents, FDR practitioners and lawyers need additional support to manage expectations, improve education and access to legal advice and provide psychosocial support. This finding is supported by research conducted by Kaspiw et al. (2009), who found that parents were not always satisfied with the assistance they received. Having explored parents’, practitioners’ and lawyers’ experiences of the current FDR process, I sought to explore the needs of participants as they prepared for FDR.

7.4 Suspended in Unfamiliarity

The world of FDR was unfamiliar to parents, FDR practitioners and lawyers, particularly the management of psychological distress, family violence and waiting lists.

7.4.1 Psychological distress

Parents experienced psychological distress as they prepared for FDR, sharing examples of anger, heightened emotions, depression (both diagnosed and undiagnosed), stress, family violence, managing the effects of separation and preparing for the unfamiliar process of FDR. Parents described concerns about their own mental health, including reverting to previous periods of depression. Parents also described increased alcohol consumption, anger, crying, depression, anxiety, fatigue, loss, grief, stress-related symptoms such as insomnia and poor recall of FDR information. The language used by parents suggests they did not feel confident about managing the tasks of daily

living in addition to preparing for FDR. The literature reveals few studies specifically relating to preparing parents for FDR who are experiencing psychological distress, although much is written on the effects of mental health as a consequence of or a contributing factor to separation.

These emotions and behaviours have been collectively termed ‘psychological distress’ in line with Mirowsky and Ross (2002), who describe psychological distress as a state of emotional suffering that can affect the day-to-day functioning and wellbeing of individuals. Doley (2016) suggests that, in addition to parents’ conflict management styles, mental health concerns may also negatively affect parents in mediation. Findings of this research in relation to the psychological distress experienced by parents are similar to those of Petch et al. (2014), who stress the importance of establishing the degree of psychological distress experienced by a parent to facilitate appropriate referrals and support for parents.

Management of psychological distress affects practice. FDR practitioners indicated that, when psychological distress is evident, they may reduce the length of sessions or align sessions with parents’ medication schedules following discussions with parents about ‘how they feel on the day’. However, FDR practitioners and lawyers did not elaborate on how they formally assess a parent’s psychological distress or decide whether to refer a parent for therapeutic intervention.

7.4.2 Family violence

Parents had all undergone the stringent family violence screening process at each of the three FRCs as part of their preparation for FDR and had all been deemed suitable to proceed to the joint session, despite some parents describing significant and debilitating fear of family violence. This suggests that the identification of family violence does not necessarily preclude vulnerable parents from being physically present

with perpetrators of violence when attempting to negotiate arrangements for their children.

The primary concern for parents who had experienced or were experiencing family violence was the unpredictability of their former partners, regardless of apprehended or family violence intervention orders being in place. Additional concerns included being physically present with perpetrators during joint sessions, increased risk to children and future ramifications of their decision to participate in FDR. One parent with a background of family violence was afraid for her life as a result of participating in FDR.

Parents' preparation for FDR was affected by their focus on what might occur in the joint session, the potential consequences of the joint session and the unexpected behaviours of the other parent. Parents tended to recall previous violent behaviours of their former partners when they became aware that participating in FDR could mean being in close proximity with the perpetrator. This observation is supported by research conducted by Evans, Davies and DiLillo (2008), who found that the majority of survivors of abusive relationships are negatively influenced in a variety of ways for the rest of their lives, regardless of whether the violence occurs at the time of dispute resolution.

Research conducted by Rice, Washington, Signal and Taylor (2012) at three FRCs in Queensland found that the majority of clients disclosed some form of family violence, with just under one-third saying they were still afraid of their ex-partners. However, this did not reduce their perceived sense of safety about participating in FDR. In contrast to this, parents in my research indicated that they had safety concerns before, during and after FDR.

7.4.3 Suspended on waiting lists

Lengthy waiting lists generated three concerns for parents, practitioners and lawyers. All participant groups expressed concerns about the inequitable fee structure, the length of time on waiting lists for parents and the effects of being on waiting lists on parents and children. Previous studies of service delivery have not explored the effects on parents of being on waiting lists. Interviews for this research were conducted at three sites in three separate states, and participant views on the length of waiting lists were similar at each location.

Being suspended on lengthy waiting lists exacerbated interparental conflict and parents were concerned about the detrimental effects of this on themselves and their children. FDR practitioners and lawyers were equally concerned about the psychological effects on children as a result of parental conflict escalating. At each of the three FRCs in this research, there were approximately 80 parents on the waiting list and the average period of waiting for an appointment with a practitioner was 8–10 weeks.

Lawyers suggested that any legal advice that had been provided would be ineffective because of delays in parents accessing services. Lawyers were also concerned about the ‘domino effect’ on the court system of parents being unable to access a process that was designed to reduce the need for court appearances.

Parent, FDR practitioner and lawyer participant groups highlighted the need to reduce the length of time parents are required to wait for a service at FRCs. To reduce the length of the waiting list, the introduction of an equitable fee structure that reflected parents’ ability to pay was suggested—parents unable to pay for services should be offered FDR at an FRC, while those with incomes over a certain threshold should be required to seek services through private providers. This strategy was considered

potentially effective because FDR would then be more accessible and expedient for those needing assistance.

While preparing for FDR, parents, FDR practitioners and lawyers highlighted that they were unfamiliar with how to manage psychological distress, family violence and lengthy waiting lists. These findings highlight a gap between what parents, FDR practitioners and lawyers need and what is available to meet their needs to prepare.

7.5 Unveiling the Taken for Granted

Given the diversity of responses from parents, FDR practitioners and lawyers, how well parents are prepared for FDR remains elusive.

7.5.1 Parents' perspectives on preparation

Preparation was defined in various tenses, including past, present and future. Phrases such as 'I am more prepared this time' suggest that they were better prepared if they had attempted FDR on a previous occasion. One parent believed that the preparation would not be affected by the lack of interaction with their previous partner for the previous two years. Writing information down, gathering evidence, practising what they wanted to say in the joint session and being aware of time limits were other aspects of preparation that parents felt were beneficial.

Parents had various perspectives of engaging in and preparing for FDR. These differences may be determined by whether parents initiate or respond to the FDR process. Initiating parents were concerned about anticipated behaviours of the responding parent and vice versa—this has not been explored in the literature to date.

7.5.2 Practitioners' perspectives on parents' preparation

FDR practitioners incorporated their philosophical stance in deciding the appropriate model for FDR and implemented hybrid models in an endeavour to find the 'right fit' for a parent. FDR practitioners indicated that the preparation of parents was

determined following discussions in team meetings, with decisions being made collectively rather than autonomously. FDR practitioners admitted that they felt uncertain about the most appropriate models to use for parents with complex issues. FDR practitioner interviewees spoke of ‘stretching the model’, ‘adapting the model’ and ‘changing the model’, indicating that they were not confident in applying a particular model to meet the identified needs of parents. This may result from FDR practitioners being ill-equipped to work with complex cases or from parents requiring more preparation than is currently provided.

From this research, it may be established that practitioners are unable to meet all needs of parents and that parents have multiple and complex issues when preparing for FDR. In addition to the assistance provided by the FDR practitioner, interventions from other professionals such as counsellors, conflict coaches and child-inclusive practice specialists may be required to assist parents further. However, these interventions are not necessarily available at all FRCs or, if they are, there may be long waiting lists for them, potentially excluding parents from receiving assistance in a timely manner.

FDR practitioners and lawyers recognised that, regardless of the preparation provided to parents, there are a percentage of parents that cannot be adequately prepared. FDR practitioners suggested that this may be because of the ‘personal characteristics of the parent’, which is determined by mental health, substance abuse and family violence issues.

7.5.3 Lawyers’ perspectives on preparation

As a direct result of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth), parents are encouraged to work with lawyers prior to their engagement in FDR or after the process if they are unable to reach agreement. Lawyer experiences were different to those of parents and practitioners when preparing

parents for FDR. Lawyers believed parents are ineffectively prepared for FDR as a direct result of not understanding their legal options or positions if they are unable to reach agreement. Lawyers suggested that inadequate knowledge has a negative impact on parental ability to effectively prepare because they are more likely to make inappropriate decisions.

Lawyers believed that their primary role in preparation is to advise parents of their options and the potential outcomes should the matter remain unresolved. However, legal services were increasingly limited to those parents who had sought legal advice prior to engaging in FDR or to those parents who had not reached agreement and had consequently sought legal advice. Regardless of location or place of practice, all lawyers considered it necessary for parents to seek legal advice as they prepared for FDR.

7.5.4 Tension between practitioners and lawyers

FDR practitioners and lawyers viewed the preparation of parents for FDR differently, which may account for their divergent and disjointed perspectives. FDR practitioners and lawyers collectively recognised that parents who present for FDR have complex issues and that there are a proportion of parents who, for a variety of reasons, will never be effectively prepared for FDR.

However, there were diverse perspectives among FDR practitioners and lawyers on how best to prepare and how well parents were prepared for FDR. This finding points to the much wider issue of the need for FDR practitioners and lawyers to work collaboratively to provide parents with a less adversarial approach to resolving disputes. Some FDR practitioners and lawyers in this research exhibited mistrust and disrespect for the other profession, but both play vital roles in the preparation of parents for FDR. This finding has similarities to the interdisciplinary research undertaken by Rhoades et

al. (2008), who suggest that developments in the family law system require practitioners and lawyers to work collaboratively.

Differences existed between the perspectives of FDR practitioners and lawyers regarding the concept of skilled judgement and how best to prepare parents for FDR. FDR practitioners had a range of disciplinary backgrounds apart from social work, psychology and law. Lawyers engaged in ongoing debate about the skills, abilities and statutory requirements of FDR practitioners. FDR practitioners and lawyers both endeavoured to prepare parents for FDR, but there was limited common ground between the disciplines of social science and law.

By questioning the text and reflecting on the text, a greater understanding of the lived experiences of each participant has been revealed. The current process of FDR does not effectively prepare parents for FDR and how well parents are prepared for FDR remains elusive. The vulnerability of parents is further complicated by divergent and disjointed perspectives of FDR practitioners and lawyers about how best to prepare parents for a process aimed at providing them with a less adversarial approach to resolving disputes with former partners.

7.6 Recommendations

While the results of this study may not be transferrable to other contexts, the theoretical and methodological insights may be transferrable to other projects, sites, cultures and groups (Kacen & Chaitlin, 2006). The new understandings arising from my experiences of conducting this research may also be transferrable to other studies. However, from this study's findings, it is imperative to highlight that in the regions studied, the following four recommendations may be beneficial for parents, FDR practitioners and lawyers as they prepare parents for FDR:

1. Additional support should be provided to parents, FDR practitioners and lawyers to adequately prepare parents for FDR.
2. Parents should be provided with therapeutic interventions and prompt referrals while waiting on FRC waiting lists.
3. All parents should be screened for psychological distress early in the FDR process to enable timely and appropriate referrals for therapeutic interventions.
4. Collaborative relationships between FDR practitioners and lawyers as they prepare parents for FDR should be encouraged.

7.7 Significance of the Study

The establishment of FRCs in Australia was promoted as an innovative public service that offered an alternative to the judicial system and a doorway to the wider family law system. FRCs provided a new approach to children's matters and services to assist parents with FDR (Pidgeon, 2013). Although FRCs provide a variety of services, findings in this research have highlighted that parents, FDR practitioners and lawyers need additional support to prepare for FDR.

The current process of FDR and the assistance of FDR practitioners and lawyers will not, in itself, ensure parents are effectively prepared for FDR. An imperfect system in which legal and social services vary may cause confusion not only for parents, but also for FDR practitioners and lawyers who are endeavouring to assist them. As suggested by Allen (2013), further investment in support will contribute to 'both a socially just, inclusive society, and a productive economy' (p. 13). Currently, the skills of FDR practitioners and lawyers do not adequately equip them to assess and manage the modifiable risks of preparing parents who are experiencing psychological distress, family violence or long waiting lists.

The findings of this research contribute significantly to the knowledge relating to the preparation of parents for FDR but do not minimise the contribution of FDR practitioners or lawyers or question the less adversarial approach to resolving issues.

7.8 Limitations of the Study

I have provided an explanation of how I undertook the research so that other researchers may review and understand my interpretation of the data and scrutinise the evidence provided to support my conclusions. Although the research questions have been successfully answered, there are limitations to this research. The findings cannot necessarily be applied to other FRCs because parents who undertake FDR with private FDR practitioners or in non-regional settings may have different perspectives. The data do not indicate whether parents who have previously completed a joint FDR session have the same perspectives as those who have never experienced preparing for FDR. One parent in this research was undergoing FDR for the eighth time, equating to one attempt per year since the opening of the FRC at Location 3. From the data, it cannot be established whether parents returning for subsequent attempts had participated in joint sessions on previous occasions or whether they had prepared for FDR on multiple occasions without ever having had a joint session with their former partners.

Participants narratives of their lived experiences were retrospective and relied on their recall of the process. It was my intention that the data reflect the perspectives of parents, FDR practitioners and lawyers prior to the joint FDR session; therefore, this is not considered a limitation of the research. The findings of this research should not be interpreted as being representative of all parents, FDR practitioners or lawyers who prepare for FDR, but rather as the perspectives of participants at a given time and within a specific context.

7.9 Concluding Comments

In this thesis I have explored the experience of preparing for FDR from the perspectives of parents, FDR practitioners and lawyers across three regional sites in Australia. As a result of conducting this research project, I have added to the body of knowledge, particularly in the practice of FDR. I have highlighted that the current process of FDR and the assistance of FDR practitioners and lawyers will not, in itself, ensure parents are effectively prepared for FDR, that participants need further support than is currently afforded to them to manage preparation and that if parents are screened for psychological distress in the early stages of engagement, they may be referred for appropriate interventions to assist them more effectively in preparing for FDR.

In Chapter 1, I introduced the research topic. In Chapter 2, I provided an extensive literature review of the family law arena from 1975 to the present time, with a particular emphasis on the changes that have occurred in family law since 2006 when FDR was introduced and in the understanding of what constitutes a marriage and parenting. In Chapter 3, I described the methodology and methods undertaken to conduct the research. In qualitative research, it is accepted that findings can vary from person to person. Petty, Thomson and Stew (2012) suggest that ‘the passage of time will not enable a study to be replicated elsewhere’ (p. 382). The data were presented in Chapters 4, 5 and 6. Chapter 4 described participants’ experiences of the current FDR process. Chapter 5 provided suggestions from participants regarding what they needed to prepare for FDR more effectively. Chapter 6 explored the perspectives of each participant group on how well prepared they considered parents to be and their suggestions on how to prepare parents more effectively for FDR.

In Chapter 7, this final chapter, I have presented an analysis of the data and highlighted my contribution to the knowledge in the field of FDR. Chapter 7 provided a

summary of the main findings, made comparisons, discussed limitations of the research and made recommendations for policy, future research and professional practice, particularly in regional Australia. The research question and the research results were drawn together to provide a deeper understanding of the phenomena.

In presenting my interpretation of the results, I considered the strengths and weaknesses of alternative interpretations from the existing literature. I did this by moving 'back and forth' between other research and the findings of this research, clarifying what has been found by others, what has been found in this research and, where appropriate, how they complement each other. In this final chapter I revisited the objectives of the research and highlighted how each objective has been attained. I then provided an overview of the findings and the application of the findings to the preparation of parents for FDR in regional Australia.

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Appendix A: Glossary

A glossary of terms is provided to assist the reader in clarifying and understanding the terminology used in this thesis.

Term	Explanation	Accepted term or abbreviation	Term/abbreviation used in this thesis
Family dispute resolution	Family dispute resolution is the legal term for services (such as mediation) that help parents affected by separation and divorce to settle family disputes.	FDR	FDR
Family dispute resolution practitioner	Only accredited FDR practitioners can issue certificates under the <i>Family Law Act 1975</i> . An accredited FDR practitioner meets the standards outlined in the <i>Family Law (FDR Practitioners) Regulations 2008</i> (Cth).	FDRP	FDR practitioner
Family Relationship Centre	Family Relationship Centres focus on providing family dispute resolution (mediation) services to enable separating families achieve workable parenting arrangements outside the court system.	FRC	FRC
Certificate 60I	Parents can only apply to a family law court for a parenting order when they have a certificate from an accredited FDR practitioner, which states that they have made a genuine effort to resolve their dispute through FDR. The requirement to participate in FDR applies to new applications and applications seeking changes to an existing parenting order.	Certificate 60I	Certificate 60I
Equal shared parental responsibility	Under the <i>Family Law Act 1975</i> , there is the presumption that both parents will have an equal parental responsibility—that is, they will both have a role in major long-term decisions, such as schooling and health. The presumption does not apply if a parent has been the perpetrator of family violence of child abuse or if it is not in the best interests of the child. Shared parental responsibility is different from equal time. Parents will spend equal time with a child only if they agree to this arrangement or a court finds that equal time is in the best interests of the child and is the most suitable arrangement.	Equal shared parental responsibility	Equal shared parental responsibility
<i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i>	The <i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i> focuses on the rights of children and the responsibilities that each parent has towards their children, rather than on parental rights. The act aims to ensure that children can enjoy a meaningful relationship with both parents and are protected from harm.	<i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i> (or SPA)	<i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i>

Term	Explanation	Accepted term or abbreviation	Term/abbreviation used in this thesis
<i>Family Law Regulations 1984</i>	The <i>Family Law Regulations 1984</i> requires separating families who have a dispute about children to make a genuine effort to settle their disputes through FDR. The act also requires that parents engage in FDR prior to attending court unless an exception, such as family violence, child abuse or urgency, applies.	<i>Family Law Regulations 1984</i>	<i>Family Law Regulations 1984</i>
Best interests of the child	The <i>Family Law Act 1975</i> focuses on the rights of children and the responsibilities that each parent has towards their children, rather than on parental rights. The act aims to ensure that children can enjoy a meaningful relationship with both of their parents and are protected from harm.	Best interests of the child	Best interests of the child/ren
FDR practitioners—assessment of suitability for family dispute resolution	<p>(1) Before providing family dispute resolution under the act, the FDR practitioner to whom a dispute is referred must be satisfied that (a) an assessment has been conducted of the parties to the dispute, and (b) family dispute resolution is appropriate</p> <p>(2) In determining whether family dispute resolution is appropriate, the FDR practitioner must be satisfied that consideration has been given to whether the ability of any party to negotiate freely in the dispute is affected by any of the following matters:</p> <ul style="list-style-type: none"> (a) a history of family violence (if any) among the parties (b) the likely safety of the parties (c) the equality of bargaining power among the parties (d) the risk that a child may suffer abuse (e) the emotional, psychological and physical health of the parties (f) any other matter that the FDR practitioner considers relevant to the proposed FDR. <p>(3) If, after considering the matters set out in sub-regulation 2, the FDR practitioner is satisfied that family dispute resolution is appropriate, subject to regulations 28 and 30, the FDR practitioner may provide family dispute resolution.</p> <p>(4) If, after considering the matters set out in sub-regulation 2, the FDR practitioner is not satisfied that family dispute resolution is appropriate, the FDR practitioner must not provide family dispute resolution.</p> <p>FDR practitioner certificates</p> <p>(1) According to subsection 60I(7) of the act, an applicant may file a certificate only within 12 months after the latest FDR or attempted FDR.</p> <p>(2) The practitioner may give a certificate under paragraph 60I(8)(aa) of the act only after having regard to the matters mentioned in sub-regulation 25(2).</p> <p>(3) An FDR practitioner must not give a certificate under subsection 60I(8) of the act to a person more than</p>	Assessment and screening	Assessment and screening

Term	Explanation	Accepted term or abbreviation	Term/abbreviation used in this thesis
	<p>12 months after the person last attended or attempted to attend FDR about the issue or issues that the order for which the application was made would deal with.</p> <p>(4) An FDR practitioner may give a certificate under paragraph 60I(8)(a) of the act only if the practitioner, or a person acting for the practitioner, has, at least twice, contacted each party who failed to attend, with at least one contact in writing, (a) giving the party a reasonable choice of days and times for attendance at FDR, and (b) telling the party that if the party does not attend FDR:</p> <ul style="list-style-type: none"> (i) the practitioner may give a certificate under paragraph 60I(8)(a) of the act and (ii) the certificate may be considered by a court when determining whether to make an order under section 13C of the act referring the parties to FDR or to award costs against a party under section 117 of the act. <p>(5) If the FDR practitioner who is entitled to give a certificate under subsection 60I(8) of the act becomes incapable of giving the certificate, the certificate may be given on behalf of the practitioner by an organisation for which the practitioner has provided FDR services. Examples of incapacity include death of the practitioner, loss of accreditation or the inability to be contacted.</p>		
Certificate by FDRP	A certificate that may be given by a family dispute resolution (FDR) practitioner under subsection 60I 8) of the act.	Certificate OR Certificate 60I	Certificate OR Certificate 60I
Information provided to parents	<p>Before family dispute resolution is started under sub-regulation 25(3), each party in family dispute resolution must be provided with the following information:</p> <p>(a) It is not the role of the FDR practitioner to give people legal advice (unless the FDR practitioner is also a legal practitioner).</p> <p>(b) The FDR practitioner's confidentiality and disclosure obligations under section 10H of the act.</p> <p>(c) Provided section 10J of the act applies, evidence of anything said or an admission made during FDR is not admissible (i) in any court (whether exercising federal jurisdiction or not) or (ii) in any proceedings before a person authorised by a law of the Commonwealth or a state or territory, or by the consent of the parties, to hear evidence.</p> <p>(d) The qualifications of the FDR practitioner to be an FDR practitioner.</p> <p>(e) The fees (including any hourly rate) charged by the FDR practitioner with respect to FDR.</p> <p>(f) FDR must be attended if required under section 60I of the act before applying for an order under Part VII of the act.</p> <p>(g) If a person wants to apply to the court for an order under Part VII of the act, the FDR practitioner may</p>	Information provided to parents	Information provided to parents

Term	Explanation	Accepted term or abbreviation	Term/abbreviation used in this thesis
	<p>provide a certificate under subsection 60I(8) of the act, including a certificate to the effect that the person:</p> <ul style="list-style-type: none"> i did not attend FDR due to the refusal, or the failure, of the other party or parties to the proceedings to attend or ii attended FDR with the other party or parties to the proceedings but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues. <p>(h) If a certificate under subsection 60I(8) of the act is filed, the court may take it into account in considering whether to make an order under section 13C of the act, referring the parties to FDR or to award costs against a party under section 117 of the act.</p> <p>(i) Information about the complaints mechanism that a person who wants to complain about the FDR services may use.</p> <p><i>Note:</i> Paragraphs (b) and (c) outline the general rule that communications during FDR are confidential and not admissible in court. However, sections 10H and 10J of the act specify exceptions to the general rule when disclosure by an FDR practitioner is permitted.</p> <p><i>Note:</i> An FDR practitioner must not start FDR until sub-regulation (1) has been complied with.</p>		
Child-inclusive practice	<p>Child-inclusive dispute resolution shares these goals, and also includes:</p> <ul style="list-style-type: none"> • consulting with children in a supportive, developmentally appropriate manner about their experiences of the family separation and dispute • ensuring that the style of consultation avoids and removes any burden of decision-making from children • understanding and formulating children’s core experience within a developmental framework • validating children’s experiences and providing basic information that may assist their present and future coping • forming a strategic therapeutic loop back to the children’s parents by considering with them the essence of their children’s experience in a manner that supports them to hear and reflect upon their children’s needs • ensuring that the ongoing mediation/litigation process and the agreements or decisions reached reflect at their core the psycho-developmental needs of each child. 	Child-inclusive practice or CIP	Child-inclusive practice

Appendix B: Ethics Approval

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Appendix C: Invitation to Family Relationship Centre



Townsville Campus
Townsville Qld 4811 Australia
Telephone: (07) 4781 4111
International +61 7 4781 4111
www.jcu.edu.au
CRICOS Provider Code 00117J

¶

The Manager

Wednesday 8 January 2014

Dear

I am a PhD Candidate at James Cook University (JCU), working on a project entitled '*How prepared are parents to participate in family dispute resolution? Perspectives of parents, family dispute practitioners and lawyers*'. Associate Professor Samantha Hardy and Dr Anna Blackman are my supervisors. I have received JCU ethics approval to conduct interviews with parents, FDRPs and lawyers. I am seeking your approval to conduct interviews with about five parents and five FDRPs at the Family Relationship Centre in early February 2014. The interviews will take about an hour each. The aim of my research is to explore how parents, FDRPs and lawyers perceive parents' preparedness to participate in the FDR process. The research will explore whether further or different support in the way of intervention prior to FDR may assist parents to more effectively prepare for and participate in FDR in order to resolve their parenting disputes.

My research questions include:

1. How prepared do parents feel to participate in FDR?
2. How prepared do FDRPs think their clients are to participate in FDR?
3. How prepared do lawyers think their clients are to participate in FDR?
4. What support is currently provided to parents to assist them to prepare for FDR, by:
 - a. FDRPs?
 - b. Lawyers?
5. What are parents' needs in relation to preparing for FDR?

Participation in interviews will be voluntary and strict adherence to James Cook University and FRC ethical guidelines will ensure participant confidentiality. If you are willing to participate in this research, I will need:

- Access to your FDRPs for an introductory meeting to provide an overview of the project and to discuss how the research can take place in a way that minimises disruption to your service.

- Your FDRPs to select suitable parents for interview and to obtain their consent to participate (this will probably take place through the normal FDR Intake/Assessment process, depending on what best suits your organisation).
- Access to a private room at your FRC to conduct the interviews.
- Access for parents to see a counsellor at your FRC if required following the interview.
- Referrals to family lawyers who work with parents undergoing FDRP at your centre so that I can invite them to be interviewed (off site).

Subject to each Family Relationship Centres availability I am hoping to conduct interviews at the following locations and dates:

- Family Relationship Centre 5-7 February
- Family Relationship Centre 12-14 February
- Family Relationship Centre 3-5 March

Please find attached the following:

1. Ethics approval from HREC, James Cook University
2. Information Sheet for each Interview Participant
3. Consent Form for each Participant

Further information can be provided upon request, including the full Ethics Application, Research Proposal and Preliminary Literature Review.

Further questions can be addressed to:

Principal Investigator

Rhonda Emonson
PhD Candidate
James Cook University
Rhonda.Emonson@my.jcu.edu.au

Principal Supervisor

Dr Samantha Hardy
Associate Professor
Director, Conflict Management and Resolution Program
James Cook University
Phone: (
Email: Samantha.Hardy@jcu.edu.au

Associate Supervisor

Dr Anna Blackman
Senior Lecturer, School of Business
Faculty of Law, Business and The Creative Arts
James Cook University, Townsville QLD 4811
Phone: (
Email: anna.blackman@jcu.edu.au

I will telephone within two weeks to follow up on this letter and to answer any questions you might have.

Rhonda Emonson

PhD Candidate

James Cook University

Rhonda.Emonson@my.jcu.edu.au

Appendix D: Invitation to Lawyers



Townsville-Campus
Townsville-Qld-4811-Australia
Telephone (07) 4781 4111
International +61 7 4781 4111
www.jcu.edu.au
CRICOS-Provider-Code-00117J

Monday 3 February 2014

Dear Sir/Madam

I am a PhD Candidate at James Cook University (JCU), working on a project entitled '*How prepared are parents to participate in family dispute resolution? Perspectives of parents, family dispute resolution practitioners and lawyers*'. Associate Professor Samantha Hardy and Dr Anna Blackman are my supervisors. I have received JCU ethics approval to conduct interviews with parents, FDRPs and lawyers. I am writing to invite you to participate in this research by allowing me to interview you. I will be based at the Townsville Family Relationship Centre between 3-6 March 2014, and it would be most convenient for me to interview you in person there during that period of time. However, if these dates or the location does not suit you, I can make other arrangements to interview you by telephone or Skype when it is convenient for you. The interview will take about an hour. Participation in interviews is completely voluntary and strict adherence to James Cook University and FRC ethical guidelines will ensure participant confidentiality.

The aim of my research is to explore how parents, FDRPs and lawyers perceive parents' preparedness to participate in the FDR process. The research will explore whether further or different support in the way of intervention prior to FDR may assist parents to more effectively prepare for and participate in FDR in order to resolve their parenting disputes. In particular, I am interested in talking with you about:

- How prepared you think your clients are to participate in FDR?
- What support you currently provide to your clients to assist them to prepare for FDR?
- What do you think are parents' needs in relation to preparing for FDR?

I have attached for your information:

4. Ethics approval from HREC, James Cook University;
5. An Information Sheet about the research; and
6. A Consent Form that I will need you to sign if you agree to be interviewed.

Further information can be provided upon request, including the full Ethics Application, Research Proposal and Preliminary Literature Review. Further questions can also be addressed to:

Principal Investigator

Rhonda Emonson
PhD Candidate
James Cook University
Rhonda.Emonson@my.jcu.edu.au

Principal Supervisor

Dr Samantha Hardy
Associate Professor
Director, Conflict Management and Resolution Program
James Cook University
Phone: (
Email: Samantha.Hardy@jcu.edu.au

Associate Supervisor

Dr Anna Blackman
Senior Lecturer, School of Business
Faculty of Law, Business and The Creative Arts
James Cook University, Townsville QLD 4811
Phone: (
Email: anna.blackman@jcu.edu.au

Would you kindly let me know whether you are willing to be interviewed? I can be contacted by email or telephone. If I have not heard from you, I will call you in two weeks to follow up on this letter and to answer any questions you might have.

Rhonda Emonson
PhD Candidate
James Cook University
Rhonda.Emonson@my.jcu.edu.au
Phone:

Appendix E: Participant Information Sheet



Townsville-Campus
Townsville-Qld-4811-Australia
Telephone-(07)-4781-4111
International +61-7-4781-4111
www.jcu.edu.au
CRICOS-Provider-Code-00117J

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Participant Information Sheet

You are invited to take part in a research project about how well parents are prepared to effectively participate in FDR. The study is being conducted by Rhonda Emonson, Principal Investigator and will contribute to a **PhD** at James Cook University.

If you agree to be involved in the study, you will be invited to be interviewed. The interview, with your consent, will be audio-taped, and should only take approximately 45 minutes of your time. The interview will be conducted at or or or Family Relationship Centre and the Centre chosen will be dependent on your locality. As an example, if you live in , your interview will occur at the Family Relationship Centre in

Taking part in this study is completely voluntary and you can stop taking part in the study at any time without explanation or prejudice.

Your responses and contact details will be strictly confidential. The data from the study will be used in research publications and reports such as the Thesis. Non-identifiable data may be published in academic journals at a later date. You will **not be** identified in any way in these publications. If you have any questions about the study, please contact Associate Professor Samantha Hardy.

Principal Investigator:
Rhonda Emonson
School of Law, Business and Creative Arts
James Cook University
Mobile:
Email: rhonda.emonson@my.jcu.edu.au

Supervisor:
Name: Associate Professor Samantha Hardy
School: Law, Business and Creative Arts
James Cook University
Phone:
Mobile:
Email: samantha.hardy@jcu.edu.au

If you have any concerns regarding the ethical conduct of the study, please contact:
Human Ethics, Research Office
James Cook University, Townsville, Qld, 4811
Phone: (07) 4781 5011 (ethics@jcu.edu.au)

Appendix F: Participant Consent Form

This administrative form
has been removed

Appendix G: Interview Guide



Townsville-Campus
Townsville-Qld-4811-Australia
Telephone: (07) 4781 4111
International +61-7-4781-4111
www.jcu.edu.au
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Interview Guide for Clients/FDRP/Lawyer participating in Research

This research is being conducted to understand the views of those participating in FDR at Family Relationship Centres. I am conducting this research as part of my PhD at James Cook University. I am especially interested in the opinions of parents as they participate in FDR. The questions I would like to ask you relate to how well-prepared parents are to effectively participate in FDR. Everything you tell me will be only used for this research project and will not be shared with anyone outside of the research team. Your name will not be used to make sure that no one can identify you with any answers. You have already consented to the interview by signing the Consent Form and as you know, we have already collected the demographic information.

Do you have any questions before we begin?

1. Tell me how you became involved with FDR at the
() FRC?

Probe: Rationale for FDR in a community vs private setting.

2. Tell me about your experience with FDR (Allow narrative- uninterrupted)

Probe: How are decisions made about engaging in FDR?

3. Have you accessed any of the pre-FDR services?

- a) If client did access them-Which services did you access and how helpful was it?
- b) If client did not access any of the services – Ask, what would have influenced you to not seek any of the available services?

Probe: How well informed is the client of services available to assist in preparing for FDR? And how were those choices made by the client?

4. Could you tell me how prepared you feel to participate in FDR?

Probe: What thoughts/processes does the client use to prepare for FDR or is it “step in a cog approach”?

5. If participant is Party (A), would have you prepared any differently for the FDR if it was your expartner that had initiated the FDR? Could you tell me what you would have done differently?

Probe: How personally resourced does the client feel to work with their expartner and reach a resolution?

6. If participant is Party (B), would have you prepared any differently for the FDR if you had initiated the FDR? Could you tell me what you would have done differently?

Probe: How personally resourced does the client feel to work with their expartner and reach a resolution?

7. What happened in the FDR?

Probe: Is the client well informed of services that are offered to assist them to effectively participate in FDR and would they actively engage with these supports?

8. How do you think you could have been better supported to participate in FDR?

Probe: Does the client have any thoughts on what they think would be beneficial for either themselves or the other party to more effectively participate in FDR?

9. Can you think of an example of how others could be supported to participate in FDR?

Probe: What do they think would be beneficial for parents in FDR?

Any comments?

Thank you

Appendix H: Family Law Pathways Network Presentation

with His Honour Joe Harman and Rhonda Emonson

BREAFAST FORUM

WEDNESDAY FEBRUARY 26TH 2014 - 7.30AM TO 9.30AM,

MR BENEDICT - 664 DEAN STREET ALBURY

GUESTS: HIS HONOUR JUDGE HARMAN AND RHONDA EMONSON

Rhonda will present on her research and His Honour Judge Harman will provide feedback on his experience and comments on the topic. Rhonda's PhD topic: "How prepared are parents to participate in Family Dispute Resolution (FDR): perspectives of parents, FDRPs and lawyers".

Following changes to the Family Law Act on 1 July 2006, parents who are unable to mutually agree on arrangements postseparation for their children are required to participate in Family Dispute Resolution (FDR). All separated parents who go to the Family Court of Australia seeking new orders in relation to disputes over their children, must attempt FDR before the case can be heard (Family Law Act 1975 (Cth) s601(7)). Many problems are associated with litigating divorce disputes and FDR was proposed as an alternative to litigation (Beck & Sales 2000). Public commentary has primarily focused on the increasing inadequacy of adversarial based litigation (Harrison 2007) and the growing evidence that children's distress is reduced to the extent that parents are able to resolve their own conflict (Cummings, Ballard, El-Sheikh & Lake 1991). FDR may assist parents to keep conflicts about parenting out of Court, give parents an opportunity to negotiate freely and to make their own choices about postseparation arrangements for their children. However, anecdotally, FDR has not been perfect, and limited time, resources and party preparation has led to less than ideal outcomes for many separating couples.

Rhonda's project aims to explore how well-prepared parents are to effectively participate in FDR, from the perspectives of the parents themselves, and from the perspectives of the FDRPs and lawyers involved in supporting the parents through the FDR process. The project aims to compare the perspectives of parents, lawyers and FDRPs and explore reasons for any differences across those groups. Assuming that one or more of the groups feel that parents could be better prepared for participation in FDR, the project will explore the ways in which parents are currently prepared, and the various participants' perceptions of what will help them become better prepared. RSVP by: Friday 21st

February - Mobile: 0434 318 002

Appendix I: Lawyers and Alternative Dispute Resolvers

Conference Presentation in Melbourne

Rhonda Emonson

What do clients, FDRPs and lawyers think would assist clients to effectively prepare for FDR?

Melbourne 12 Sept, 3.30pm | Wellington 5 Sept, 3.45pm

In an endeavour to promote excellence in ADR practices and delivery of services, I am conducting research as part of my PhD that may demonstrate that parents are not adequately prepared to participate effectively in FDR.

Presently, parents participate in treatment programs- that is, interventions that are designed to produce change after a major problem has developed. Would enhancing participants skills in conflict resolution strategies increase the probability of reaching a satisfactory resolution to the conflict? The focus of the research is not about ensuring paper work etc is in order but rather on skilling the parents with conflict resolution skills prior to the joint FDR session.

The intention of the qualitative research is to interview participants involved in FDR (Clients/FDRP's/Lawyers) in Hobart/Melbourne/Wagga and Townsville thus capturing the East Coast of Australia in an interpretative phenomenological study.

I will present some preliminary findings from the literature review, receive feedback and encourage discussion with 'kon gres attendees on how they think clients can be better prepared for Family Dispute Resolution.



Rhonda Emonson has practised and studied conflict management for over 13 years

following working as a registered nurse/midwife for ten years and a Family Therapist/Relationship Counsellor for 17 years. She has undergraduate degrees in Health Science and a Masters in Social Work and a Masters in Dispute Resolution, has National Recognition as a Mediator and is accredited with the Attorney General's Department as a Family Dispute Resolution Practitioner. Rhonda is an experienced mediator in workplace disputes, family law matters (children and property), multi-party disputes and provides conflict coaching.

Recently Rhonda spent three months working as a volunteer in an impoverished area of Negros Occidental and as a result of the impact of that work she has helped set up Create a Change Foundation Ltd.

Rhonda is presently a PhD student at JCU in Townsville and lives in Albury NSW.

'kon gres 2013

Appendix J: Lawyers and Alternative Dispute Resolvers

Conference Presentation in Wellington, New Zealand

Dr Jan Pryor, Anet Kate,
Rhonda Emonson & Rachel Lohrey

Family Dispute Resolution - the new frontier: a discussion on the challenges and opportunities for FDR within NZ

Wellington 5 Sept, 3.45pm

An experienced panel of practitioners and researchers from NZ and Australia will bring together their knowledge to discuss family practice issues and the implications of the NZ FDR model. Building on current NZ practice and the Australian experience of FDR, this discussion will provide valuable information on what practitioners may need to consider when working in this area.

Panel Members:



Dr Jan Pryor recently retired from being Director of the McKenzie Centre for the Study of Families, and the Chief Commissioner at the Families Commission. Her research has focused on family transitions including separation and divorce and its impact on children, and she co-authored the book 'Children in Changing Families. Life After Parental Separation' in 2001. More recently she has focused on stepfamilies, and in 2008 she edited the 'International Handbook on Stepfamilies. Policy and Practice in legal, research, and clinical environments'. She has just completed a textbook called 'Stepfamilies. A Global Perspective on Research, Policy and Practice'.



Anet Kate is a Family Court Barrister, Mediator, Conflict Coach, and University Lecturer. She has been a conflict resolution practitioner for 32 years, and teaches, coaches, trains and assists in conflict conversations. Particular interests include cultural, family, refugees, same-gender and other minorities. Anet's current learning edge is to foster opportunities mindfully for empowerment in family mediations, using the processes and language of empowerment. She is engaged in academic research to assess and provide culturally appropriate resolution of conflict to refugees and other minority groups in NZ.



Rhonda Emonson has practised and studied conflict management for 13 years and Family Therapy/ Relationship Counselling for 17 years. She has an undergraduate degree in Health Science and a Masters in Social Work and a Masters in Dispute Resolution, has National Recognition as a Mediator and is accredited with the Attorney Generals Department in Australia as a Family Dispute Resolution Practitioner. Rhonda is presently a PhD student and is researching, "What do clients, FDRPs and lawyers think would assist clients to effectively prepare for FDR?"

Rachel Lohrey is a Barrister and Solicitor specialising in Family Law and Mediation. She has a Masters Degree in Law from Otago



University and has been on the Court approved Lawyer for Child and Counsel to Assist list since 1996. Rachel has been conducting mediations in Family Court Proceedings since 2010.

Whether acting for children or parties, her focus is on resolving disputes outside the Courtroom and preserving family relationships.

Panel Facilitators:



Carol Powell and Anna Quinn are both lead trainers for LEADR in New Zealand and have been mediating and training for over 20 years. They bring experience in family mediation within the NZ context

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Appendix K: Example NVivo Coding and Mind Map

