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Competition and Collaboration in the Contracting of Family Relationship Centres¹

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Abstract

In 2005/06 the Australian government announced the establishment of 65 Family Relationship Centres (FRCs) - a 'gateway' service assisting separating couples to reach agreement about child custodial arrangements without recourse to courts. The use of a multi-round competitive contracting regime for the purpose of selecting service providers gave rise to a number of tensions amongst not-for-profit organisations (NFPOs) which, to a degree, compromised the full realisation of stated public policy aims. Reporting on fieldwork conducted with a sample of FRC operators, industry representatives and key government officials this article evaluates the extent to which the case of FRCs conforms to critiques commonly aired in the social policy literature that attribute various forms of policy failure and/or social capital depletion to the competitive contracting of human services within quasi-markets. Although the competitive selection process imposed significant costs on the NFPOs involved, the program also exhibited substantial collaborative and collegial behaviours between government and NFPOs, thus diverging from the critique usually portrayed in the literature.

Introduction

In its 2005/06 Budget, the Howard government announced the provision of \$199.1 million over four years to establish a network of 65 Family Relationship Centres (FRCs) in metropolitan and non-metropolitan areas across Australia. The FRCs were one of a suite of policy and program initiatives established as part of 'a new family law system' and would 'provide separating couples with an opportunity to resolve their child custody disputes without having to go to court (Budget Papers 2005/06). It was also intended that FRCs would 'provide face-to-face outreach services in rural areas and encourage Indigenous families to make use of the new system' as well as provide information about and facilitate access to pre-marriage education, family skills training and support (Ibid. 97). In practice, the facilitation of 'parenting agreements' in accordance with the provisions of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* is the predominant function performed by FRCs.

Decisions about the preferred service delivery model were taken in a policy environment prefigured by the experience of the *Job Network*, a quasi-market established by the Howard Coalition government in 1998 for the purpose of delivering employment services via competitively selected not-for-profit sector (NFPS) contractors. The government had a clear preference for the indirect provision of publicly mandated services by third party providers and for the use of open and competitive processes for the selection of preferred providers (Commonwealth of Australia 2005 : C134). Furthermore, it was the expressed intention of government that FRC operators would be chosen in accordance with competitive selection processes similar to those used for the *Job Network* (Commonwealth of Australia 2004 : 2).

There is a sizeable policy literature critiquing the delivery under contract of mandated health and human services by not-for-profit organisations (NFPOs). In general, this literature portrays a classic principal-agent relationship between governments, who use their monopsonistic power in quasi-markets characterised by imperfect competition, to leverage price, compliance, performance and conformity from non-government service providers. Where third party providers are also NFPOs it is posited that the contractual relationship can have corrosive effects on their organisational mission and behaviour. The purported loss or decline of the social capital-producing qualities of NFPOs – such as trust, collaboration, solidarity and

altruism – is a recurring theme. Not surprisingly, given the clear preference of governments for indirect service provision through NFPOs, they tend to resurface periodically.

The question we ask is whether this characterisation of government-NFPO principal-agent relationships has sufficient explanatory power to account for our observations of the implementation of FRCs as part of a re-vamped Family Relationship Services program. In particular, we critically examine service providers' claims that the competitive selection process imposed significant financial and opportunity costs on the NFPS and provided the catalyst for a progressive decline in social capital. We also examine claims that the operational framework governing the contractual relationship between government and NFPOs has served to perpetuate and amplify those effects.

We begin with a brief review of recurring themes in the policy literature concerning the use of principal-agent models for contracting the services of NFPOs. We next describe the frameworks under which FRCs were implemented and administered. In so doing we rely on a variety of primary documentation together with observations drawn from interviews with FRC operators, industry representatives and key government officials. Finally, we map these insights against the normative expectations commonly canvassed in the literature and conclude with an overall assessment of the applicability of the critique of third party service delivery to the specific context of Family Relationship Centres.

The Critique of contracted third party service delivery

Third party Service provision in Australia

Since the late 1980s Australian governments have increasingly elected to deliver a range of public services indirectly through non-government organisations – including for-profit and not-for-profit providers² This has been attributed both to pressures on government expenditure and 'government failure' critiques which posit that the most effective response to a 'sclerotic' government bureaucracy is the application of quasi-commercial disciplines within competitive markets or, in the absence of 'mature' markets, quasi-markets established to allow for contestability. In Australia the sourcing of services from the non-government sectors coincided with the advent of new public management (NPM) with its emphasis on the use of market mechanisms to leverage greater technical and economic efficiency in the delivery of services. More recently, renewed intellectual support for service delivery through not-for-profit organisations (NFPOs) has been provided by emerging network governance discourses, such as public value management, which argue that collaborative engagement with NFPOs serves to address the democratic deficits inherent in state-only provision.

The Australian government now purchases a variety of labour market and other human services from third party providers. Although such arrangements are frequently portrayed as 'partnerships' or 'collaborations' their principal theoretical underpinning is provided by agency theory (Cribb 2006; Stewart 2007) and, as a result often more closely resemble orthodox principal-agent contracting. Even where government follows a 'leveraged funding model' (through which NFPOs are provided top-up funding to do more of what they do already) the terms of such funding is

² See (Productivity Commission 2010 : 303)

contractually-based and incorporates stringent – often onerous – compliance reporting (Flack and Ryan 2005). More often than not, compliance reporting is heavily skewed towards counting inputs and outputs as opposed to being focused on the achievement of outcomes for end users (Freyens 2008; Wanna et al. 2010). This represents a form of path dependency in which the character of the transaction between government and non-government providers simultaneously reflects the institutional origins of the public sector (predisposing it to rigidity and control) and the received values of NPM (with its emphasis on market solutions).

Implications for the Not-for-Profit Sector

There is a growing policy literature addressing issues arising from the provision of public services by third parties on behalf of government. A major theme in this literature is the effects of purchase-of-service contracting on the behaviour of not-for-profit (NFP) service providers. An important sub-theme is concerned with the effects of commercial or quasi-commercial relationships between government and the NFPS on the formation of social capital (Lyons 2000; Butcher 2006; O'Shea et al. 2007; Van Slyke 2007). This sub-theme focuses on the potential for contractual or quasi-contractual arrangements to:

1. undermine the altruistic charter of NFPOs by subordinating the NFP mission to government policy and supplanting collaborative behaviours with competition, thereby fundamentally altering NFP character and behaviour (Lyons 2000; Landsberg 2004; O'Shea et al. 2007)
2. compromise service quality by 'bidding down' the cost of delivery, inadvertently rewarding encouraging parking or creaming behaviours, or through misalignment of policy goals and operational norms (Considine 2003; Meagher and Healy 2003; O'Connor 2004)
3. foster financial dependence and impose burdensome compliance and reporting costs (Auditor General Western Australia 2000; Brown and Ryan 2003; Phillips and Lévasséur 2004; Flack and Ryan 2005; Rawsthorne and Shaver 2007)
4. blur the respective roles and identities of public and NFP sector organisations, dilute social capital and compromise capacity for advocacy and innovation (McDonald and Marston 2002; Evans et al. 2005; Nevile 2009).

Although, at times, one suspects a degree of 'confirmation bias' in some of this work – reinforced and amplified by the collective 'self talk' of the NFP sector (McDonald 1999; McDonald and Marston 2002)– evidence of the potential for third party service delivery to be compromised in its various dimensions is nevertheless compelling. It is our intention to test these propositions with regard to Family Relationship Centres (FRCs) funded by the Australian Government and operated by a variety of not-for-profit organisations (NFPOs).

Competitive selection of FRC operators

On 3 July 2006, the first 15 FRCs opened their doors, coinciding with the commencement on 1 July of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. The government heralded the opening of the centres as a 'major milestone'. Certainly, the call for funding applications, the selection of successful applicants and roll-out was achieved within a relatively short time frame. An early decision was taken to run an 'Open Competitive Selection' process utilising

a 'Request for Application for Funding' (RAF) rather than the 'Request for Tender' (RTF) process commonly used for government procurement (Commonwealth of Australia 2005b: CA134).

The key difference between an RAF and an RFT process is that 'price' is not a selection criterion and applicants are not asked to 'bid' for services. Rather, the costing model for the services to be provided is pre-determined by the 'buyer' (in this case the Department of the Attorney General - AGD) and preferred providers are selected according to criteria that are indicative of the capacity and viability of applicants to deliver the services to the standard required by government. The RAF conducted in 2005 required applicants to address five generic selection criteria:

1. the suitability of the applicant to deliver the service
2. the applicant's ability to deliver proposed service objectives and outcomes
3. the applicant's capacity to manage the proposed service and evaluate outcomes
4. the compliance with approval requirements proposed by the applicant
5. the applicant's financial viability

Applicants were also required to 'provide details of [their] aims, objectives, service charter and governance arrangements' and, while successful applicants were not required 'to disclose [their] affiliation or faith orientation' they would be required to 'have a clear ethical framework that includes a non-discriminatory and equitable approach to service provision' (Commonwealth of Australia 2005).

Applications for funding were invited for a range of services – Early Intervention Services, Post Separation Cooperative Parenting Services and a Regional Family Dispute Resolution Service – in October 2005 and closed the following December. The AGD made the final selections in January and February 2006 and recommended preferred providers to the Attorney-General in March 2006 – all of which were accepted. Two further funding application rounds were conducted – in 2006-07 and 2007-08 – both using the RAF process (with minor variations). These brought the total number of FRCs to 65, the last of these opening their doors on 1 July 2008.³

Service provider perspectives

Between July and October 2009 senior personnel of six FRCs and the national peak organisation, Family Relationships Services Australia (FRSA), were interviewed for this study. Respondents were asked about; their experience with the funding application and selection process; the history and current market position of their organisations; issues arising from the implementation of the FRC service model; capacity constraints affecting the provision of services; and, the effects on service providers of operational processes flowing from the contractual relationship with funding agencies. Interviews were also conducted in November and December 2009 with officials from the Attorney-General's Department (AGD), the Department of

³ It is noteworthy that the Family Law Act was amended 'so that Ministerial approval and funding can be given to counselling and mediation organisations irrespective of whether they are voluntary (i.e. not for profit) or 'for profit'' (Parliament of Australia 2006 : 28). Previously, only 'voluntary organisations' could be approved as providers of counselling and mediation services. In the event, there were no for-profit providers amongst the successful applicants.

Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Australian National Audit office (ANAO).⁴

Apparent support for critique of third party contracting

Interviews with FRC operators and FRSA offered anecdotal support for the proposition that the competitive selection and contracting process had a number of corrosive effects on provider organisations. These include:

- *opportunity costs* associated with the large sunk costs of bid preparation (particularly for unsuccessful bidders) and burdensome compliance reporting (both resulting in the re-direction of resources from more ‘productive’ activity)
- *organisational stress and worker burn-out* associated with the preparation of bids and the implementation of services within short time frames and in the face of sometimes incomplete or inconsistent information
- *heightened competition between erstwhile collaborators* in the form of new entrants displacing established providers, the poaching of staff and resistance to information sharing or referral to ‘competitors’
- *asymmetries of information* resulting from inconsistent communications with departments (owing to periodic changes in administrative arrangements or staff turnover) and ‘moveable goal-posts’ in the form of incremental policy or procedural changes with flow-on effects for service providers
- *a subordination of NFP mission to government policy* and a consequent loss of organisational identity through the application of stringent branding protocols and the application of rigid contractual compliance.

A more complex reality

Notwithstanding our observations of apparent support for the broader critique of third party contracting by government for the provision of public services, our findings suggest a more complex and nuanced reality. We examine some of these below.

Opportunity costs

Certainly, a number of problems were experienced in the initial funding round that resulted in opportunity costs for prospective service providers. Indeed, participating NFPOs expressed their concerns to government about the proposed selection process on a number of occasions, to little apparent avail. Said one respondent:

we were saying ‘why are you going through this tendering process?’ Wouldn’t it make more sense to ask yourselves [the funding agencies] where you have providers and simply locate FRCs where these providers are and use their local knowledge and expertise?

Funding agencies replied it was all about diversification and having an expanded, broader group of providers,

⁴ The AGD has carriage of policy and funding responsibility while FaHCSIA has operational and administrative responsibility for FRCs. The respective responsibilities of the two agencies are set out in a Business Partnership Agreement. The ANAO conducted a performance audit of the FRC implementation in 2009 and the report of that audit is expected to be published in mid-2010.

including for profits entering the market (didn't happen). And we said it doesn't make sense: a tendering process usually advantages existing players, or better put, existing *large* players so you're not likely to get your diversification', we said. They said 'consortiums and partnerships would increase diversification' but it did not really have that effect at all. We knew it would not. By the time we got to the third round we asked 'are you not convinced yet?'

In addition to the RAF process, successful service providers in the initial funding round were challenged to get services up and running within very short time frames. The initial 15 FRCs opened their doors on 3 July 2006 – three months after the Attorney-General approved the successful applicants. Said one FRC service provider:

the government in its performance measurements expected you to be able to first of all completely either build or fit out a building in twelve weeks ... What commercial developer out there can do that? And the extraordinary thing about the community sector is that we did it.

To some degree the public sector agencies charged to give effect to the selection process were constrained by policy settings that were redolent of new public management and agency theory orthodoxy. Even so, one should not underestimate the complexity and scale of the task; the mix and number of actors involved; or the practical difficulties inherent in delivering FRCs within the timeframe fixed by government. Given these factors, it is small wonder that some procedural or operational deficiencies arose.

One might well suggest that the problems identified by NFPOs were both foreseeable and avoidable. Officials interviewed for this study acknowledge the difficulties experienced in the first funding round, such as:

- a complex and costly funding application process
- a lack of understanding about how consortia might operate
- a foreshortened implementation timeframe that required providers to be up and running within weeks of being advised of successful applications
- problems with securing appropriate premises in tight local property markets and recruiting appropriately skilled staff.

They also contend that they learned from that experience and worked to improve their performance in subsequent rounds, an observation supported by service provider organisations. Processes were adjusted and simplified, the quality and timeliness of information improved, and short turn-around time avoided. To be sure, change was reactive and incremental, but it was also positive and adaptive. Although opportunity costs imposed on prospective service providers by the competitive selection process were not eliminated, they were at least mitigated in subsequent funding rounds. It remains to be seen, however, whether problems observed in the initial funding rounds will be repeated when existing contracts mature in 2011. This is an issue of great concern for the sector.

Compliance costs

As for opportunity costs arising from compliance with financial and performance reporting requirements, it will come as no surprise that service providers generally regard these processes as a burden. One respondent observed; ‘we have hundreds of contracts and one person can be paid by different programs on different days and you can’t separate really but in the past governments acted as if they could – we try to run a service for the client not on the basis of what auditors want’. For its part, FaHCSIA recognises that service providers are constrained by the lack of a common information technology platform with which to support the collection, management and reporting of performance data.

Service providers acknowledge that the compliance burden associated with FRC contracting has eased considerably in recent years. Government officials interviewed for this study confirm that the government recognises a need to streamline reporting and is continuously adjusting administrative arrangements to:

- offer greater certainty to providers
- cut ‘red tape’, and
- simplify the interface between government and providers.

An important innovation has been to introduce the use of a single funding agreement with cascading schedules for different service types (whereas, prior to 2009, service providers were obliged to enter into separate agreements per tender/per service type). These efforts to ease the compliance burden have been implemented ahead of broader structural reforms that will come into effect in 2011 when current contracts expire and all FRSP services will be subsumed into a new ‘joined up’ Family Support Program (FSP) located in FaHCSIA. The sector has welcomed these changes, but it must be remembered that many FRC providers have multiple sources of funding for whom reporting requirements can vary significantly. Said one service provider; ‘I would love it if COAG would say there is only one data system allowed’.

Organisational stress

Each of the service provider organisations interviewed for this study cited some degree of organisational stress arising from the selection process. The preparation of bids and the negotiation of partnering arrangements with allied NFPOs took a toll on organisations and individuals that resonates even today. Said one service provider:

my whole life for the last four years is lost – has been lost to tender writing ... You know, it’s sort of churned up family life, it’s churned up private time, it’s sort of... you know, it’s churned up staff, it’s, you know, burnt us out ... So, great pain. I mean I still have one staff member who cries when we talk about tenders.

It should be noted that accounts such as the one above are coloured by respondents’ (generally unhappy) experiences with the RAF process. Although these experiences relate to past events, their recollection has somehow acquired a resonance that long afterwards shapes service providers’ narratives about their relationship with government. For those involved, the experience of the competitive selection process – designed by the AGD and implemented by FaHCSIA – is symptomatic of much that they find wanting in the practice of third party contracting with government. In many

respects, service providers' recollections of the RAF process have entered the collective 'folk memory' of the sector and are reified as normative constructs about the nature of the relationship between the NFPOS and government. In part, this is suggestive of the propensity for 'self talk' sometimes attributed to the NFPS, but it is also suggests that participation in the RAF was a challenging – and even traumatic – experience for this sector.

It should be pointed out that other, on-going sources of organisational stress arise from the very nature of the relationship with government. One problem frequently mentioned by service providers interviewed for this study is that government policy and government officials are not sufficiently mindful of the practical constraints within which NFPOs operate. For example, service providers spoke about having to respond to incremental policy and procedural changes required by government – many of which impose additional costs:

the government has actually changed operational guidelines or expectations a couple of times and ... that has impacted on our workforce and our management quite significantly at times.

Competition

The application of a competitive selection process was a key element of the policy framework underpinning the implementation of the FRC program . It was expected that such a process would allow a reliable determination of the most appropriate providers; leverage a positive realignment of service provision in a market where competitive forces had heretofore not been present; and encourage increased diversity in service provision – including through the entry of for-profit providers. The sector, however, was – and largely remains – extremely sceptical about the appropriateness and outcomes of the process:

We've been critical of the competitive tendering process applied to this sector...the presence of a large number of equally-placed competitors with available resources who could compete on a level playing field never really fit with this field.

It is important to keep in mind that with respect to FRCs (and other family relationship services included in the three funding rounds) competitive selection was based on assessed *capacity* to deliver services to a predetermined standard – not *price*. Therefore, there was no attempt by the government to use its monopsonistic power to 'bid down' the price of service delivery (as is sometimes alleged in relation to other third party service procurements by government).

Impact of 'turf wars' on social capital

It cannot be said that competitive forces do not operate in this particular quasi-market. Certainly, the selection process was competitive in the sense that there were winners and losers: for example, some small, relative newcomers to the field significantly increased their market share virtually overnight (and were challenged to rapidly increase their capacity) while older, established local providers were unsuccessful (to the great surprise of many in the sector).

A number of respondents associate competition with a loss of social capital, citing a marked loss of trust and collegiality in inter-organisational relationships, less

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willingness to share information, cross-refer clients or act cooperatively outside consortium arrangements (or, in some cases, within them!). One respondent put it thusly:

this industry was collegial (to a level). Now, underneath, it has turned too competitive: if I share with you some great ideas or a new staff coaching model you may use them in your tender, or to poach my people. A lot of 'social capital' has been lost there and got worse as each year went, and will be very hard to regain. Unexpectedly for this sort of sector, it has turned into a dog-eat-dog industry because it is about money that you don't have.

Respondents offered anecdotal accounts of 'turf wars' between established providers over 'market share' involving 'hostile' incursions by prospective service providers into localities where other providers were well established. In cases recounted by respondents, these sometimes escalated into 'tit for tat' retaliatory responses, and in at least one case resulted in a situation in which:

we are stuck with an absurd mismatch with each [provider] operating on the other's turf but not on their own where they would have all the community connections, knowledge of population mix and culture.

This same respondent observed that, 'It's profoundly disappointing that public policy should trigger such behaviours in actors first and foremost driven by philanthropic and collegial goals.'

Not all service providers harbour the same concerns about putative losses of social capital. Some – notably those who won new market share through the competitive selection process – consider that the entry of new providers amounted to the formation of *new* social capital, effectively off-setting the failure of some established providers to win contracts. Said one such service provider:

the opportunity to test the market is still a useful thing for government to do ... Where is the opportunity for innovation if you don't actually check out who has got some ideas of doing things differently?

In some locales, respondents suggest that potential applicants decided not to compete with local service providers, thus ensuring the 'incumbent' would be the successful bidder. It was even suggested that, in some cases, smaller providers won contracts as a direct result of larger providers agreeing not to compete in their locale. It has also been suggested that, in some cases, such 'agreements' were not honoured, resulting in lingering ill feeling within the sector. As one respondent suggested:

Maybe the little providers won fair and square, I'm not sure, but I suspect in various cases the large providers did not bid against an existing provider ... In some other cases though, I heard a deal was struck and reneged upon: the organisation that promised not to run eventually did run and won even though the other organisation thought they had a deal ... That happened a couple of times.

Commercial confidentiality provisions preclude our testing these anecdotal accounts of cartel-like behaviour. Whether true or not, the fact that hearsay of this nature now forms part of the folkloric culture of the sector suggests that the collegial nature of the sector has staggered under the weight of heightened competition.

Consortia: from collegial to hierarchical NFPO interrelationships

Relationships between NFPOs in this sector have also been tested and strained by the experience of forming consortia for the purpose of bidding for contracts. A number of service providers interviewed for this study contend that they were strongly encouraged to form ‘consortia’ for the purposes of responding to the RFA. Indeed, a number of service providers reported an expectation that being part of a consortium would confer a special advantage – an expectation that was not borne out. As one service provider recalled:

the way that the tender’s specifications were structured gave an explicit message that you would be stupid not to tender as a consortium.

Government officials deny that any pressure was placed on prospective applicants to form consortia, although training and education was provided to the sector in relation to the legal and practical aspects of partnering. However these misunderstandings arose, it would seem probable that inconsistent communication might have been a contributor. It is clear that from the outset of this initiative that the government contemplated the possibility – even the desirability – of ‘partnering’ between prospective service providers, as evidenced in the following testimony offered to a Senate Committee in 2005:

We will be encouraging partnership as much as we can, and part of our consideration in the tendering process is giving some consideration to how providers can partner. Some interesting partnerships have already emerged over the last year or so within the service system, crossing some of the boundaries of the industry representative bodies, and we are encouraging that because we want to see an integrated services system.
(Commonwealth of Australia 2005 : C108)

An important part of the rationale for encouraging partnerships or consortia was the fact that, for the first time in a service offering of this nature, prospective providers were being invited to apply for funding to provide ‘bundled’ services – including FRCs and other FRSP service types including:

- Early Intervention Services offering a mix of Men and Family Relationships Services
- Family Relationships Counselling
- Family Relationships Education and Skills Training and Specialised Family Violence Services, and
- Post-Separation services, including Contact Orders Program, Children’s Contact Services and Family Dispute Resolution Services. (Commonwealth of Australia 2005 : 12)

It made sense, therefore, for the government to encourage providers to join forces in order to benefit from potential economies of scale and to integrate the experience, expertise and local knowledge offered by a range of prospective providers. However, while welcoming consortia to apply for funding, the RAF made clear that:

The Departments will only enter into Funding Agreements with single incorporated entities. Consortia seeking to submit Applications must appoint one of their member organisations to be the Applicant (referred to as the Lead Member), and to be the legal entity that, if successful, will enter into a Funding Agreement with the Departments. (Commonwealth of Australia 2005g: 12)

Many consortium partners – mainly smaller organisations allied to consortia with larger partners – failed to appreciate that they would not be contracted to the government in their own right. Rather, they would be, effectively, subcontractors to so-called ‘Lead Members’, a situation that gave rise to tensions amongst service providers. In some cases organisations who had joined themselves to an application for bundled services found themselves afterwards excluded because the particular service component they signed on to deliver had not been awarded as part of the successful application. Some organisations did have unrealistic expectations, believing – wrongly – that being part of a consortium virtually guaranteed success. One respondent summed up the experience of consortia as follows:

There are some FRC consortiums which are totally dysfunctional, where nobody speaks to each other. They’re not common, only a few would be in that category. Most of them are happy collaborative partnerships but they are not true consortiums because only the lead agency has power in most cases.

Poaching and the competition for scarce resources

This sector is fraught with endemic workforce issues that have been poorly studied to date. In a study for the Australian Family Relationships Clearing House (AFRC) Cortis *et al* found ‘compelling reasons for concern about future capacity and sustainability’ (Cortis *et al.* 2009). The authors of the study found that ‘family relationship services face challenges in recruiting, retaining and developing skilled practitioners’. The study notes particular shortages in: suitably qualified Indigenous workers and non-Indigenous staff experienced in working with Indigenous communities; workers in rural and remote locations; and male workers. Capacity constraints in the family service sector flow from ‘diversity of occupations and qualifications in family relationship services, which means there are several uncoordinated pathways into these jobs, a range of qualification levels, and no core professional identity’. (Cortis *et al* 2009:21)

These issues were expressed in more colloquial terms in an interview with an FRC operator:

Even though this is a time in which people are assumed to be unemployed and taking any job they can, it is still a nightmare for us to get experienced and qualified staff because the government has trebled the size of the

sector without trebling the workforce (i.e. the means to attract a trebled workforce). A lot of these workers could work in private practice and earn a lot more, so [it's] very difficult for us.

Within this highly competitive labour market the 'poaching' of staff by competitors is not unknown. Service providers note that state government welfare agencies rely on the same skill sets values by the family relationship services industry and are able to lure workers with the promise of higher wages, job security and better conditions. These problems are accentuated in regional Australia where the skill sets relied upon by the FRS industry are both in demand (especially by the mining industry) and in short supply.

A number of the FRC operators interviewed for this study report that the retention of skilled staff is not an issue for them, citing factors such as flexible work practices, family friendly work practices (important for a predominantly female workforce), investment in skills development and maintenance of a quality 'brand' (organisational identity/employer of choice). Others report the difficulty of matching salaries offered by the private sector or industry and observe that non-monetary rewards aimed at encouraging staff loyalty require investment that is not recouped from the FRC funding stream. While a proportion of staff turn-over is undoubtedly due to *pull* factors, interviews with providers suggest that *push* factors are just as important. These have to do with the emotionally intensive nature of the work: dealing with families who are in conflict, have complex problems and experience difficulty reaching agreement on a parenting plan.

Market concentration vs. market diversity

Finally, it does not appear that the use of a competitive selection process had the desired result of increasing provider diversity: not only have we seen market share concentrated in the hands of a small number of larger providers (for example Relationships Australia, with expenditure of over \$100 million in 2008-09, is the lead agency in 22 of 65 FRCs) – exceptions being the few smaller providers who won contracts in their own right – but no contracts were awarded to for-profit providers (see Exhibit 1 below). As one government official put it succinctly, 'there's no profit in this stuff'.

Exhibit 1 – Concentration of Market Share for Selected FRCs

Organisation	Number of FRCs in which the organisation is involved
Relationships Australia	32
Centacare	20
Interrelate	9
UnitingCare Unifam	9
Anglicare	8

Informational asymmetry and inconsistency

Although the FRS industry is in many respects 'information rich' – there is an abundance of published guidance, opinion and research on policy and practice matters

– providers nevertheless report problems of informational asymmetry and inconsistency. In large part, these observations are influenced by providers' recollections of the RAF process. As for the on-going operational relationship with government, problems of inconsistency arising in the management of contracts by public servants appear to be of greater concern to service providers. This can take the form of staff turn-over in government agencies (loss of consistency, corporate knowledge and corporate memory), fragmentation arising from machinery-of-government changes (changes in priorities and personnel arising from portfolio realignments) or the impact of incremental changes in policy or procedures ('shifting the goal-posts').

It is important to bear in mind, however, that informational asymmetry and inconsistency are endemic to networked environments. They are characteristic of complexity itself and are, therefore, not confined to the government-NFPO relationship. There is unquestionably a greater capacity for ineffective or miscommunication in networked environments, where traditional bureaucratic silos can command adherence to operational policy, albeit at the cost of innovation, adaptation and nimbleness – or even effectiveness. That said, while networked systems can be 'fraught' or 'messy', they might still demonstrate a superior capacity to achieve good outcomes.

In the case of the FRC rollout, interviews with departmental officials and service provider organisations suggest that learnings from the initial funding round led to some revision of the subsequent RAF processes. It seems clear too that all players – government and NFPOs – adapted their expectations, processes and behaviours to improve communication and coordination of effort. This suggests to us evidence of organisational learning and attempts by the policy and funding agencies to demonstrate 'nimbleness'.

Subordination of NFP mission

Delivering public services for government can be a source of internal conflict for NFPOs. Most NFPOs are protective of their organisational identity, sense of mission and operational autonomy. Thus, a collection of essays recently published by the Centre for Independent Studies was suggestively entitled *Supping with the Devil: Government Contracts and the Non-Profit Sector* (Saunders and Stewart-Weeks 2009). Service providers may well consider that submitting to the policy and operational requirements of purchase of service contracts amounts to 'supping with the devil'. However, it is also clear that NFPOs *choose* to participate in tendering processes because of the possibilities offered by government funding to leverage their existing capacities.

As a condition of funding FRCs are required to be clearly branded ('badged') using an approved government livery. The rationale for this approach is that FRCs were originally conceived as a gateway service and needed to be recognisable and project legitimacy – in other words they needed to look like a government shopfront. The fact that branding has succeeded in this regard is a sore point with some providers, with many respondents reporting confusion on the part of clients, ancillary services and even their own staff concerning the identity and auspice of the provider. One provider observed that many clients believe FRCs are Commonwealth agencies capable of providing advice on payments or, alternatively, are deterred from attending, believing that their benefits might be compromised through disclosures they might make in the course of mediation. Others, however, are more sanguine:

people complained about having to badge their centers as Australian Government initiative FRCs. I was keen to be able to put my logo on the wall as well somewhere. Then I thought, 'well it's government money so they can actually choose that'. But then my other point of view is that people actually want to know it's one of those FRCs. Recognition of the brand ... is an important part of the business. There has to be familiarity and commonality among FRCs.

Although there is some lingering resentment, most FRC operators grudgingly accept the branding requirements, observing that branding has neither undermined providers' capacity to be innovative nor prevented their inflecting FRCs with their organisation's unique qualities. It is also observed that the use of what government officials refer to as a 'quality brand' has made the services clearly recognisable and has contributed to a perception that FRCs are 'trustworthy'. To the extent that branding has resulted in cases of 'mistaken identity' this has sometimes worked to the advantage of FRCs who observe that close identification with the Commonwealth predisposes state and local government agencies to be more cooperative than might otherwise be the case.

A mixed performance

Looking at the big picture, the FRC initiative is a success in that it has:

- met a previously un-met need
- demonstrated the value of the FRC practice model
- gained user, practitioner and community acceptance

A comprehensive evaluation of the 2006 family law changes undertaken for the government by the Australian Institute of Family Studies (AIFS 2009) reported that FRC clients increased from almost 14,000 in 2006-07 to over 60,000 in 2008-09 (AIFS 2009: 39). This finding reflects the impact of the mandatory provisions of the Act (commencing in July 2007) and supports the anecdotal accounts of government officials and service providers that FRCs are seeing a cohort of families who, previously, would not have sought any form of legal or other intervention largely for reasons of affordability.

The evaluation also found that parents who have 'sorted things out' are by and large satisfied with post-separation services although those still in the process of 'working things out' are less satisfied (AIFS 2009: 81). Importantly, the evaluation found that mothers and fathers who have sorted out their parenting arrangements indicated much higher levels of satisfaction with counselling/mediation or family dispute resolution (FDR) than with either lawyers or the courts (AIFS 2009: 82).

Overall, the evaluation concludes that there has been a 'cultural shift' away from a reliance on legal pathways for dispute resolution towards non-coercive community-based family law pathways (AIFS 2009: 77), evidenced in part by an observed decline in court filings with respect to children's matters (AIFS 2009: 365). Interestingly, the evaluation also notes that relationships between FRCs and the legal profession (both lawyers and courts) vary from 'highly cooperative, especially where active family law pathways groups were operating, to non-existent or, occasionally, hostile' (AIFS 2009: 89).

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Service providers interviewed for this study assert that FRCs are well-embedded in their local communities and enjoy effective links to state and local government services as well as other NFPOs. This may in fact demonstrate the purported capacity of NFPOs to work across ‘boundaries’ and gain cooperation and trust. It might also be the case that their capacity to do so is superior to that of a government-auspiced service provider, being less constrained by the observance of bureaucratic protocols.

Some expectations for this initiative, however, have not been fully realised:

- greater provider diversity has not materialised
- FRCs have not, in practice, fulfilled a role as ‘gateway’ services, and
- the majority of clients are unable to reach agreement on a parenting plan within the three ‘free’ hours and service providers frequently waive fees on affordability grounds.

As previously stated, government justified the competitive selection process partly on grounds that such a process would promote provider diversity and encourage new entrants into the nascent family law services ‘market’. However, apart from the handful of NFPOs new to this market who were selected ahead of existing local providers, the majority of successful applications were awarded to a relatively small number of larger, established organisations. One service provider portrayed the situation in the following terms:

I don’t think any of the tendering process has been completely equitable because at the end of the day when you look at nearly any area around Australia the tenderer or consortium who has won, or the lead agent who has won, is the one that’s had the largest balance sheet.

It is tempting, therefore, to conclude – as have some service providers – that the motivation to apply a competitive selection process was more ideological than practical: more reflective of an adherence to principal-agent orthodoxy. It does not appear, in the end, that any real systemic benefits accrued from the competitive selection process (apart from the benefits flowing to those who won contracts). On the other hand, there appear to have been significant economic and opportunity costs as well as social capital costs arising from strained relationships, distrust and suspicions about collusive behaviour.

There also appears to be a lingering unease about the impact of consortia on organisational behaviour and identity. In particular, a number of service providers interviewed for this study expressed concerns about the extent to which lead contractors exert control over a large number of smaller consortium partners – effectively sub-contracting these smaller organisations to deliver specific components of bundled services. They cite as potential risks the loss of organisational identity and a lack of diversity in approach. Conversely, organisations with smaller ‘balance sheets’ (meaning those who might otherwise not meet the due diligence tests built into the application process) have recognised the advantages of partnering with larger organisations in order to leverage their market power.

Conclusions

Our investigation of the Family Relationship Centres program only partly confirms the critique of third party contracting. Although the anecdotal accounts of service providers superficially support the proposition that ‘instrumentalist’ government contracting regimes have corrosive effects on not-for-profit providers and serve to co-opt NFPOs and subvert their altruistic mission by engendering competitive behaviours and practices, our research suggests the reality is far more complex and nuanced.

The policy framework governing the FRC implementation exhibits a degree of path dependency insofar as its internal logic appears to have been shaped by the tenets of New Public Management and agency theory. To a large extent, this constraint is an exogenous factor well beyond the discretion of any of the government agencies involved in this program.

Furthermore, it must be acknowledged that the policy design and implementation process also exhibited substantial collaborative and collegial behaviours on the part of government and the NFPS. In addition, the final form of the competitive selection process marked a significant departure from a pure service procurement model in that selection was based on capacity not price; collaboration between sector partners was encouraged (albeit imperfectly); and the sector was consulted extensively in the development of the service model, training and accreditation and performance measurement. Indeed, the government has refrained from using its monopsonistic power to the full extent possible by incorporating relational elements within the family relationship services framework and opting to work with the sector to improve operational and administrative processes.

The relationships between the sector and the Government departments exhibit an encouraging degree of ‘good faith’. The second and third contract rounds demonstrated departmental willingness to adapt policy and practice in response to the concerns expressed by the sector. Moreover, there appears to be a high degree of collegial endeavour in the form of a shared commitment by all parties to deliver good outcomes for families. As one official observed, it is ‘early days’ yet for the FRC initiative because, after all, 2008-09 was the first year in which all 65 FRCs were operational. The true test of this initiative will be how it performs – and how it adapts – to a range of endogenous and exogenous pressures over the next few years.

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