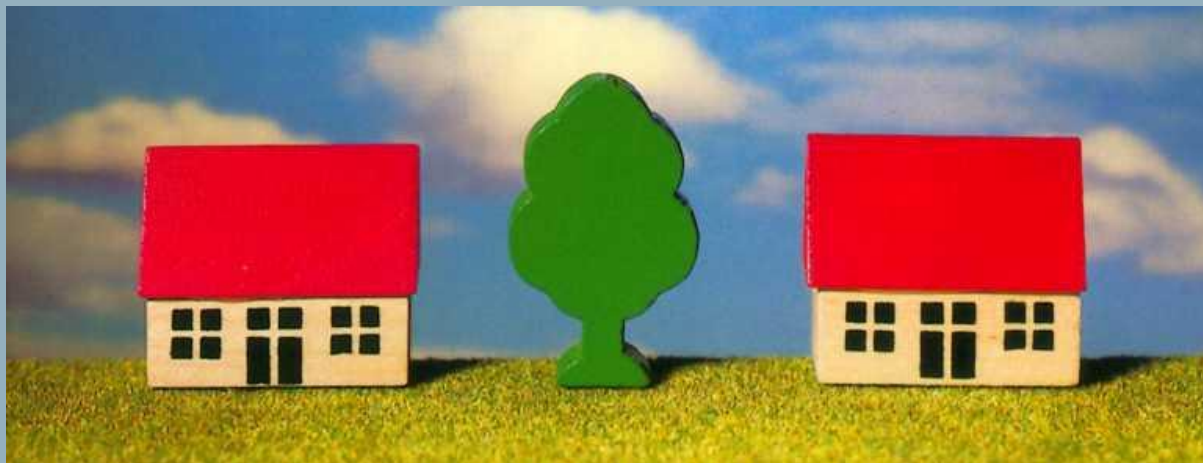


Access to Justice in the Family Law System Reflections from a social scientist

Bruce Smyth
ANU Centre for Social Research & Methods

Access to Justice: Building Bridges, Breaking Barriers
7th National Access to Justice & Pro Bono Conference 2019





Rate my plate



Adam Harvey If I'm not mistaken this appears to be somewhere around the 4th and 5th circles of hell.



1w

↳ 66 Replies



Alex J Sebbinger-Sparks What's that poured over it? Castrol GTX?!

1w

↳ 5 Replies



Jason Adamson Does that say Pancakes or Pancreas?

1w



Paul Scott Scottie It's a type 2 pancake cake

1w

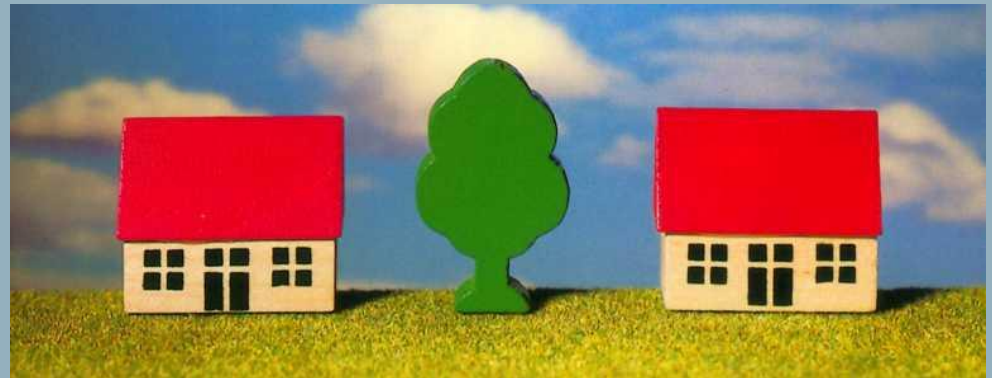


Tommy Mann If I hear one more joke about pancakes I'm gonna flip 🤪

1w

↳ 7 Replies

I. Social Change



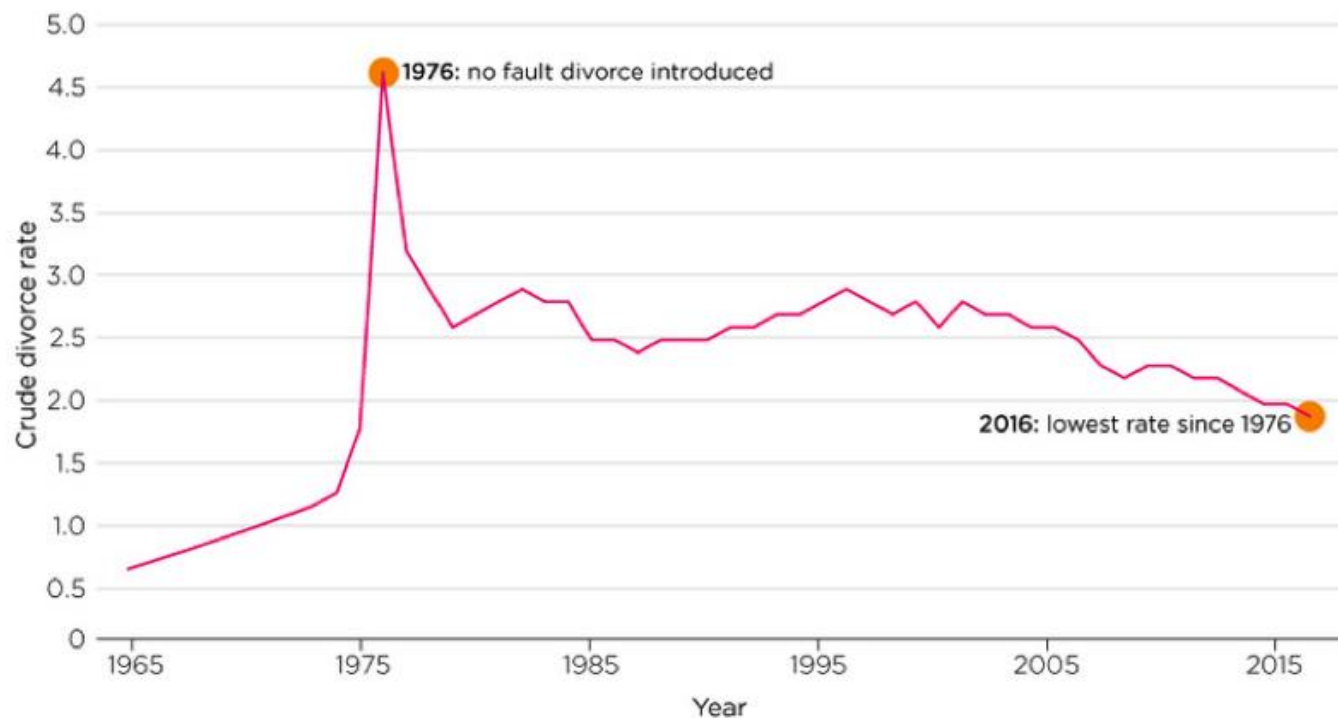
Some key shifts

Families & relationships increasingly **complex & fluid**.

- Increases in life expectancy occurring alongside major changes in family formation:
 - Marriage rates falling.
 - Crude divorce rate fallen to its lowest rate since 1976.
 - Non-marital cohabitation on the rise (23% 1980 vs 78% 2008).
 - Significant proportion of children born outside of marriage.

Crude Divorce Rate 1965-2016

Crude divorce rate, 1965–2016



Note: Crude divorce rate: Number of divorces per 1,000 of estimated resident population at June for each reference year. Sources: ABS (various years) *Marriages and Divorces Australia* (Catalogue No. 3310.0); ABS (various years) *Divorces Australia* (Catalogue No. 3307.0, 3307.0.55.001)

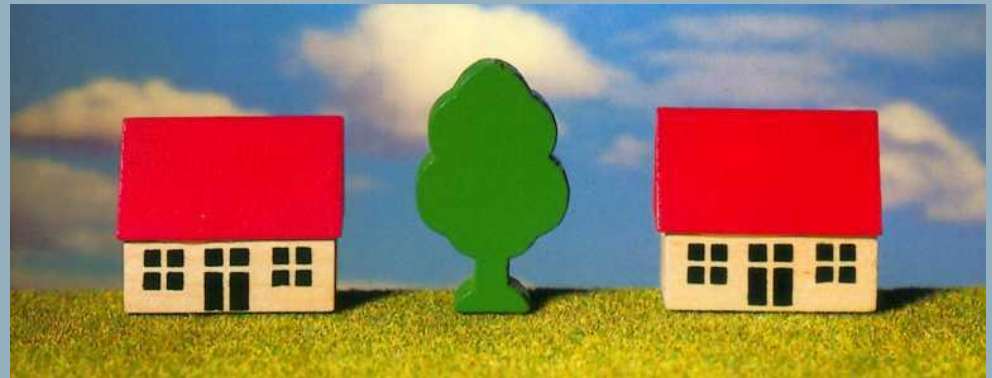
To sum up:

- Australian parents are:
 - a) less likely to be married than in the past
 - b) getting older before parenting children
 - c) having fewer children in individual relationships
 - d) having children in more than one relationship.
 - e) both participating in the workforce (mums: from 43% in 1981 to 63% in 2009) – esp PT



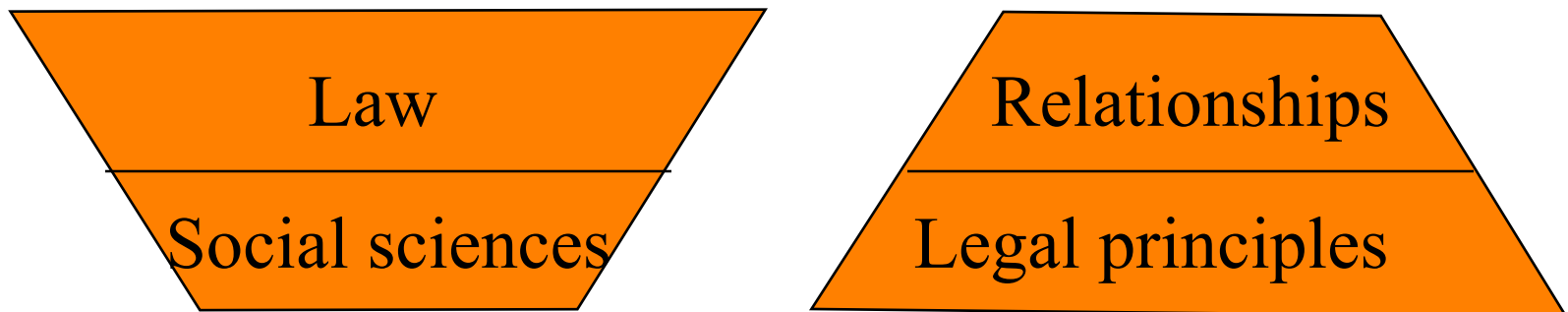
II. Five profound shifts in the family law system

... that flow on from social change

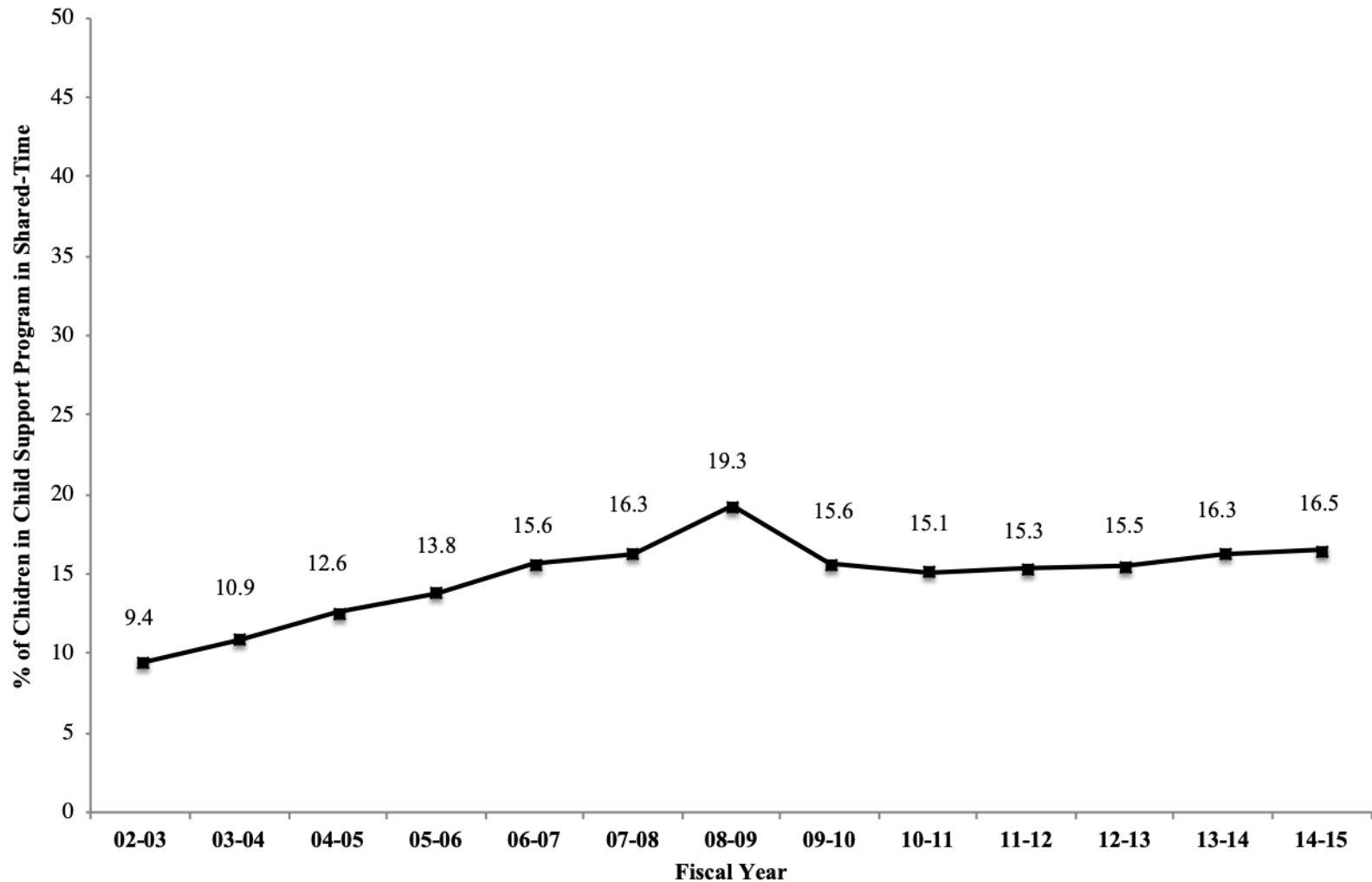


Shift #1: An inversion?

- From a predominantly *legal discourse in law & practice* (supported by the social sciences) to a drift towards a *relationship discourse* (supported by legal principles)



Shift #2. Sharing parenting – not ‘visiting’



Growing popularity of shared parenting

Convergence of several mutually-reinforcing trends:

- Marked rise in women's participation in labour force (tag-team ptg)
- Greater acceptance of the importance of the role of fatherhood;
- Growing appreciation that children generally benefit from an ongoing meaningful relationship with both parents after separation;
- Divorce laws that increasingly “lean ... in the direction of joint custody”.
- Dev't & greater enforcement of child support (where \$ goes, heart ...).
- Bi-directional nature of social change and the law (e.g., 2006 legislation *caught the wave* of shared parenting rather than caused it)

Shift #3. Children

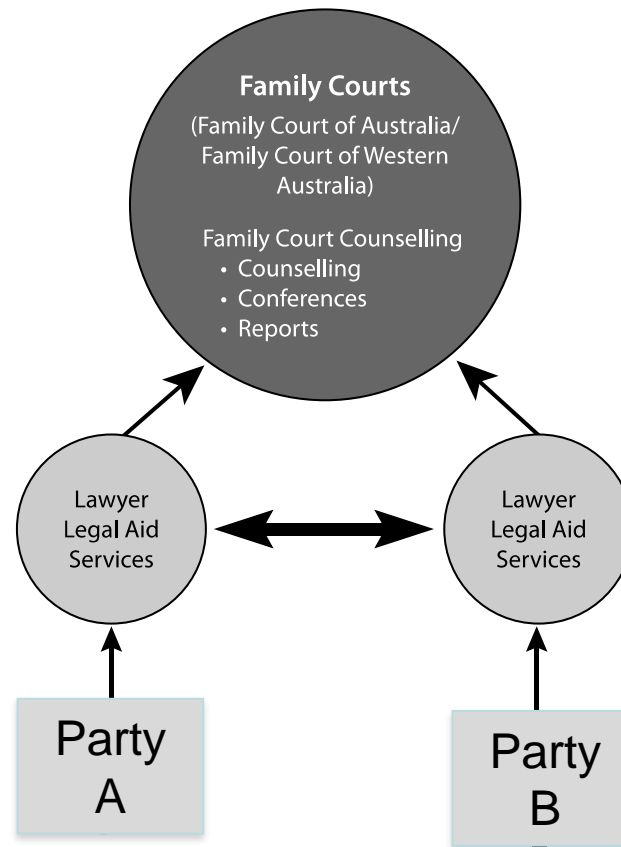
- Family law professionals putting the child “front and centre” at all times (*Children in Focus*) – i.e., keeping the needs, aspirations & attachments of children at the centre of deliberations & decision-making

Shift #4. Family violence and abuse

- From ‘behind-closed-doors’ & invisible to a serious social problem.
- Understanding FV and abuse to be more than an interpersonal issue (not just ‘conflict’) to a dynamic that is often linked to power & control, & a sense of entitlement.

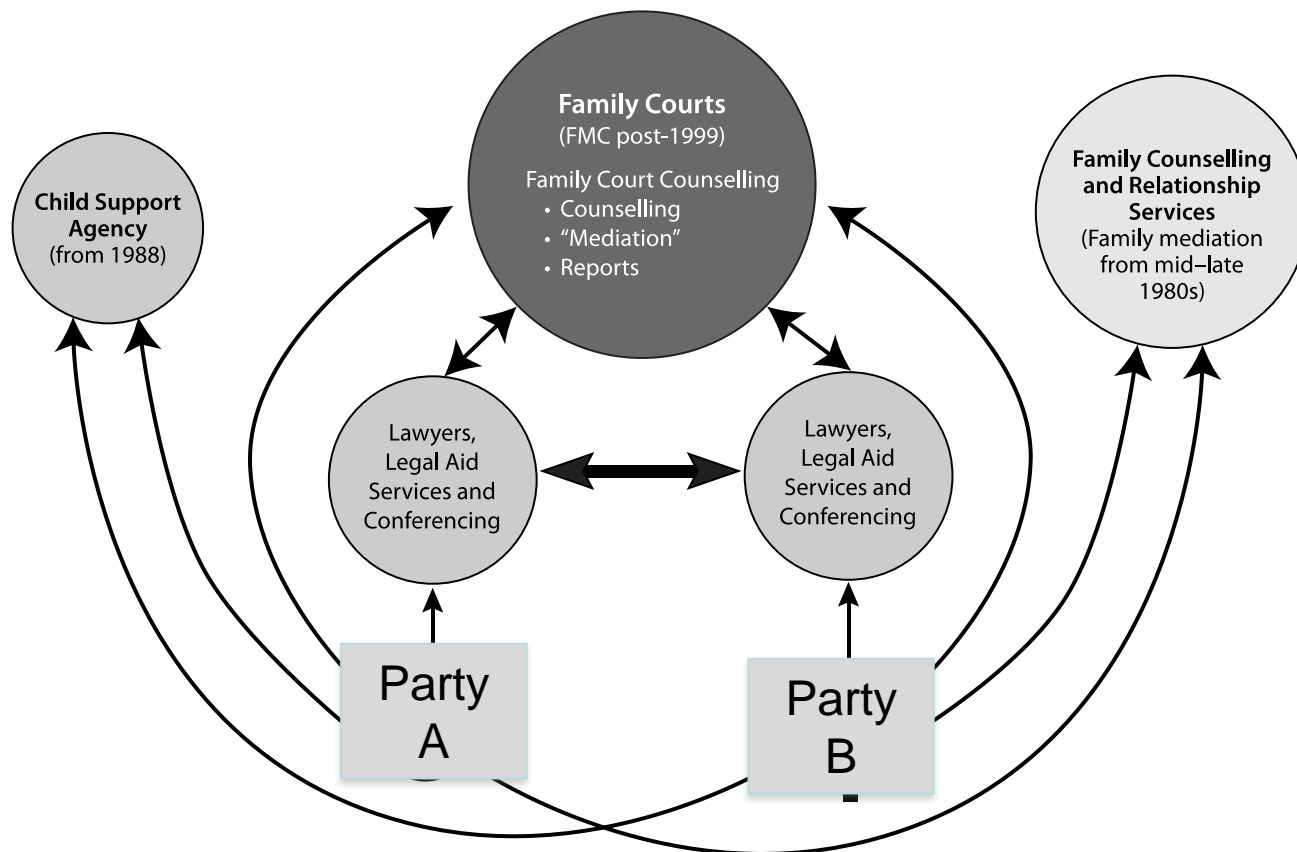
Shift #5. Court Centric model

Main pathways
Child-related services in family law
Phase I
1976–85

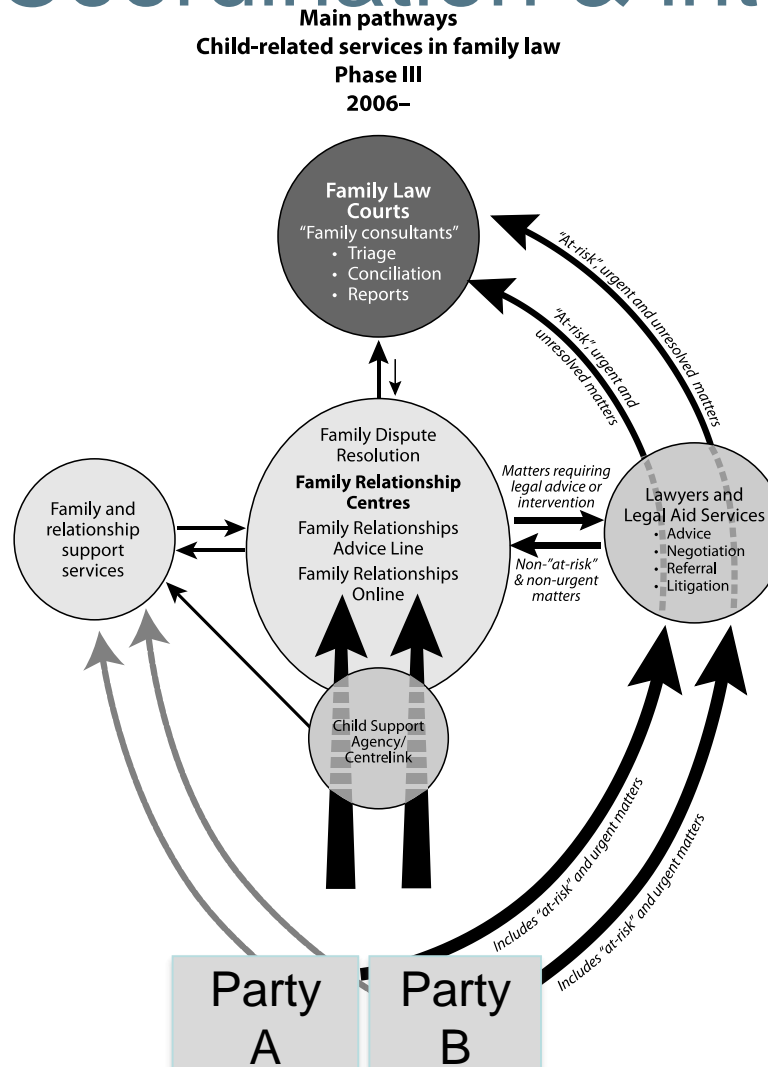


Shift #5. CSA & Community-based services

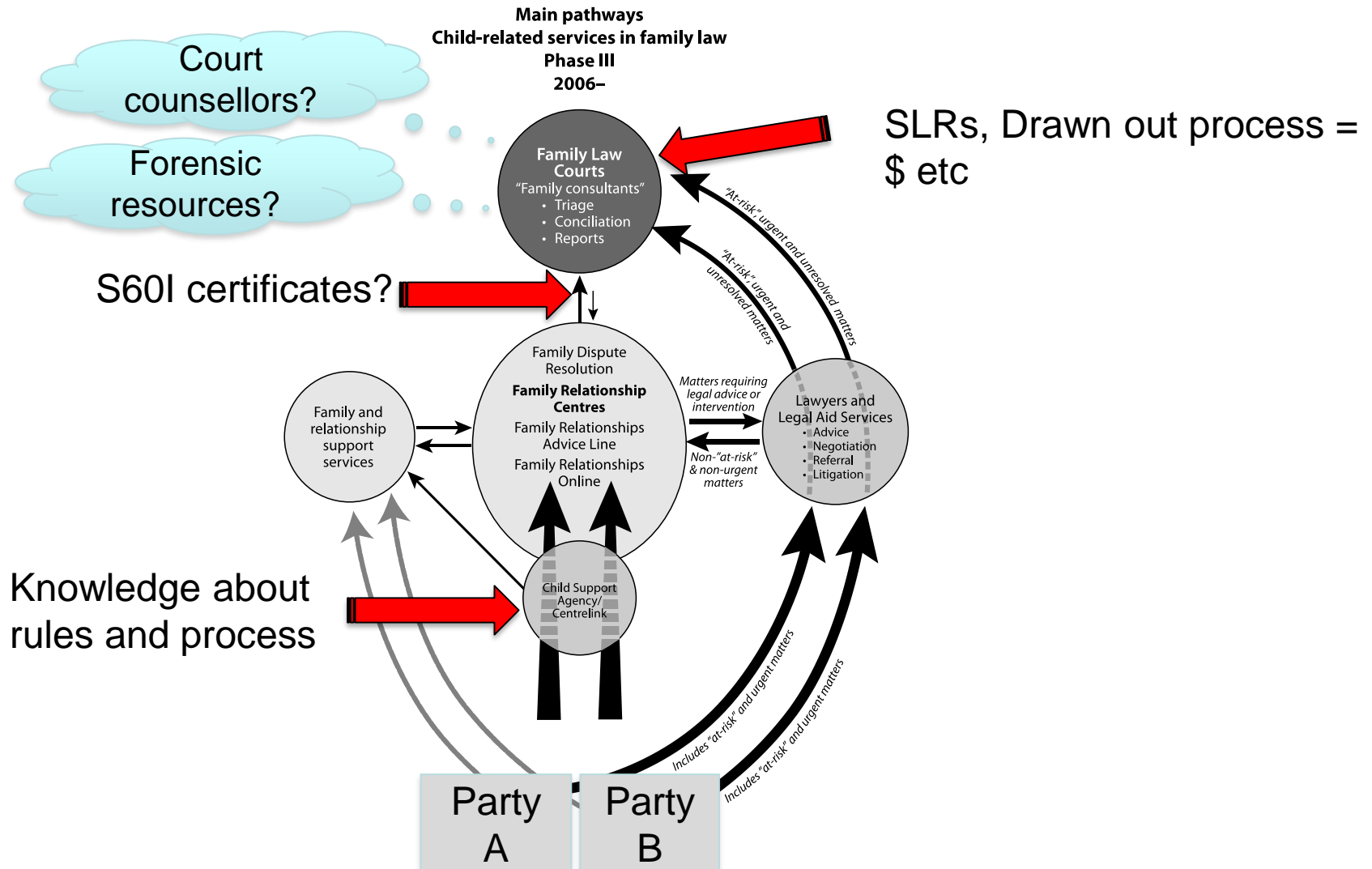
Main pathways
Child-related services in family law
Phase II
1985–2006



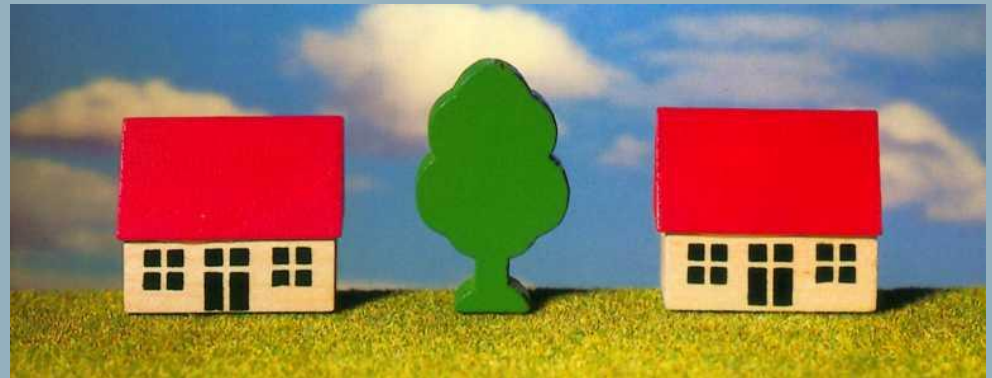
Shift #5. Coordination & integration



Shift #5. Some pressure points?



III. Parting reflections



Access to Justice – Positives

- Giving adult disputants the chance to be heard & supported
- Getting adult disputants into conversation about their children (where safe & possible)
- Close liaison with other relevant services
- Creating child-sensitive spaces to help parents reflect on the range of present and future possibilities

Access to Justice – Improvements?

- Expanded FDR practices in ‘ordinary’ cases – difficult & complex but not unsafe [> ‘standard’ mediation; get in & represent interests of children; keep parents focused; therapeutic interventions]
- *Collaborative* practices rather than adversarial practices
- S60I certificates: 5 categories? Used by crt?
- Working with interparental hatred
- Family violence – Are we getting anywhere?



Comments? Questions?

