


Mediation in the Family Law Context

Family Relationship Centre Townsville

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Family Relationship Centre Townsville - Centacare NQ




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Family Relationship Centre


- ❖ FRCs are funded by the Commonwealth government for provision of, and referral to a range of services for families in various states of distress, e.g.
 - ❖ Counselling,
 - ❖ Education and skills (various course offerings for parents and children),
 - ❖ Domestic and Family Violence support,
 - ❖ Family law services,
 - ❖ Gambling Help
 - ❖ Alcohol and drug rehabilitation

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What is Family Dispute Resolution?

- ▶ Bringing together two or more people to discuss family issues:
 - ▶ Post-separation parenting
 - ▶ Property division
- ▶ FDR “sits” alongside Family Court processes but is independent of the courts.

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Context

- ▶ Pre-1975 - Need to “Prove” a grounds for divorce.
- ▶ Family Law Act 1975. No-fault divorce - removes necessity of adversarial approach.
- ▶ 2005 Reforms introduce requirement for FDR before applying for court determination. (see Certificates)
- ▶ 2006
 - ▶ First FRCs open
 - ▶ Family Relationships Online
 - ▶ TDRS, Telephone Dispute Resolution Service

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Context - cont.

- ▶ 2016 Reforms - require Safety to be the primary consideration for parenting decisions. (AG Robert McLelland)
- ▶ 2019 FRCs authorised to conduct FDR on Property-only matters on the same basis as Parenting matters.
- ▶ 2021 Merging of FCA and Federal Circuit Court - ADR further normalised as a part of the legal process.

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What is Mediation?

“...a structured, interactive process where an impartial third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques.”

► - Wikipedia

- It is fundamentally about the people involved deciding for themselves what the solution looks like.
- NOT one winner and one loser.
- Long history of this function.

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What is Mediation?

- As a profession, mediation exists and is used in many contexts.
- Mediation falls on a spectrum of interventions termed **Alternative Dispute Resolution (ADR)**. From Adjudication to Arbitration, Conciliation, Mediation, Counselling.
- More specifically, Mediation is a form of Non-determinative Dispute Resolution (NDDR)
- There are industry bodies, such as the Mediator Standards Board.

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What is Family Dispute Resolution?

- Bringing together two or more parties to discuss **family** issues:
 - Post-separation parenting
 - Property division
- FDR “sits” alongside Family Court processes.
 - Can resolve issues without the need to involve the courts.
 - Is usually a pre-requisite activity to court.
 - Possibility of a court ordering people to attend FDR.

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What is Family Dispute Resolution?

- In the Australian Family Law context, the FDR process is regulated by the federal government (since 2006).
- The mediation process is termed Family Dispute Resolution (FDR); the mediator is titled Family Dispute Resolution Practitioner (FDRP)
- There are specialised training bodies and an accreditation process managed by the Department of Attorney-General.

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The FDRP's Role

- ❖ The Family Dispute Resolution Practitioner **will not**:
 - ❖ Impose a solution or specific course of action
 - ❖ Give legal advice or make decisions for the participants
 - ❖ Act as an advocate or spokesperson for either participant during the Family Dispute Resolution process

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The FDRP's Role

- ❖ The Family Dispute Resolution Practitioner's role is to:
 - ❖ Assist the parties to prepare for FDR
 - ❖ Assess appropriateness for Family Dispute Resolution
 - ❖ **Facilitate the FDR process**
 - Apply strategies to mitigate against power imbalances - alternate delivery modes, caucus throughout sessions
 - ❖ Issue any documents which arise from the process
 - ❖ Remain impartial

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The FDR Process Flowchart

The process is identical for both parties. Parties A & B attend:

- ❖ Individual appointments with the Family Dispute Resolution Practitioner (Mediator) - approx. 1.5 hrs
 - ❖ Questions to assess circumstances, history, risk, needs and suitability
- ❖ Child Focused Information Session (1 hour)
 - ❖ About me; About the other parent; About my children
- ❖ Pre-FDR session - approx. 1 hr
 - ❖ Agenda items, 'on the day' logistics, last opportunity to prepare
- ❖ **Joint Family Dispute Resolution session** - approx. 3 hours
 - ❖ May be in the same room, or 'shuttle' or on the phone

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Considerations

- ▶ Presumption that parents are able to negotiate through their issues.
- ▶ Assessment of the suitability to conduct FDR is ongoing throughout the process. Central issues:
 - ❖ Safety issues - Domestic and family violence, or child impact concerns
 - ❖ The willingness and ability of each parent to manage their own emotions and to express themselves.
 - ❖ Cultural considerations (CALD & ATSI), interpreter services, location, support people, shuttle (arrival & departure) logistics

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Requirements for accreditation

- ▶ Undergraduate degree in one of: Law, Psychology/behavioural sciences, Social work, Mediation.
- ▶ Graduate Diploma in Family Dispute Resolution
- ▶ Membership of an RMAB
- ▶ Application to and accreditation by the Department of Attorney General (Commonwealth)
- ▶ Reaccreditation every two years.

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The Best Interests of the Child

The Family Law Act is driven by 'the best interests of the child':

(2) The primary considerations in s60CC are:

(a) The benefit to the child of having a meaningful relationship with both parents

(b) The need to protect the child from physical and/or psychological harm caused by abuse, neglect or family violence

(2A) The Court is to give greater weight to paragraph (2)(b)

So, with each option/proposal/issue the parents **discuss**, the Practitioner's work is to assist parents in considering what that option/proposal would feel like from their child's perspective.

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Family Relationship Centre

- ❖ Funded by the Commonwealth government,
 - ❖ Delivered by NGOs
- ❖ Core clients are parents who have separated
- ❖ Core business is conducting Family Dispute Resolution (FDR)
- ❖ FDR may be delivered outside FRCs

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Equal Shared Parental Responsibility

The presumption of Equal Shared Parental Responsibility (s61DA) applies, unless otherwise ordered.

This means both parents are equally responsible for making decisions together about all the major long-term issues that affect their children:

- ❖ Health
- ❖ Education
- ❖ Any change of name
- ❖ Religious and cultural beliefs and practices
- ❖ Living arrangements



NB: Many parents misinterpret this as an assumption of an equal-time living arrangement (ie, 50-50 care). Living arrangements should be guided by developmental, needs-based considerations for the child, which usually change over time.

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Living Arrangements

Where there is equal shared parental responsibility, parents and caregivers can consider:

- 1) The child spending equal time with each parent:
 - If it is reasonably practicable and ‘in the best interests of the child’ e.g. age of the child, location of both parents, safety considerations, communication between parents
- 2) The child spending substantial and significant time with each parent:
 - Week days over nights or after school visits
 - Weekends and Holidays
 - Special days for the child and parent e.g. birthdays, Mother’s Day and Father’s Day, Christmas

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S60i Certificates (R/ship with court)

The Family Law Act specifies five types of certificates which may be provided by the Family Dispute Resolution Practitioner, but three main reasons:

- a) One party to the dispute did not attend Family Dispute Resolution
- b) The case was not appropriate for Family Dispute Resolution
- c) All parties attended and attempted to resolve the dispute



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A Day in the Life of an FDRP

- ❖ Preparing the clients: What can be put in a Parenting Plan? living arrangements, communication, special occasions & holidays, health, education, routines, diet, discipline, travel, relocation, religion & culture, extra-curricular activities, financial (over and above Child Support Assessment).
- ❖ Managing the clients’ compounding issues - DFV, substance abuse, Mental illness, poverty, disadvantage, parents focused on own needs rather than the needs of the children, “fairness” assumptions, child abuse, trauma impacting on parents, high-conflict personalities, developmentally appropriate parental expectations for ages/stages of babies/children.

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A Day in the Life of an FDRP

- ❖ Managing the Family Dispute Resolution Joint session - pre-planning, safety, balance between parties, impasses, conflict in session, where to from here?
- ❖ Demographics - FIFO, Grandparent carers, ADF personnel, young parents, Outreach areas - Charters Towers, Mt Isa, Ingham, Ayr - logistics

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Preparation

The Mediation itself is about bringing two parents together for a discussion, so it is necessary to conduct appropriate preparation:

- ▶ The Practitioner needs to become familiar with the elements of the case,
- ▶ The clients need to be prepared;
 - ▶ What topics will they discuss?
 - ▶ How will they raise issues and generate options?
 - ▶ What does collaboration look like?
- ▶ A Case assessment must be conducted

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Family Dispute Resolution Practitioners (FDRPs)

- ▶ An FDR practitioner is an independent person trained in mediation and negotiation and specialising in family disputes. They are neutral and don’t take sides with any of the people involved in the mediation. They will facilitate the process by encouraging people to talk about the particular issues in dispute.
- ▶ An FDR practitioner is accredited under the standards set out in the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*.
- ▶ Family Dispute Resolution Practitioner obligations - case management model, ongoing screening and assessment of risks and appropriateness of case to proceed to joint Family Dispute Resolution session

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Family Relationship Centre

- ▶ We have a specific role of Indigenous Advisor who is also an accredited Family Dispute Resolution Practitioner.
- ▶ We have a library with books that are free to borrow, and many free 'take-away' resources on parenting, taking care of yourself post-separation, children's picture books on living in two homes, etc

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