

REPORT ON THE STUDY TO IMPROVE UNDERSTANDING OF NON-AGREEMENT IN FAMILY DISPUTE RESOLUTION

Prepared for Interrelate Family Centres

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1 Background

Family dispute resolution is a process by which separating parents can tackle issues relating to their children in an environment that attempts to facilitate communication between the parties and allow each to feel that their point of view has been considered. The process is guided by the 'best interests' principle, which focuses attention and energy on parenting arrangements that provide the best solution for the children affected by the dissolution of the couple relationship.

The report of the evaluation of the 2006 family law reforms (Kaspiew et al., 2009) noted that, relative to some other services (FRCs, Children's Contact Services, and Parenting Orders Program), clients' perceptions of family dispute resolution were less positive in relation to: affordability, waiting times, impartiality, capacity to meet needs, overall quality, and efficacy. On the other hand, family dispute resolution was positively viewed for the opportunity it provides for individual views to be put forward and the focus on addressing children's needs. 'Facilitated services' such as family dispute resolution were seen as more effective with respect to forming agreements than legal services, but less effective than the less formal discussions parents have between themselves.

2 The project

The primary aim of this project was to improve understanding of the reasons why family dispute resolution clients could not reach full agreement regarding parenting arrangements. Phone interviews were conducted with past clients of family dispute resolution services to explore the issues that impacted on their attempts to achieve a parenting agreement. This report outlines the findings of the project, which need to be considered in the context of the practice of family dispute resolution with a view a) to helping parents achieve better or more complete agreements, b) improving practitioner training and practice, and c) designing possible follow up services for clients who have left the dispute resolution program, to optimize the chances of their reaching more complete and satisfactory – or at least, sustainable - parenting arrangements.

3 Survey design

The factors on which client perceptions were measured by the family law evaluation, noted above, were of limited value in trying to understand why parents are unable to reach a full agreement regarding parenting arrangements. Therefore, to identify key aspects of the family dispute resolution process relevant to parenting agreements, a workshop was conducted with Interrelate FDR practitioners at their staff conference during September 2010. The outcome of the workshop was a large set of factors relating to why, in the experience of the practitioners, parents could not reach an agreement. These were to be asked of clients some time after the termination of the family dispute resolution process. The large pool of items generated as a result of this consultation was whittled down to a smaller, manageable set that would provide answers to the questions of interest but not be overly intrusive or onerous for participants. Workshop participants provided a list of 26 elements of parenting agreements that, in their experience, were areas of contention for clients. These are presented in Table 1 below.

Communication	Time	Safety
Holidays/special days	Decisions	Household routines
Education/school activities	Food/nutrition	Telephone contact
Drop off/pick up	Conflict resolution	Re-location
Alcohol and drug use	Parenting behaviour & responsibilities	Finances
Transport	Extended family	Child(ren)'s needs
Long/short term	In case of death	Medical care
Denigration of other parent	Step/blended families/significant others	Parent's dating
Religion	Travel/passport (significant)	

They also identified a number of common stumbling blocks to parents reaching agreement; these are presented in Table 2.

Table 2. Stumbling blocks to parenting agreements, provided by Family Dispute Resolution Practitioners

Lack of trust in ex-partner	Lack of trust in the FDRP	Values/beliefs
Partner intransigence/bad faith/hanging on to conflict	Money	Cultural differences
Insufficient time	Practitioner skill	Geography/distance
Lack of information	Mental health issues	Grief/loss
Lawyer misinformation/direction	Power/control issues	Parental circumstances (e.g. factors impacting capacity to engage)
Lack of trust in the process	Alcohol and/or drug use	Presence of a new partner
Other unresolved issues (property, child support)	Level of conflict, fear, domestic violence	

Items were written to:

- identify past clients' primary dispute resolution starting points and their obstacles;
- generate the particular information needed to understand why parenting agreements may not be achieved for some clients;
- determine clients' views with respect to what else could have been done to help them reach agreements;
- identify how well clients' current arrangements were working; and
- identify whether the family dispute resolution process helped them focus to a greater degree on their children and communicate with their child's other parent.

The items were framed as a telephone interview and conducted by an Interrelate staff member.

4 Results and comments:

A total of 155 phone interviews were conducted comprising 79 women and 75 men (sex not recorded for 1 respondent). Two gender differences were found.

Important aspects at start of family dispute resolution

The first question in the interview asked participants to nominate up to 6 aspects of parenting arrangements that were *most important* to them at the time they entered the family dispute resolution process. The responses were collated to identify the most common issues that clients regarded as important. The top three of these were:

- ❖ Time (n=129),
- ❖ Communication (n=87), and
- ❖ Parenting behaviour & responsibilities (n=42).

Other issues included holidays/special days (n=22) and transport (n=22). The full list appears in Appendix 1. Time and communication are clearly the key primary items on the agenda of clients coming to family dispute resolution.

Issues agreed on/not agreed on

Respondents were asked to indicate which aspects of parenting arrangements they and the child's other parent agreed and those they did not agree on, at the time they started mediation. Multiple answers could be given. As would be expected, few clients reported any issues on which they had reached agreement at the time they started family dispute resolution. Of those who had agreed on something, it was likely to be the issue of time. Since it is likely that some informal arrangements regarding the time children would spend with their non-resident parent were put in place immediately following the separation, this would not be unexpected. The full list appears in Appendix 2; several issues were not nominated at all. Given that clients had chosen or been required to engage in family dispute resolution it is unsurprising that few clients reported having reached agreement on any issues.

Two issues emerged as common points of contention prior to beginning family dispute resolution: time (n=112) and communication (n=77). Parenting responsibilities/behaviour (n=39) was less frequently reported. As would be expected, these mirror the issues cited earlier as important by former clients. The order of issues that emerges from these data offers a useful hierarchical checklist to facilitate information gathering at either registration, intake, or throughout the first family dispute resolution session. Having such a list could assist those clients whose capacity to think clearly is negatively affected by the stress of the family dispute resolution process or their exposure to former, possibly intimidating, partners, and would ensure the complete range of potential issues is at least raised or acknowledged. The complete list appears in Appendix 3.

Could we have done more?

Respondents were able to provide qualitative answers to this question. Of the 153 responses recorded, 54 per cent indicated that there was nothing else that the Family Dispute Resolution Practitioner or Interrelate could have done. Of these, just over half (56%) were from women. A few comments

reflected a sense that there was no expectation of a positive outcome participation in family dispute resolution – regardless of the Family Dispute Resolution Practitioner’s skill -: “No, everything that could be done was done”, “No, practitioner did all that she could”, “No, we can’t change others”.

Seventy respondents commented on how they could have been better served by the family dispute resolution process. The individual comments were examined for emerging themes. There were no dominant themes; the three largest groups each contained comments from only 12 respondents. The first of these groups reflected the view that practitioners needed to be more directive, offer more opinions and have more power and control [“Practitioners to have more power and authority and be able to give directions”]. This might indicate that some clients came into family dispute resolution expecting practitioners to have more authority than was the case, perhaps looking to the practitioner to decide rather than facilitate. In contrast, the second key theme related to the need for practitioners to be more neutral [“practitioner to be more neutral”; “fathers are important too, focus on their wishes”]. Impartiality was a concern for respondents in the family law evaluation (Kaspiew et al., 2009). It is interesting to note that 8 of the 12 comments in each of these two groups are from men.

The third group of comments reflects dissatisfaction with the length of the family dispute resolution process – “make the process quicker”, “shorten process time, appointments closer together”. It is unclear, however, whether the comments refer to the number or length of family dispute resolution sessions per se, or the time required to finalise their individual case. Participants in the family law evaluation (Kaspiew et al., 2009) also commented negatively on the timeliness of the family dispute resolution process.

Each of the three groupings represents the comments of 12 of the 70 participants offering comments. This is a fairly small number; therefore interpretation of these themes needs to be cautious. Within those constraints, the results suggest that expectations of the role of family dispute resolution practitioners are not being met for a small group of participants. Also of note – no “don’t know” responses were received for this question. The complete list of comments appears in Appendix 4.

How well are your parenting arrangements working now?

As Table 3 shows, although participants had achieved only a partial, if any, parenting agreement through family dispute resolution, current arrangements were reported as generally working well for almost half (47%) of respondents. Arrangements were problematic for 27 per cent, and for a further quarter (26%) the arrangements were not working well at all.

Table 3. Clients' ratings of current parenting arrangements

How well are your parenting arrangements working now? (%)				
Badly	Not well	Sometimes well, sometimes not	Fairly well	Really well
11	16	27	43	4

These data indicate that there is a group of clients who are able to make their arrangements work at least 'fairly' well. There is also clearly a group of clients experiencing persistent difficulties, resulting in arrangements that seem to work inconsistently or not well at all. Unfortunately the data cannot tell us whether there is any relationship between participants' dispute resolution experiences and the success or otherwise of their current arrangements, or even whether the current arrangements are those that were put in place at the end of their dispute resolution sessions. However, they do provide a baseline against which future outcomes may be assessed or could be assessed in future studies.

Major stumbling blocks

Participants were asked to indicate which of the stumbling blocks practitioners had identified were relevant to their attempts to reach an agreement. The responses of the 154 participants who answered this item are reported in Table 4 below. Three results stand out. First, partner intransigence, bad faith and old conflicts were seen as a common stumbling block for family dispute resolution participants, being cited by 72 per cent of participants. Men and women were equally likely to nominate this as an issue. Second, the next most frequently mentioned issue was power and control, with women significantly more likely to report this as a stumbling block than men. Third, although reported by only 5 per cent of the sample overall, fear, conflict and domestic violence were cited by 9 per cent of women as a stumbling block to achieving an outcome – significantly more than men.

Table 4. Major stumbling blocks to agreements

	%
Partner intransigence/bad faith/hanging on to conflict	72

Power/control issues	25**
Practitioner skill	12
Lack of trust in the process	10
Presence of a new partner	8
Lack of information	7
Grief/loss	7
Alcohol and/or drug use	7
Lack of trust in ex-partner	7
Geography/distance	6
Money	5
Level of conflict, fear, domestic violence	5*
Values/beliefs	5
Other unresolved issues (property, child support)	3
Mental health issues	3
Insufficient time	2
Lack of trust in the FDRP	2
Lawyer misinformation/direction	1
Cultural differences	1
Parental circumstances (e.g. impact of housing, employment on capacity to engage)	1

Gender difference in responses: * $p < .05$ ** $p < .01$

The relative order of these responses again suggests aspects of clients' circumstances that may be targeted at the beginning of the family dispute resolution process. While experienced practitioners may quickly identify the most frequently cited issue, partner intransigence, those with less experience may not. Along with other responses alluding to the skill and experience of practitioners this list may have some value as a research-based training tool or a resource to assist in session planning.

Practitioner skill was also identified by a small group of clients as an obstacle, suggesting that there were some concerns with how sessions were conducted.

Help focus on child's emotional needs

Participants were asked to rate on a scale of 1 to 10 whether the family dispute resolution process helped them to focus more on the emotional needs of their children. Their numerical responses were

re-coded into categories. Two-thirds of respondents indicated they had been helped to focus on their child's emotional needs to at least some degree, however almost one quarter (24%) were not helped and a further 12 per cent were helped only a little (refer Table 5.).

Table 5. Did the mediation process help you focus more on the emotional needs of your child(ren)? (%)

Not much	A little	Some	A fair bit	A lot
24	12	14	36	14

These data indicate that half of the clients left family dispute resolution with a greater awareness of the need to focus on their child's needs. Given that the 'best interests' principle guides the family dispute resolution process, this suggests that a more concerted focus on the needs of the child may be warranted. However, this is a complex aspect of post-separation dynamics being played out in stressful circumstances – making it difficult to capture in a single item. Further exploration of clients' ideas and perceptions relating to this principle may shed further light on the implications of this result.

Help communicate with ex-partner

Participants also gave a numerical rating to indicate whether the family dispute resolution process had helped them in their communication with their ex-partner. The clear majority (67%) of respondents said that the family dispute resolution process **did not** help them in their communication with ex-partners (refer Table 6).

Table 6. Did the mediation process help your communication with your child's father/mother? (%)

Not much	A little	Some	A fair bit	A lot
67	7	14	8	5

These data may reflect the high levels of partner intransigence noted earlier. They may also be related to a perception on the part of clients that family dispute resolution and Family Dispute Resolution Practitioners are a mechanism for settling parenting arrangements and not concerned with parental relationships. While it is accepted among professionals in the post-separation sector that good communication between parents is an important element of workable post-separation parenting

arrangements, for parents the two dimensions – child focus and parental communication – may not be so closely entwined. This result may also be a function of the number and length of sessions – issues relating to couple communication are unlikely to be abated to any great degree in the relatively short period over which family dispute resolution occurs.

Possible further analyses

In addition to the interview data, a considerable amount of information is known about clients who participate in family dispute resolution services, collected via the various client information and feedback forms. This information is both quantitative and qualitative and relates to clients' social demographic profile and current life circumstances. Information collected specifically relating to parenting agreements includes:

- If an agreement was reached and the type of agreement
- Assessment of client effort
- If a certificate was issued
- If there was any involvement by a legal practitioner
- If either parent will be seeking a consent order
- Client perceptions of whether the agreement is workable, whether the children experience less conflict as a result of the agreement, and whether the client feels better able to cope

These intake data could be added to the survey data, to provide valuable background information about clients and allow for a broader range of analyses that may contribute to a deeper understanding of client issues and experiences.

5 Overall findings and comments

The overall results indicate that negotiations pertaining to time are an especially important issue for clients and that the greatest obstacle to achieving a parenting agreement is the intransigence of their former partner. Communication appears to be a somewhat less critical aspect of the attempt to reach an agreement, and one that is not well fostered by the family dispute resolution process, possibly due to some clients not being open – or perceived not to be open - to the process. Clients seemed to want or expect practitioners to drive the dispute resolution process more and to shorten the time taken for their case to be closed, suggesting the need for closer management of expectations prior to, or at the time of, clients' initial appointments to make the process and, in particular, the role of the Family Dispute Resolution Practitioner clearer to clients. Although practitioner neutrality was raised as an issue, it is not known how/whether these comments are coloured by the rest of the family dispute

resolution experience and/or the extent to which the arrangements in place at the end of the process were more or less favourable for clients for whom this was a concern.

The findings suggest some points of focus for training or session planning – for example, a comprehensive checklist of issues to canvas to ensure as many of the relevant aspects of parenting arrangements are put on the table and not overlooked by clients struggling in difficult circumstances. In large part the results provide baseline information on some aspects of service delivery that can be monitored over time, such as what more could have been done to facilitate an agreement and the extent to which family dispute resolution assisted communication between parents, and areas that would benefit from further, in-depth exploration.

A cautionary note

Family dispute resolution is a difficult and complex system operating in a difficult, complex and highly emotive arena of family life, and as such it is somewhat unreasonable to expect to achieve highly positive feedback in some areas touched on in the interview. While some steps can be taken to improve, for example, clients' expectations of the service and of practitioners prior to entering family dispute resolution, there are other aspects that are unlikely to be impacted by the service or its practitioners due to the limited time available or the nature of the relationships between the parties to the process. It is vitally important that the findings of this study be interpreted in the context of the constraints on the information that could be gathered, the particular nature of the service being delivered and the emotional arena in which it operates.

APPENDIX 1. Parenting arrangement issues cited as important prior to family dispute resolution

ISSUE	FREQUENCY
Time	129
Communication	87
Parenting behaviour & responsibilities	42
Holidays/special days	29
Transport	22
Drop off/pick up	20
Conflict resolution	20
Safety	17
Finances	16
Relocation	15
Step/blended families/significant others	11
Education/school activities	8
Alcohol/drug use	8
Denigration of other parent	7
Household routines	7
Special needs	7
Decisions	5
Travel/passport	4
Medical care	2
Telephone contact	2
Access	2
Stability	1
Long/short term	0
Food/nutrition	0
Extended family	0
In case of death	0
Religion	0
Parent dating	0

APPENDIX 2. Issues agreed on prior to family dispute resolution

ISSUE	FREQUENCY (n)
Time	17
Communication	9
Holidays	5
Transport	5
Drop off/pick up	4
Education/school activities	3
Significant others	3
Household routines	2
Decisions	2
Alcohol/drug use	1
Denigration of other parent	1
Conflict resolution	1
Parenting responsibilities/behaviour	1
Finances	1
Children's special needs	1
Short/long term	0
Medical care	0
Safety	0
Phone contact	0
Food/nutrition	0
Extended family	0
In case of death	0
Religion	0
Travel	0
Relocation	0
Parents dating	0

APPENDIX 3 Issues NOT agreed on prior to family dispute resolution

ISSUE	FREQUENCY (n)
Time	112
Communication	77
Parenting responsibilities/behaviour	39
Holidays	24
Conflict resolution	18
Transport	17
Safety	17
Drop off/pick up	16
Finances	15
Relocation	14
Significant others	8
Household routines	7
Children's special needs	7
Alcohol/drug use	7
Denigration of other parent	6
Education/school activities	4
Travel	4
Decisions	3
Medical care	2
Phone contact	2
Food/nutrition	0
Extended family	0
In case of death	0
Religion	0
Short/long term	0
Parents dating	0

APPENDIX 4: Responses to: “Was there anything we could have done to help you reach a (more) workable agreement?”

More directive, more opinions, power & control

A more controlled process where aggression was addressed

Be more directive & offer opinions on proposals

FDRPs to have the power to make decisions and be more directive

Have more authority to make decisions; have a legal process

Have the ability to be directive

Have the power to make decisions; be directive and controlling

Have the power to make other parties attend further sessions

Mediator to give opinions and be more directive

More focus on repairing the relationship with the other parent and ability to “referee” the mediation

Practitioner to be able to force an agreement

Practitioners to have more power & authority and be able to give directions

Have more decision making ability

More neutrality from practitioner

A less biased approach & less trying to convince me would have helped

Had 3 FDR sessions but process was going nowhere; less favouritism towards mother might have helped

More neutral; more support for males

More neutrality from mediator and to be better informed of my situation

More neutrality from practitioner

Practitioner to be more neutral

Practitioner to be more neutral

Hear the full story

An acceptance of our wishes without pushing to seek legal advice

Fathers are important too, focus on their wishes

Felt I was being pressured into agreeing with other parent as I was the more compliant party

Less judgmental

More timely process

Shorter process

Follow up in a timely manner

Make the process quicker

More timely process would have helped

Process too protracted, a more timely process

Shorten waiting time when appointments cancelled

Reduce length of time for process

Reduce time of process

Refine process time - it is too long

Shorten the process, my case took 8 months

Shorten process time, appointments closer together

The process takes too long; make the process more convenient

Follow up

Include a step in between FDR & court and make sure the agenda is realistic

Follow up after FDR session

More follow up after session

Regular follow up would help

Follow up courses

Provide ongoing support & resources to access help

Provide support & info subsequent to final session

Send the plan as advised and follow up on the case

Follow up courses

More experienced, qualified practitioners

Better trained & experienced practitioners

Employ more qualified practitioners with better skills

Provide experienced mediators to enable a positive atmosphere to the session which would contribute to positive negotiating

Don't get sidetracked, control accusations & allegations

Control irrelevant discussions

Have the ability to understand the issues better

Focus on individual & unique needs

A process suited to unique situations - we were never in a relationship, the process was more appropriate for longer relationships

Tailor process to suit individual needs

FDRP to focus more on individual circumstances rather than what the research states

If process had been more accommodating of my wishes it might have made a difference

Have knowledge of bigger picture

Perhaps a different approach, particularly around Building Con. seminar, our separation wasn't new & seminar was mostly focused on new separateds

Focus on what's best for children

Keep focus on child

Keep the focus on the children

Practitioner to be more focused on children rather than a resolution

A focus on the best interest of the children is needed

Provide info on research of best scenarios for children, how best to help children, how much time with each parent is best

Provide more info on what is best for children

More neutral or safe environment

A more neutral place would have helped

More neutral environment

Provide a more neutral environment

Have a more neutral environment

I found the process confronting & felt like I had to defend myself, so a more comfortable environment would help

Provide a more neutral environment

Provide relevant information

Have much better coordination between the centres & provide relevant important information

Provide accurate information (school fees)

Provide ongoing support & resources to access help

Provide support & info subsequent to final session

Provide referrals

Have a co-mediation model & provide legal backup

Provide referrals for counselling

Provide referrals when no agreement reached

My ex-partner to attend anger management

Plan to represent agreement

To have the issues we did agree on put in the plan, the practitioner did not draft the plan with our agreements included

Issue 601 certificate that accurately reflects situation

A fairer or more accurate representation of the parents on the 601

Have agreements reflected accurately in parenting plan

Legal powers

Have an ability to admit into evidence communications made

Legal weight to support FDR process so that legal support can be provided after FDR completed

Have more legal qualifications

Have plans legally binding

More support

Be more supportive

FDRPs to be more conciliatory

Support from the centre and practitioner would have helped

Mandatory referrals to counselling or post-separation parenting program

Compulsory counselling for both parents

Have a mandatory requirement that both parents attend a post-separation parenting program prior to mediation

Have power to force people to do parenting courses & state reasons why they wont agree

Shuttle mediation (1)

There were things I wanted to say to other parent but couldn't because our mediation was a shuttle. I was disappointed with process & felt like I'd been hoodwinked, same room would have been better

Being in the same room might have helped

I thought a shuttle mediation wasn't effective, being in the same room might have helped

Shuttle mediation (2)

A shuttle mediation may have helped

A shuttle session would have been better as my ex-partner would not have heard my conversations with mediator, there were things I did not want my ex-partner to know

Better assessment & screening

Less directive; allow me to parent my way

Mediator to give less opinions

To have both parents attend the Building Connections seminar rather than one parent; have a KIF session and the other BC

Give some information about what the other parent wants to discuss so I can be prepared to negotiate on the day & also so I don't have to worry intensely about it
