ADR Bulletin
ADR Bulletin

Volume 3
Number 5 *Special Edition Series: Edition 1*

Article 1

1-1-2001

Child welfare, protection and wellbeing: ADR in the NSW Department of Community Services

Recommended Citation
(2001) "Child welfare, protection and wellbeing: ADR in the NSW Department of Community Services," *ADR Bulletin*: Vol. 3: No. 5, Article 1.
Available at: http://epublications.bond.edu.au/adr/vol3/iss5/1

This Article is brought to you by ePublications@bond. It has been accepted for inclusion in ADR Bulletin by an authorized administrator of ePublications@bond. For more information, please contact Bond University's Repository Coordinator.

The ADR Bulletin

The monthly newsletter on dispute resolution

contents

VOLUME 3 NUMBER 5

SPECIAL EDITION SERIES:
ADR and the cycle of life
EDITION 1
Growing up

Child welfare, protection and wellbeing: ADR in the NSW Department of Community Services ..53

The cycle of life: growing up, blowing up, growing old 55

Community conferencing for young people in conflict.....57

The adult child: equipping teenagers to deal with conflict 61

General Editor

Laurence Boulle
Professor of Law,
Bond University, Queensland

Special Edition Editor
Shirli Kirschner
Resolve Advisors Pty Ltd
Sydney

Information contained in this bulletin is current as at January 2001.

ADR in child protection

Child welfare, protection and wellbeing: ADR in the NSW Department of Community Services

NSW Department of Community Services

The *Children and Young Persons (Care and Protection) Act 1998* (the Act) was assented to by the NSW Parliament in December 1998. It is the product of an extensive three year consultation process and review of the *Children (Care and Protection) Act 1987* (NSW) (the 1987 Act). As it was the most extensive review of the legislation that has taken place, many of the initiatives were widely discussed and welcomed by the sector.

ADR is a significant initiative in the Act. It reflects the current trend across Australia and internationally towards the use of various models of ADR in welfare practice. Many Australian states and territories now provide a legislative basis for the use of ADR. In both the private and public sector, the use of ADR is rapidly expanding and there are now numerous ADR providers in NSW. The Family Court of Australia initiated a mediation program in the 1980s to improve client satisfaction and reduce administrative and judicial costs. Other organisations have also developed ADR processes. These include the Legal Aid Commission, the Anti-Discrimination Board, the Australian Commercial Dispute Centre, Relationships Australia and the Community Justice Centre network.

In response to the requirements of the Act the Department of Community Services (DoCS) established an interagency working group to examine the application of ADR in children's care and protection matters in NSW and to make recommendations to DoCS as to service models to be used within the sector. This group produced a discussion paper from which DoCS has moved to progress the implementation of ADR within the Department and the Children's Court system. This paper is on the DoCS website at <www.community.nsw.gov.au>.

A premise of the Act is that ADR can be used to facilitate workable outcomes in resolving concerns about the care and protection of children and young persons and in resolving serious and persistent conflict between children or young persons and their families.

The Review Report of the 1987 Act by Professor Patrick Parkinson[1] points out that it is not appropriate to use ADR where there is a dispute about *whether* the child or young person has been abused or neglected, or is, for some other reason, in need of care and protection. Rather, ADR is about finding workable solutions concerning the kinds of actions that need to be taken to ensure the safety, welfare and wellbeing of the child or young person.

The Act provides for the use of ADR at any point where it might reasonably assist in identifying and planning to meet the needs of clients or to resolve an issue of dispute. ADR is to be available as an ➢

Editorial Panel

Tom Altobelli
Senior Lecturer, Faculty of Law, University of Wollongong

David Bryson
Conciliation Officer, WorkCover Conciliation Service, Victoria

Peter Condliffe
Barrister/Mediator, Director, Peacemaking Associates, Brisbane

Shirli Kirschner
Resolve Advisors Pty Ltd, Sydney

Nadja Alexander
Senior Lecturer, Faculty of Law, University of Queensland

Michael Mills
Partner, Freehill, Hollingdale and Page, Perth

➢ early intervention strategy, as an alternative to a care application, or during the course of a care application in the Children's Court.

ADR will not solve all cases. It does not replace counselling, supervision and such services. However, DoCS anticipates that the use of ADR, coupled with preliminary conferences under s 65 of the Act, may reduce both the number of matters going before the Children's Court and the amount and level of litigation after the matter has been to the Children's Court. This has been the experience in Victoria.[2]

The implementation of the Act requires substantial changes in child protection practice. DoCS is making significant changes to its policy framework in order to better provide for the needs of children and families. ADR is integral to that framework both as a case planning tool and as a strategy for resolving disputes within families.

The intent of ADR in child welfare settings is to assist those involved in family breakdown to communicate better with one another, and to reach informed decisions about some or all of the care and protection concerns about their children. ADR is also recognised as useful in overcoming families' unwillingness to participate in settings that can be alienating, confronting and disempowering. It is also seen as a means of reducing litigation and developing solutions that will work in the interests of all parties.

When used appropriately in child protection matters, ADR can build on and extend client participation in decision-making about what the safety, welfare and wellbeing goals are and how they can be achieved. It can also facilitate bridge-building between department workers and families. The use of ADR in child protection requires DoCS staff to be committed to a child centred, family focused approach. It needs to be recognised that when given the opportunity, families can often find suitable solutions to care for and protect their children.

Currently, DoCS and our partner agencies use various means to meet the safety, welfare and wellbeing needs of children and young persons. These include a variety of conferencing mechanisms, Children's Court applications and individual casework. Recently, ADR mechanisms have been used by the Burnside agency and DoCS (Family Decision Making) as a planning tool in child protection. In some cases, DoCS or the Children's Court also use ADR providers such as Relationships Australia or the Community Justice Centres to assist in resolving disputes.

The implementation of ADR proposed by DoCS builds on these existing features. It also seeks to establish the use of ADR as an integral feature of child protection practice. The successful development and implementation of the model involves the following key factors:

- the independence of the ADR facilitator, mediator or conciliator;
- the timely use of ADR;
- the varying costs of ADR; and
- maximising effective participation of children, young people and their families.

The implementation of ADR has a preventative and early intervention focus to avoid the use of ADR as a 'courtroom door only' mechanism. It embeds ADR across the continuum of intervention with families and identifies specific points where ADR could apply. The model has three approaches: internal ADR, external ADR and court initiated ADR. It is not intended that families will access all three approaches.

Internal ADR (Approach 1) is ADR provided by DoCS which is directed to those instances where:

- it is necessary to allocate or re-allocate parental responsibility without consent of the parties, and to develop a care plan;
- there is a conflictual history between DoCS and family members;
- there are issues of dispute between family members including 'serious and persistent conflict' as outlined in s 114 of the Act;
- family members or the caseworker requests ADR; or
- family circumstances are particularly complex or the family has special needs.

Internal ADR follows ADR principles and is provided by a neutral third party who is a DoCS caseworker. These DoCS 'ADR

continued on page 56 ➢

ADR in child protection

➢ continued from page 54

practitioners' will be identified staff within all DoCS areas who have received formal training in ADR practice.

The training has been provided to more than 50 DoCS staff by Relationships Australia and the University of Western Sydney. The training is equivalent to a post-graduate unit in the Certificate of Dispute Resolution, or the Masters of Dispute Resolution run by the University of Western Sydney.

External ADR (Approach 2) applies to those matters in which internal ADR was either attempted and was unsuccessful or, if it was to be attempted, is highly likely to be unsuccessful. All ADR provided in external ADR is carried out by ADR providers external to DoCS.

Court initiated ADR (Approach 3) is linked exclusively to s 65 of the Act and refers to the preliminary conference that occurs after a care application has been lodged with the Children's Court. According to the Act, preliminary conferences may recommend that participants attend ADR to resolve any issues of dispute.

DoCS advertised in August 2000 for providers of Approach 2 and Approach 3. Providers to DoCS of external ADR were asked to demonstrate their capacity against key criteria, which included:

- timely provision of services;
- recognition of the principle of participation and its application to ADR sessions;
- recognition that the safety, welfare and wellbeing of children and young people is paramount;
- accessible and equitable services;
- service provision which is appropriate and effective in achieving objectives; and
- ADR services which have sufficient documentation to meet DoCS and Children's Court requirements.

DoCS is establishing an internal DoCS ADR team to further progress the implementation of ADR within its current service delivery.

'The intent of ADR in child welfare settings is to assist those involved in family breakdown to communicate better with one another, and to reach informed decisions about some or all of the care and protection concerns about their children.'

Conclusion

The development of ADR in the child protection context is an exciting phenomenon internationally. In developing a model of ADR, DoCS have sought interagency input, and developed a discussion paper to inform its work. It has since established trained staff within the Department to undertake mediation, and is establishing a network of external providers of ADR for child protection cases. These actions are a response to the need for a flexible model of provision of ADR services that works along the continuum of intervention in families, while still complying with the requirements of Act. ●

NSW Department of Community Services; enquiries: to Cheryl Abram (02) 9716 2222.

Endnotes

1. Parkinson P (Review Chairperson) *Review of The Children (Care and Protection) Act 1987, Recommendations for Law Reform* NSW Department of Community Services, available on the DoCS website at <www.community. nsw.gov.au>.

2. R Sheeehan and C Trotter *Prehearing Conferences in the Children's Court* paper in *Proceedings of Australian Conference on Child Abuse and Neglect* 1999, p 285.

Prospect
website

For the latest, up-to-date information about Prospect, new product titles and existing business and legal publications, ordering online and much more, contact us at our website:

www.prospectmedia.com.au