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## Issues in FDR

# Casting shadows by compulsion and agreement (or, am I strong enough?)

Paul Lewis

*As we near the final stage of the roll-out of the Australian Government's 65 Family Relationship Centres across the country, it is an opportune time to ask the non-rhetorical question 'Am I strong enough?' Family mediation has metamorphosed into FDR (family dispute resolution), a clever, deliberately generic definition which encompasses an array of non-adjudicative processes.<sup>1</sup> This 'pracademic' commentary examines various aspects of the new family law system and explores some considerations so that we might reflect on where we are and where family dispute resolution may be going from 2008 onwards.*

## Introduction

The Shared Parenting legislation, as it is euphemistically called by the Federal Attorney General's Department,<sup>2</sup> together with the establishment of the 65 Family Relationship Centres (FRCs) across Australia in the period from 1 July 2006 to 1 July 2008 can fairly be said to represent the single biggest reform to family law in Australia since the abolition of fault-based divorce under the *Family Law Act 1975*.

The changes in family law in recent years have been major and extend well beyond the significant amendments to Part VII of the *Family Law Act* in relation to children and the setting up of the FRCs. The new *Family Law Rules 2004*, as they were then called, were revolutionary in effect rather than evolutionary, certainly with the introduction of the pre-action procedures and the introduction of the single expert regime. The latter was a reform which was opposed by the Family Law Section of the Law Council of Australia and the former was a reform the legislative basis of which was properly questioned by leading commentators at the time. Neither of them was the subject of a judicial challenge and the legal profession adjusted to them quickly.

Further, the growth of child inclusive practice within the community sector and from 2005 the renewed and expanded commitment to it within the Family Court's mediation arm (meaning the 'old' counselling section which we now call Child Dispute Services where clients see Family Consultants rather than counsellors) and the growing size and workload of the Federal Magistrate's Court has rendered the changing landscape of family law over the last six or so years truly remarkable.

No summary of the changes in family law would be complete without special mention of the fertilisation of the seeds of collaborative practice in family law with the first collaborative training taking place in Canberra and Sydney in 2005, and the rapid proliferation since then of local collaborative practice groups across the country. This has been accompanied by the formation of incorporated associations in nearly all States and Territories to represent the emergent interests of collaborative practitioners (both in family law and other areas of civil law).

However, the quantum leap in public policy (the asymptote policy shift if you are mathematically inclined), the 8 on the Richter scale (if you are geologically inclined) and the major public accounts change (if you are fiscally inclined) is the generous public largesse allocated to the creation of the 65 FRCs by the former Federal Government which is not, and could not be, at the expense of the monies given to the family law courts (although perhaps some family lawyers are wondering whether there is a negative correlation given the blow-out in hearing times in various registries of the family law courts over the last few years).

It was a 2005–2006 Federal Budget decision that announced 'the biggest ever investment in the family law system — \$397.2 million over four years ...'<sup>3</sup>

The 10 May 2005 press release of the then Attorney General, the Hon Philip Ruddock, further stated:

The Government wants to bring about a cultural change in the way family breakdowns are handled ... The centerpiece of the package is \$189 million to establish 65 Family Relationship Centres, a place where families can go to get help with the relationship difficulties ... There will also be a national telephone advice line and website ... The package will also increase spending by \$134 million over four years to increase the number of mediators in addition to those in Family Relationship Centres and ... quadruple the number of Contact Orders Programs, which already successfully help thousands of highly conflicted separated parents to work together and ensure their children have a relationship with both their parents ...

Fortunately, as the author is not an economist, this article is not about the adequacy of the funding to the family law courts or the level of funding to the FRCs and the family relationship services sector more broadly.

In addition to the roll-out of the FRCs, the quantum leap includes the policy change of making mediation compulsory away from the court system in parenting matters together with such compulsion being a pre-condition to filing a court application subject to limited, defined exceptions. The exceptions are detailed later in the article.

Arguably, these two seismic changes had to go together. FRCs based on voluntary mediation would have run the risk of being white elephants. Compulsory FDR without the FRCs would surely have led to crisis within the supply and demand chain, with too few dispute resolution (DR) practitioners being available and accessible.

Therefore, the new FDR and the new FRCs may be said to be the twin planks of the new family law system. Rapid or



non-incremental change in most areas of endeavour typically stimulates a high degree of adjustment for people, trial and error learning and a range of other tensions. This article examines some of the tensions which appear to have emerged during the initial or early stage of the new family law system.

This article will deal with the following questions, in turn:

- Is there a danger of hubris?
- Is this perpetuating the myth that one system is better than another?
- What about the paradox of tendering and the myth of accountability?
- How will we know that the new FDR system is working?
- Is there a skills shortage (of trained FDR practitioners)? If so, what are we doing about it?
- Who are we letting in, that is, who are we currently accrediting as registered FDR providers?
- Can you give a certificate?

These are the author's current thoughts on the question 'Am I strong enough?' It may be that an annual health check yields up a new set of considerations. Indeed, other family 'helpers' may apply different diagnostic criteria and see and hear different signs and pulses, and opine an alternative prognosis. This would be a mark of good health from a dedicated community of family professionals in Australia.

### The danger of hubris

'Easy money' and the risks that go with it, the story of third generation wealth and its waste, the crassness of the 'nouveau riche' are well-known themes and stories in daily life. There is a risk that the most passionate family mediators may lose their objectivity and professional detachment if they become intoxicated by the free spirit of public money to set up and fund the FRCs. While there are many countervailing factors that can avoid such a tendency, for example the rigorous requirements of competitive tendering, ongoing requirements in respect of data collection and reporting requirements, the risk of hubris arises from mediation's inevitable relationship with the law and the inescapable tension between the two.

From a management perspective if FDR providers ignore or only pay lip service to fundamental considerations in the mediation literature such as the desirability (and strict need in some cases) of parties having independent legal advice prior to mediation (and as may be indicated, during mediation, including between sessions) and after mediation, the limits of mediation to resolve conflict and the need for courts to adjudicate some matters, there is the risk of publicly-funded FDR being overwhelmed by the generosity of the Canberra bartender. If this were to occur the generous bartender, like any responsible server of intoxicating liquor, may well cut off supply to any one or more invitees or call 'last drinks' for all patrons.

The above is intended as a caution, with the aid of hyperbole that FDR organisations cannot take things for granted following the policy turning points of recent years; neither the levels of public funding nor autonomy given to them under the existing frameworks. These are early days for the operation of the FRCs. In the longer term they are likely to evolve with respect to their functions and relationships with clients and other service providers (both public and private) in the communities in which they reside.

### The myth of one system is better

The testy debate that mediation is better than the legal system in family law matters, and some defensive rebuttal arguments, ran through the Australian dispute resolution literature in the 1990s. While this seemed to have abated in recent years this author did sense something of an 'undertow' at the travelling road show earlier in 2007 about the new national accreditation system for family law dispute resolution providers run by the AG's Department across the country.

Funnily enough the overt signs of this did not come from any non-lawyer attendees, although a few were observed on a non-verbal level to be rather 'happy' about things. The most demonstrative articulation of the wonders of FDR came from the external facilitator who, to her credit, introduced herself at the beginning as a former



practicing lawyer who had converted to mediation in recent years. The use of a solo facilitation model did not on this occasion work as well as a co-facilitation may have done. In future the Department would be well advised to walk the talk and employ a co-facilitation model for groups of interdisciplinary professionals as large as 50 people.

### The paradox of tendering and the myth of accountability

Tendering is the free market in its purest form, yet for a process such as family mediation with its required quality controls and application to emotionally labile human behaviour, tendering might be seen as a rather crude selection tool. One of the rationales that the Government expressed in favour of the FRC tendering that the author recalls is that of 'contestability'. Presumably contestability meant a silent auction process during which each existing service provider and any brave prospective service providers had to extol the merits of their or its application. Sounds fine in theory, but is one really comparing apples with apples, and how do you risk manage or simply check such an assessment after the successful tenders have been awarded?

Contestability seems to lead onto, and hopefully connect with, 'accountability'. Accountability refers to the ongoing requirements of publicly-funded FDR providers to meet quantitative and qualitative key performance standards.

Tendering typically produces a climate of secrecy. One of the features of a progressive roll-out of the FRCs across a period of three years is that the interests of contestability and accountability are not reconciled from the perspective of the public interest. We can take the Government's word that all is well and presumably it is.

It might be said that the above doubts are over-stated and that the observations simply reflect the usual tensions involved in tendering, particularly public tendering. Nonetheless, the public interest

demands empirical evaluation and such evaluation is a prerequisite of, or sine non quo for, accountability in the human services sector. This leads on to the question 'How will we really know whether the new family law system is working?'

### How will we really know whether the new family law system is working?

The answer or responses to this question are complex. We have to avoid crude measures or hypotheses such as

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requiring the number of court filings to diminish. Let's just start with that one. The problem with it is that it assumes that family law conflict is like the kinetic energy of a moving object, that is that the energy will eventually dissipate and the object will come to rest. The reasoning is that if you set up resources well away from the court system then the 'negative energy' can be caught and dealt with. Wrong. Conflict resolution theorists and practitioners know that conflict is rarely resolved to a quiescent state. In other words, in most instances, particularly in the context of post-separation parenting, conflict does not end per se, but can only change its shape.

We may hope to see a significant uptake in the use of parenting plans. The writer certainly hopes so. The difficulty is, 'how will we ever know?' Parenting plans, for good reason, do not need to be registered with a family law court nor with a government agency. The legal status of plans has been elevated under the 1 July 2006 changes to Part VII of the *Family Law Act*, yet as a tool of 'self-management' it is inevitably the case that the best empirical research may not reliably

survey the whole population of parenting plan users. In other words, the legislature invites a population of 'hidden' parenting plan consumers.

Another measure that occurs to the writer as being an important one in the context of compulsory FDR under Part VII from 1 July 2007, is to see the number of cases determined as being unsuitable for FDR by FDR practitioners, whether at the regulation 62 intake stage or at the later point of a first or subsequent joint session. The writer submits that there needs to be

some sizeable numbers in each of these sub-categories appearing in the periodic reports of the FRCs and other large FDR service providers to government as a measure that their services are being taken up by a broad cross-section of the community and delivered according to best practice standards.

A fourth measure is to track and analyse data with respect to the receipt and management of client complaints and grievances by FDR clients. In this country, despite the strength and age of consumer sovereignty, the development of complaints handling by medium-sized organisations is in its infancy across most sectors of the economy. Based on funding and seeding revenue it is fair to categorise FRCs as medium-sized organisations.

The fifth point, and one advocated by many commentators and practitioners, is the need for much greater empirical research, including the evaluation of the results of FDR interventions on a longitudinal basis.

It is pleasing to see that the Government is committed to gathering performance data and allocating resources to empirical research. A detailed review of its empirical program



objectives is beyond the scope of this article but may be perused on the Attorney General's Department website.<sup>4</sup>

### **Is there a skills shortage of FDR practitioners?**

This is something of a 'secret society' question, at least from the perspective of private practitioner lawyers. After all 'shortage of workers' or 'skills shortage' is heard often in our daily life. One hears or reads in the media that there is a shortage of doctors (ie general practitioners) particularly in rural areas, a looming shortage of secondary teachers, an anticipated shortage of lawyers in rural areas and current shortages of senior chefs, psychiatric and other nurses and many trade occupations.

The author recalls first reading about a skills shortage of mediators in an AG's Department discussion paper in relation to family law dispute resolution in 2004. It was just stated, and there was no elaboration as to whether it was a current or projected shortage. Anecdotally, the question is being raised again, at least among many of the FDR employers in the community sector.

Two important factors may be at work in respect of a current skills shortage or a predicted shortage in the short term. First, community-based mediators employed on a casual or sessional basis have historically received low hourly rates of pay. There is a strong argument that salary levels be reviewed and increased over time to attract mature recruits from allied disciplines such as social work, psychology, management and law. Such recruitment has already occurred of course, in which case the additional challenge of staff retention arises.

Second, the greater institutionalisation of FDR by the opening of FRCs and the introduction of mandatory mediation in children's cases has arguably created 'private' career opportunities for practitioners with experience, even intermediate experience not just senior experience. That is, the expansion of FDRs through the government's largesse has hastened an outflow of labour from the community sector to the private sector of FDR suppliers, and this is an example of market forces at work within a mixed economy (or sub-economy.) It is plausible that the former may have contributed to the latter, and this type of

trend or dynamic has been observed before in other professions, vocations and areas of economic life.

Given that there has not been much discourse about the balance of demand for and supply of FDR practitioners we have to search for some other evidence or indicators of an actual or suspected skills shortage. This leads into the next subject, 'Who are we letting in as registered FDR practitioners?'

### **Who are we letting in as registered FDR providers?**

'It's all good' as the modern saying has it. However, if one puts Edward De Bono's black hat on, one might be concerned about the 'lowest common denominator' effect (LCD effect) coming into play not just with respect to FDR practitioners but across the broader mediation community. There is no easy solution to the risk of the LCD effect, short of the state accepting responsibility for properly funding the training, accreditation and ongoing professional accountability of non-adversarial third party neutral dispute resolution practitioners. What is the chance or opportunity of that occurring?

Arguably a major impediment to such a heroic advance occurring is our federal system. We can, with the benefit of nearly 30 years of DR history in this country, see the growth of DR not simply in terms of pluralism or sectarianism but also in terms of the multiplicity of our commonwealth, State and Territory-based initiatives to incorporate mediation and other forms of DR into their arenas, whether they be formal court procedures, statutory dispute handling schemes, community justice programs and so on.

One might further argue that we are hamstrung by our Commonwealth Constitution, negotiated in the late 19th century, and which started in 1901. It is prescriptive in its grant of powers to the legislature to make laws. This is in marked contrast to the Constitution of New South Wales, for example, which confers a general law-making power in respect of matters concerning the peace, order and good government of the State. This was the compromise involved in the States reaching an agreement to have a federal government under a federation, that is, under a system where they continued to exist and where the



federalism amounted to some demarcation and some sharing or overlap of responsibilities between the States and the new Commonwealth Government.

Mediation was not a part of our culture (at least not our articulated, dominant cultures) at the turn of the 20th century so, not surprisingly, you will not find a head of power devoted to the consensual resolution of disputes by non-adjudicative means. It might seem strange to hypothesise such a revolutionary change, that is constitutional change which recognizes DR as a separate head of power. After all, we sometimes still find ourselves wrestling with definitions of mediation and other DR processes (although this is probably worthy of a separate article). Therefore, how could one seriously contemplate a separate head of power for DR? This is a culturally laden problem or question. The answer is not simply that we cannot come up with an all embracing, unequivocal definition of mediation or DR, even though we recognise it when we see it (like the elephant that may be described in different ways when viewed from different angles). Yet, consider this point, people do not twist themselves in knots in a search for a definition of 'trade and commerce'.<sup>5</sup> We accept that trade and commerce is terminology that takes in a wide range of commercial activity, specifically human behaviour involving the exchange of goods and services between people and/or between recognized legal entities.

The 'trade and commerce' power is the first head of power under the placita of powers under s 51 of the Constitution. By way of examples, other heads of power deal with corporations, the defence of the Commonwealth and its States, banking, insurance, marriage, divorce and 'the custody and guardianship of infants'. There is no express reference to mediation in any of the sections dealing with the powers of the Federal Parliament yet we observe mediation in daily life in each of these areas.<sup>6</sup>

However, would we really want the state to have the greater responsibility for regulating and funding the training, accreditation and ongoing professional accountability of dispute resolution practitioners? The answer for the writer would be an unequivocal 'no'. In this context the national DR community has

made a long awaited breakthrough with the recent publication of the accreditation standards and approval standards which are based on a self-regulatory system operated by registered mediation accreditation bodies.<sup>7</sup> A detailed examination of those standards is beyond the scope of this article. The writer simply observes that a watershed moment has occurred and the general standards are congruent with the dispute resolution practices and procedures that operate within the family services sector in terms of training, supervision, practice, ethical responsibilities and professional development.

Under the new family law system the government has taken responsibility for the accreditation of family dispute resolution practitioners. The need to have an accreditation system went hand in hand with the policy shift of making FDR compulsory in disputes involving children before an application for parenting orders can be filed.

Family mediation had been around for long enough to enable the government to institutionalise FDR in the community via the twin planks of the 65 FRCs and compulsory FDR in parenting matters. In other words, notwithstanding valid concerns about a skills shortage, there were sufficient individual practitioners and organisations practising family mediation to enable the blueprint design of a new system to be implemented.

Anecdotally, there are reports that the process of approving applicants may not have been rigorous or at least consistent. This centres on claims or concerns that a small number of the individuals accredited have undertaken mediation training and simulated mediations only and do not have practical mediation experience in the field. If such reports are accurate it is a weakness that can be rectified by the government.

### Can you give a certificate?

The policy shift to mandate family dispute resolution prior to court proceedings is expressed in the object of s 60I at subsection (1) as follows:

- (1) The object of this section is to ensure that all persons who have a dispute about matters that may be dealt with by an order under this Part (a **Part VII order**) make a genuine effort to resolve that dispute by family dispute resolution

before the Part VII order is applied for.

The meaning of 'genuine effort' is not defined in the *Family Law Act* or the regulations. Whether it will ever be judicially defined by the Family Court of Australia remains to be seen. It is difficult to conceive of a situation where the Full Court of the Family Court would have cause to reflect on its plain English meaning. If it did it would probably mean that the veil of confidentiality of FDR had been opened by the trial judge or that one of the parties had sought to litigate the point at first instance and been unsuccessful. It is more likely in the short term that trial Judges and Federal Magistrates will develop a jurisprudence about the meaning of 'genuine effort' and its inter-relationship with confidentiality and admissibility under s 10H and s 10J of the *Family Law Act*, respectively, alongside the requirements that FDR practitioners must comply with under the *Family Law Regulations* by virtue of s 10K.

The requirement that a s 60I certificate be filed with an application for a parenting order is clear from the last part of s 60I(7) which reads:

- (7) Subject to subsection (9), a court exercising jurisdiction under this Act must not hear an application for a Part VII order in relation to a child unless the applicant files in the court a certificate given to the applicant by a family dispute resolution-practitioner under subsection (8). The certificate must be filed with the application for the Part VII order.

The form of certificate to be issued under s 60I(8) of the *Family Law Act* in parenting disputes under Part VII of the Act as from 1 July 2007 is now prescribed under regulation 12CAA and Schedule 7A of the *Family Law Regulations*. The types of certificates that a registered FDR practitioner may issue under s 60I(8) are as stated in the four paragraphs of that subsection:

- (8) A family dispute resolution practitioner may give one of these kinds of certificates to a person:
- (a) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but the person's failure to do so was due to the refusal, or the failure, of the



- other party or parties to the proceedings to attend;
- (aa) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, because the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to conduct the proposed family dispute resolution;
- (b) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, and that all attendees made a genuine effort to resolve the issue or issues;
- (c) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues.

There are exceptions to the requirement to participate in pre-action FDR. While the exceptions include the types of conduct or circumstances that we know as contra-indicators to mediation being appropriate (abuse of the child, risk of abuse of the child if there is delay in approaching the court, family violence and risk of family violence) the drafting of the section has been carefully thought out so that it may 'cover the field' of possibilities that may arise, ranging from the need to file a court application 'in circumstances of urgency' to an inability to effectively participate in FDR because of objective limitations (for example, incapacity or geographical remoteness being included as examples.) For the benefit of readers unfamiliar with the exceptions, s 60I(9) reads:

- (9) Subsection (7) does not apply to an application for a Part VII order in relation to a child if:
  - (a) the applicant is applying for the order:
    - (i) to be made with the consent of all the parties to the proceedings; or

- (ii) in response to an application that another party to the proceedings has made for a Part VII order; or
- (b) the court is satisfied that there are reasonable grounds to believe that:
  - (i) there has been abuse of the child by one of the parties to the proceedings; or
  - (ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
  - (iii) there has been family violence by one of the parties to the proceedings; or
  - (iv) there is a risk of family violence by one of the parties to the proceedings; or
- (c) all the following conditions are satisfied:
  - (i) the application is made in relation to a particular issue;
  - (ii) a Part VII order has been made in relation to that issue within the period of 12 months before the application is made;
  - (iii) the application is made in relation to a contravention of the order by a person;
  - (iv) the court is satisfied that there are reasonable grounds to believe that the person has behaved in a way that shows a serious disregard for his or her obligations under the order; or
- (d) the application is made in circumstances of urgency; or
- (e) one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason); or
- (f) other circumstances specified in the regulations are satisfied.

It is comparatively easy to determine and publish the form of the s 60I certificate under the *Family Law Regulations*. What remains an ongoing challenge and task for practitioners is how we go about explaining who we are and what we do in these days of mandatory family mediation. The author is not a critic of mandatory family mediation. Indeed the author softly advocated the option of it at a Sydney consultation meeting of NADRAC in 1998 before the then Chair, Professor Laurence Boulle.



There is anecdotal dialogue between practitioners that the FRCs are receiving many inquiries along the lines 'I am after a certificate so that I can go to Court.' On the supply side, one is conscious of hearing private practitioners state to potential referrers that he or she can give a certificate. On the one hand this is a simple statement of fact. On the other hand it is a negative aspect of the effects of mandatory mediation and one of the paradoxes of it that has long been identified in the literature.

Hopefully, all providers, private and public, will realise the strengths of articulating the potential advantages of family dispute resolution as they explain its new relationship with the initiation of court proceedings. The fact that FDR is generally compulsory would ideally become a secondary explanation to clients, especially in the private marketplace. Perhaps the private FDR providers will benefit from the publicly funded FDR providers educating the public in the necessary public education. Is it possible that a cultural breakthrough may be achieved after some 5 to 10 years? The author suspects that a more likely timeline is between 10 to 15 years. The success of change across such a time range will depend upon the maintenance of a cohesive family law system, including as necessary conditions co-operation between stakeholders, long-term public education and resource initiatives and empirical research.

In fairness to all, both client and practitioner alike, the early reactions from clients asking for a certificate reflect the inherent tensions associated with mandatory mediation. They are to be expected. From a theoretical viewpoint, the tensions are irreconcilable. However, from a practical perspective, the practitioner's response, as advocated by Micheline Dewdney, can be found in the mediator's monologue:

Welcome, to this process, I recognise that either or both of you may feel that you are here under compulsion, but now that you are here I do encourage you to give it your best. It is your opportunity to talk about what you want for your children ...<sup>8</sup>

If we take half a dozen steps back from the action and the detail of the legislation and rules, we find some slow time and space to review and reflect upon the profound changes to dispute resolution in

family law over the last 20 years. When the writer was admitted to practice as a solicitor in 1990, community-based family mediation was in its infancy and court-annexed mediation within the Family Court was being developed for its subsequent implementation. Both forms of service provision were voluntary for their clients. People attending mediation did negotiate or 'bargain' in the shadows cast by the law. While that continues to be the case, one can also conceptualise a variation to this theme, namely that the edifice of compulsory mediation now casts its own shadow within which people may reach agreement. If the unstated public policy of self-determination, which arguably underlies some of the recent major changes to the family law system (including mandatory FDR and the establishment of the FRCs), does ultimately bring about a change in community values and the negotiating behaviours of post-separation parents, it may in time be said that the presence and power of 'agreement' has become another edifice which casts its shadow on the next generation of FDR clients. The promise of a strong FDR system in the future is that it will exert an influence equivalent to that of the law and find itself casting shadows by compulsion and by agreement. ●

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*The views expressed in this article are the author's personal views and are not to be taken as representing the views of interests of any of the organisations and professional committees with which he is associated.*

## Endnotes

1. Section 10F of the *Family Law Act 1975* defines family dispute resolution as follows:

- Family dispute resolution is a process (other than a judicial process):
- in which a family dispute resolution practitioner helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; and
  - in which the practitioner is independent

of all of the parties involved in the process.

2. See, for example, the online information for FDR providers at <[www.ag.gov.au/fdrproviders](http://www.ag.gov.au/fdrproviders)> which includes the following content: 'What are the changes to the law affecting family dispute resolution providers? The Shared Parenting Act introduces a number of changes to the dispute resolution provisions of the Act'. As many readers will be aware, the title to the 2006 amending legislation is the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. It did not introduce a presumption of shared parenting (in the sense of equal time) as some of the previous Government's explanatory literature arguably implied.

3. News release of the Attorney General, the Hon Philip Ruddock MP and the Minister for Family & Community Services, Senator the Hon Kay Patterson.

4. Search for the 'Framework for evaluation and longitudinal research — March 2007' at <[www.ag.gov.au](http://www.ag.gov.au)> under 'Families'.

5. Excepting perhaps constitutional lawyers from time to time when dealing with freedom of interstate trade cases under s 92 of the Constitution.

6. Interestingly, the terms 'conciliation and arbitration' are given full rein in the relevant power dealing with non-local industrial disputes, namely s 51(xxxv) 'Conciliation and arbitration for the prevention and settlement of industrial disputes beyond the limits of any one State'.

7. These components of the framework to guide the National Mediator Accreditation System are part of Professor Tania Sourdin's September 2007 report on the National Mediation Accreditation Project. The report, practice standards and approval standards may be downloaded via <[www.wadra.law.ecu.edu.au](http://www.wadra.law.ecu.edu.au)> under National Mediator Accreditation.

8. At recent gatherings of mediators in Sydney. See also Chapter 2 of Ruth Charlton & Micheline Dewdney, *Mediator's Handbook — Skills and Strategies for Practitioners* (Lawbook Co, 2ed, 2004). The authors emphasise the importance of the mediator's opening statement and the benefits of adapting it to suit the model of mediation.