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**Telephone mediations in the family law setting**

24/7 Family dispute resolution: disconnection and reconnection via the phone line

Mieke Brandon & Tom Stodulka

In recent times telephone family dispute resolution has become more popular. Some practitioners love it, many fear it and others hate it. This article predicts that it is only a matter of time and telephone mediation and conciliation will be available 24/7. The challenges of only hearing the parties, the use of language and non-verbal cues are explored. The benefits for a global perspective are highlighted as well as the advantages and disadvantages to be taken into account. We assert that with additional training and sensitivity parties will significantly benefit from competent and confident telephone family dispute resolution practitioners.

Telephonic connections have come a long way in recent times and people's ability to handle modern communications generally is widespread. As relationships ebb and flow the phone is not only used to maintain or break off relationships, but can now also be used to help facilitate resolution of any dispute as a result of a relationships breakdown. This article helps us to understand the benefits and challenges family dispute resolution practitioners experience facilitating communication over the phone.¹

Among a number of practitioners,² even those with considerable experience, there seems a reluctance and sometimes resistance to conducting telephone mediation/conciliation. In the past there might have been similar reasons of reluctance by some for conducting shuttle and for others a resistance or fear for joint dispute resolution sessions. However, be it for practical, logistical, economical or safety reasons, telephone and telephone shuttle conciliations and conferences are not only here to stay, but most likely to become more frequently used.

There must be by now thousands of family law parenting and property cases in Australia, which have been successfully facilitated using telephone mediations/conciliations or a combination of both telephone and shuttle telephone processes. The enormous advances in communication

styles through the use of faxing, texting, emails and a range of online communications has lessened the unfamiliarity of using technology in ways that 20 years ago would have been unheard of. Sometimes we have seen that such technology can create its own set of problems, such as misuse resulting in bullying and other forms of inappropriate behaviour.

Notwithstanding, they provide our frenetic lives with tools most of us have come to accept as the norm, across most cultures and backgrounds. With such benefits come protocols and guidelines to help avoid problems and this applies equally to practitioners, the parties, their solicitors, support persons, interpreters, case workers and others, for example, child representatives and child consultants.

We are reminded when doing telephone sessions of the acute senses a blind or visually impaired person often has developed. When conducting telephone mediations, conciliations or conferences the practitioner's listening and empathy are tested and need to go up several notches. While this might be taxing for some practitioners, we feel it is part of the challenge and can be one of the benefits of telephone dispute resolution processes.³ Consider the following case of a family law property settlement involving a local party (legally represented) and a party living overseas (self-represented):

The telephone hook-up was scheduled for the afternoon with one party in the solicitor's office and timed to take about three hours allowing some flexibility should it be necessary. The phone mediation went over time and was continued after work hours. This added to the technical pressures in that the solicitor's office phone went to message bank after 5pm and after a private session break had taken place, contact could only be re-established via mobile phones. Another unforeseen technical hitch had occurred, when during the mediation the local party was put on hold which activated the recorded music. This made the discussions with the other party difficult, as it was hard to hear and be heard.

Normally during final negotiations there are quite a few private sessions and by placing the other party on hold can have time saving benefits, though clearly not advisable when the music drowns out the conversation. This was obviously not an ideal situation but with everyone's patience and understanding, and loads of good will on all sides, the parties settled. Achieving agreements in such difficult situations is a credit to the phone mediation process. Despite all participants having been caught in a stressful situation and tested to new heights it appears that the mediation was enormously rewarding when everyone is able to rise to the occasion. The role of the agency, the solicitors, the parties and the practitioner all working together with a focus on attaining a workable outcome cannot be underestimated. Sometimes working



in difficult environments really does bring out the best in people and that was certainly the case in this situation.

Telephone sessions are regularly used in Legal Aid conferencing procedures for separated parents. For example, the parents may not be on speaking terms, live in different cities, states, or countries. Their lawyers may also be at different locations. One of the main benefits in these situations is that because of different time zones a teleconference can be much more easily organised than any face-to-face meeting. Every one except the practitioner, as normally the practitioner attends a Legal Aid office, will save on travel time as well. This does not mean that phone dispute resolution, outsourced to individual practitioners, cannot be done at their own office or from their home.

The Federal Magistrates Court, the Family Court, community organisations, some Family Relationships Centres, and private practitioners also offer phone mediation/conciliation as part of their services. Consider the following case:

Occasionally a face-to-face mediation is scheduled and one of the parties changes the arrangements at the last minute by not being able to attend. This could be for a genuine reason or just a means whereby a party can exercise their power. When, for example, a mediation proceeds in a situation like this it is prudent for practitioners to become aware of any power shift. The party may have small children and a trip to the city is conveniently avoided as a result, however, it is important to realise that by driving their agenda it could influence the discussions.

In telephone dispute resolution processes (like in any face-to-face process) the power dynamics will be fluid, mostly intangible, and always relational. To fully comprehend and being able to manage power dynamics, practitioners need to understand that these dynamics result from the complex interplay of parties past interactions, current sources of power and expectations of the future. These factors are manifested according to the nature of the dispute and/or the relationship.⁴

Because facial expressions and complexion (eg turning pale or flushed), non-verbal behaviours, skin colour and other features cannot be observed, practitioners need to pay particular attention to breathing and speech patterns, tone and word usage.⁵ Additional training can be obtained through courses in non-violent communication (NVC), neuro-linguistic programming (NLP) and cross-cultural conflict resolution.

For example, NVC helps people communicate with self-awareness, and to express feelings and needs with compassion, respect and honesty and as such request from others what they would be prepared to do themselves.⁶ For example, when a party states 'he [or she] had an affair, and should not be entitled to have the children', a practitioner's response could be 'right now you feel hurt and I wonder how much it would hurt the children to not see their dad [or mum]?'⁷

NLP describes how information is processed through the five senses, the use of language and non-verbal systems. People tend to discuss their issues and concerns in predominant language and metaphors through: 'seeing' (visual pictures); 'hearing' (auditory digital sounds including self-talk); 'feeling' (kinaesthetic); 'tasting' and 'smelling' (olfactory and gustatory) expressions.⁷

By recognising how individual parties process information and use language preferences practitioners can adapt their communications to build better rapport and be better understood by incorporating some of the party's language choices. For example, a party saying 'her [or his] decision to separate is unpalatable' an example response is 'it sounds you do not agree with that decision?' can be heard as a mismatch. A more appropriate response may have been 'It left a bitter taste in your mouth?' Practitioners must also listen to the silence, the space in between what is being said.⁸

The following is a brief description of an elementary approach to telephone dispute resolution.⁹

Telephone mediation/ conciliation procedures

Telephone intake interviews conducted in community and family relationships centres follow similar

guidelines to those when conducted face to face.¹⁰ Practitioners need to fully inform parents of their obligations under the *Family Law Act*.¹¹ The intake has to be conducted according to assessment of suitability guidelines.¹² Practitioners must consider the consequences of past recent and current aspects of family violence and the affects, first on the victim,¹³ and second on the children and the whole household. The assessment about whether these parties are 'perfect pals', 'cooperative colleagues', 'fiery foes', or 'dissolved duos'¹⁴ will help the practitioner not only with their assessment but also with specific information that may be helpful to mail out. This can include handout materials on parenting schedules, child developmental reactions to separation, post-separation parenting, child-inclusive practice,¹⁵ or how to come to terms with a separation.¹⁶

Practitioners are required to discuss the option of writing up final agreements in the form of parenting plans and what information can be included.¹⁷ They will also provide information about the impact of entering into parenting plans, in particular, that if in future either parent applies for parenting orders, that the Court will have regard to the most recent parenting plan in deciding what orders to make.¹⁸

An emphasis is placed on parents working together to arrive at durable parenting arrangements that are developmentally appropriate and in their children's best interests.¹⁹ Consistent with this, the practitioner will explain to the parties the expectations of respectful behaviour towards each other during the process. For parents who seem enmeshed in their dispute and are experiencing difficulties in being cooperative, practitioners can assist to define the boundaries for their communication both during the mediation/conciliation and in the future. For example, for some parents, agreeing that future communication will only occur by certain means (such as via email or SMS) and in appropriate ways, and/or drop their children off at a contact centre so they need not meet, can assist their children to be co-parented



without undue exposure to ongoing parental tensions.²⁰ Alternatively practitioners can ignore the ‘sniping and only deal with it if it substantially interferes with the process and by focusing on the task’.²¹

Parties must be made aware that any agreements reached cannot be legally binding until filed in court and that it is their duty to fully disclose and have all relevant information, where possible, available in the session.

The limits of confidentiality and admissibility and the types of instances in which practitioners may have to be terminated must be clarified.²² If support persons are to be involved, their roles will also need to be established. Parties may also be provided with relevant fact sheets to assist them with relationship breakdown and any other education materials to help them move on.²³ The requirement for parties to sign and supply the practitioner with the agreement to mediate/conciliate, prior to their participation, is to be reinforced.

Despite the possibility of any difficulties that may be raised in the session itself, a properly conducted intake process helps to ensure that all parties come to the process well prepared, ready and able to participate.²⁴ The process is essentially

... about story telling. It opens with each client’s presenting story. It continues as the practitioner helps the clients develop a mutual story about their problem.

While doing this, the story moves from a blaming, past focus to a cooperating, future focus that leads to an agreement embodying a future with a difference for all involved.²⁵

As the practitioners often have never met any of the parties it is important that as part of the first phone conversation the parties are helped in clarifying what needs were not being met in this conflict. For example, in a family law dispute universally these unmet needs have to do with reassurances and acknowledgement in their role as parents and respect for privacy. If the need to be a parent is uppermost for one party and the other party’s need is for privacy then both parties share the needs for respect in their parental roles.

A typical example is the perception differences that each parent voices about

the best interest of their children and how their proposal for sharing the care should be implemented. Practitioners can foreshadow that each parties’ needs and interests will be different and on that basis develop some understanding of where the other is coming from and that the process focuses ‘on defining the problems, so they are manageable, workable, solvable and acceptable to the [both] parents’.²⁶

Since some parties are poor negotiators or lack experience in this, parties may need to be coached²⁷ in problem solving and negotiation skills; this can be done in a preliminary interview or in private session before or after a joint phone session. It is important to be transparent about having private phone conversations with each side as the phone practitioner needs to be seen as ‘being on everybody’s side’ and at the same time being on ‘no-one’s side’ so that everyone experiences the practitioner as impartial and even-handed.²⁸

Prior to the phone session

Prior to the session a ‘dress rehearsal’ to test participants’ comfort levels on the phone may be necessary and for the parties and the practitioner to become familiar with the technology. A speakerphone needs to be set up and tested in the room prior to the appointment time.

Commencement of the session

Ideally all participants are to be on the phone for the session. In exceptional circumstances — for example, where a party does not have a landline or private space at home, or feels intimidated talking by themselves — one party may sit with the practitioner.

Requirements for practitioners

For phone dispute resolution to be effective, the practitioner must:

Before the phone session

- have mastered the speaker phone and conference calling system
- make sure each party can speak openly and without fear of influence
- explain confidentiality issues and check when parties make calls from work or home how confidential this may or may not be

- discuss with each party the possibility of interruptions, for example a colleague walking into their office, or, if at home, kids coming in, the doorbell ringing, call waiting and so on.

As they start the session

- ensure confidentiality by checking that no party is tape recording the conversation
- provide time for all participants to settle into the phone conversation
- outline some simple guidelines such as encouraging parties to jot down things they want to say when it is their turn to speak, rather than interrupting.

During the session

- make the process transparent by telling the parties what is happening, for example that the practitioner, while on the phone, is writing down proposals and agreements, or that someone has entered the room, or that the practitioner has vacated the room
- remember the parties cannot see each other or the practitioner and the practitioner cannot see them
- explain and use the process and what is expected of the parties at each stage of the negotiation, including any time constraints
- make sure that in property dispute each party has a list of assets values and amounts of debts (this can be arranged prior to or generated in the session).²⁹

After the session

- use appropriate conflict diagnostic tools,³⁰ build and reflect on hypothesis and formulations³¹
- due to the limitations of phone discussion consider the level of their interventions.
- after the session is over practitioners need to reflect on what went well and what would need to be changed in a future phone sessions.³²

And always remember

- if any ethical dilemmas, complaints or other difficulties occur practitioners may need to take these cases to their mentor or supervisor³³
- obligations for standards, accreditation and ongoing



professional development need to be maintained.³⁴

Some telephone mediations are conducted more like a conciliation process. Conciliation, in which practitioners have an advisory role on the content as well as the potential outcome of the dispute,³⁵ is probably more directive and evaluative than a 'pure' facilitative model.³⁶ In such a process practitioners inadvertently shorten the stages in such a way that potentially not all participants get to have their say. Particularly in a process in which clients are represented and the different relationships dynamics need to be managed, practitioners need to adapt and balance expressions of concerns with allowing the voice of the parties' individual and overlapping needs and the representatives' interests.³⁷

Telephone process³⁸

First, each individual party explains their perspective of how they have experienced and identified their concerns. Second, practitioners use active listening, reframing, summarising and encourage agreement between the parties to determine what the issues to be addressed are. Third, needs and interests are explored before going into options for resolving the issues. If the discussions start with the agenda items that were previously provided to all participants, practitioners need to check if any changes or new developments have occurred. When a list of issues has been provided to all participants and there are changes or additions, the parties need to prioritise, to determine where to start so they can be economical with the time available. Due to time lines it is important to check if anything needs to be resolved urgently. Practitioners need to stay alert, be articulate and adapt their style in managing negotiation as there is less verbal and non-verbal feedback from the parties.

Practitioners need to use facilitation and boundary-setting skills to encourage each party to speak one at a time, being aware of the length of time each party talks to the practitioner and to the other party. They need to encourage less talkative parties to make their voice heard and more talkative parties to slow down. By using a sheet of paper with the

participants' names and line number on it helps to monitor this.

Phone sessions can be arranged for a shorter duration than face to face as they can be more taxing on all participants (including the practitioner). However, by mutual agreement, could be extended or a follow-up appointments scheduled.

At the end of the session

At the end of the phone session, practitioners usually summarise achievements and agreements, check for clarity with each party to determine that all parties understand the language used for their commitments in their proposed agreement document and double check whether the agreements fit the circumstances. Does anyone else need to read it and understand it? Is the agreement practical? Does it mean what it says or say what it means? They need to check with parties if anyone needs to be informed about the agreements reached, what remains confidential about the content of the session and if another session is to be arranged. Parties are thanked and any agreements reached are forwarded following the session.

Alternatively the lawyers will have drafted the agreements during the session that can be faxed or emailed to all participants.³⁹ One of the benefits and risks is that when one of the parties is at home and he or she does not have a fax or email facilities there is a greater chance of a cooling-off period, which can be beneficial or provide space for the party to change their minds as for logistical reasons the party cannot sign any documents.

Private sessions

For separate conversations with each participant, or shuttle, practitioners must make sure the speakerphone is properly disconnected or inactive at the end of each call, as otherwise conversations with one party may be overheard by the other. Some parties may feel more comfortable and may be more forthcoming in a session by phone in which they do not have to deal with an imposing presence of an ex spouse, parent or family member or the person who has belittled, harassed, intimidated, and undermined them in any way.

Telephone shuttling

If a telephone shuttle process appears the best option the general guidelines for shuttle⁴⁰ and those listed above will be helpful to follow. The telephone shuttle must at all times be conducted with appropriate intake information and practitioners need to make sure that each party is on an individual line for the shuttle negotiation to be managed. Consider the following case: a phone shuttle was conducted between grandparents and their son-in-law. As they were making great progress the practitioner extended the time and got caught into having to conduct another phone shuttle scheduled in the room next door. The practitioner had to commence the second one while the first was not yet completed.

Practitioners need to keep clear notes, not confuse which party is on which line (by writing down the line number and the name of the party), and refrain from becoming overbearing, dominant, directive or be tempted to give legal advice.⁴¹

Disadvantages in using telephone

The disadvantages for practitioners in using telephone mediation/conciliation include difficulties with the following:

- assessing whether telephone mediation/conciliation is in the best interest of all concerned
- assisting parties who are vague on issues
- building and maintaining rapport
- not allowing each party to tell their story, for example falling into the trap of listening to the first party, A, who identifies the issues and concerns and getting the other party on the phone, without asking them their issues and concerns but asking them to make proposals for options and solutions in regard to party A's 'agenda'.
- hearing signals of dissatisfaction by one or more participants due to lack of feedback through not being able to see the facial expression and other non-verbal behaviours
- checking power and control issues while remaining facilitative in their approach as they may become too directive, or forgetting to 'reality test' because of time constraints or the expectations of parties



- keeping track, going over old ground, session not progressing and not fulfilling parties' goals
- managing the phone system as well as using the whiteboard for agendas, property figures, and other paper work, for example. Unless the practitioner uses a laptop the agreements can be drafted on an electronic whiteboard so all participants can receive copies at the end of the session
- having to take into account the needs of additional people in the background or present such as a work experience student, trainee lawyer or mediator, or a support person
- arranging private sessions during phone mediation/conciliation as these are particularly time consuming with more than two participants
- ensuring even-handedness, as bias may be perceived if one party is in the room with the practitioner and other parties are not.

Advantages in using telephone

The advantages for practitioners in using telephone mediation/conciliation include the following:

- parties may be less distracted by not seeing each other, they may feel that it is emotionally less draining and may behave more respectfully than in a more controlled environment such as a dedicated mediation/conciliation room
- the safety issues involved in face-to-face mediation/conciliation can be avoided
- geographically-distanced parties can easily participate, as the process is more time and cost effective
- participants working in different parts of the country or in other countries can overcome time zones by finding a mutually acceptable time
- simple problems or only a few issues can be addressed quickly
- legal representatives or other advisors can also be on the line⁴²
- with permission of all participants, support people or interpreters can be with one or more parties
- practitioners do not need to leave their home or office.

Other considerations in using telephone

Telephone mediation/conciliation in family law dispute resolution has similar and different challenges for all those who participate. Loss of important information such as body language and non-verbal cues means that practitioners need to become aware of patterns, dynamics and the use of certain tactics used by parties that may be very different from face-to-face interactions. As certain aspects of the identity of the parties may be unknown, such as cultural background, age, or spiritual practices practitioners may make inaccurate assumptions. It is particularly important that practitioners, conducting phone mediation/conciliation in a multicultural society and across the globe, become attuned to cultural diversity in problem solving and decision making. Madonik⁴³ identifies several language patterns that practitioners need to be careful with in terms of matching to help build rapport. Cultural language patterns arise among people when they have many things in common such as religion, ethnicity, or geography. Regionally-based language patterns are as unique as accents.

Practitioners need to recognise those parties from low-context cultures, who express themselves quickly and to the point relying on verbal messages to convey information. In contrast, parties from high-context cultures tend to communicate around a topic, avoiding going directly to the heart of the matter and relying more on non-verbal communication. A practitioner coming from a low-context communication pattern may inadvertently be seen as too direct, offensive or tactless in the company of high-context parties. Alternatively, a high-context practitioner may come across as inefficient and vague with parties who prefer a more direct and frank discussion and get frustrated with the roundabout way in which issues are discussed.

It is important that parties and/or practitioners do not make cultural and/or gender specific assumptions. Believing that people from the same culture all think or respond and act similarly can be a mistake and lead to barriers in negotiations. The focus should be on the similarities that

disputants have as human beings. How parties define the issues and what meaning they attach to certain situations is more important than accentuating their perceived ethnic differences.

Accordingly Crockett considers practitioners working cross-culturally expert and novice at the same time.⁴⁴ The following example highlights this.

The parents had separated after a 10 year marriage. The father had moved in with his parents who played an active role helping to bring up the children while both parents were working and establishing their careers. The mother was never comfortable with the significant role played by the paternal grandparents and resented the strong cultural factors influencing the children. As a result the children were exposed to constant arguing between their parents. The mother's new partner, a successful entrepreneur, had to move before the commencement of the financial year (in two weeks time), they were keen to take the children with them (while they were on school holiday) so they could commence a new life together.

Rather than participate during working hours, which clashed with their busy working lives, the parties grabbed the opportunity to participate by telephone. The legal representatives had a similar cultural background as their respective clients. While not openly showing a bias, strong cultural feelings are sometimes hard to mask and influenced the negotiations concerning the best interests of the children.

As in online mediation, phone dispute resolution enables parties to communicate immediately and while this is not anonymously, in some circumstances this may encourage behaviour that most individuals would not likely engage in if the process was held face to face.⁴⁵ Practitioners must make every effort that such insults and/or threats are not made, as any menacing, sneering or belligerent behaviour can intimidate the other side. We suggest that communication by phone follows Rule's suggestions for online, in which parties are encouraged to:



- communicate with respect
- listen carefully to others in order to understand their perspectives
- take responsibility for their words and actions
- keep criticism constructive
- respect diversity and be tolerant of differences⁴⁶

Participants in telephone mediation/conciliation, similarly to online mediation, are supported to express their issues openly and in a respectful tone. In a face-to-face process the dynamics of the interaction between the parties, such as that of power and control, is often reproduced since the mere sight of the other can trigger this off. Many practitioners will seek to reduce the imbalance of power that parties exert over each other.

On the one hand we believe that telephone dispute resolution, like electronic communication, can often help to reduce the amount of hostilities that each party may bring to the negotiation table.

On the other hand it is important when the exchanges are only through the spoken word that practitioners gauge the emotional reactions that cannot be seen. A previously intimate partnership, marriage or close family relationship that has been injured due to a dispute can be a deeply felt emotional event for some parties. The loss of a relationship or the fear of potentially losing a significant family connection combined with the anticipatory loss and grief that parties may experience, cannot be ignored in non face-to-face approaches of dispute resolution.⁴⁷ Practitioners must allow appropriate expression of these feelings knowing that this usually helps people to move forward. As such practitioners' questioning has to be framed in a clear and concise manner and responses clarified to avoid misunderstandings.

Conclusion

Telephone dispute resolution has many benefits for both practitioners and their clients. No matter where the parties, their legal representatives or the practitioners are, dispute resolution via telephone communication is an efficient, cost effective way to assist those parties for whom face-to-face meetings are geographically and for

safety reasons inappropriate.

Where parental and property disputes are often conducted with time constraints basic efficiencies in managing the phone and the process being used becomes vitally important. These efficiencies can outweigh the benefits of having the parties in the same room or even in a shuttle situation. In particular phone communication is beneficial where there are high levels of emotion or hostilities and the parties must make decisions about the wellbeing of their children and/or their day-to-day finances and future property settlement.

As in all dispute resolution, each case has to be assessed for its suitability and if the case is appropriate for telephone mediation or conciliation. Practitioners conducting telephone processes must at all times stay attuned to the practical and underlying needs of the parties and manage the dynamics of all participants in such sessions so workable agreements are part of the outcome. ●

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Endnotes

1. Approaches of mediation per phone vary and include facilitative, therapeutic, evaluative and settlement models described by Laurence Boulle, *Mediation: Principles, Process and Practice* (2005) pp 43–47. All phone mediation approaches would also involve communication by email, fax and snail mail.

2. With 'practitioners' we mean those mediators and conciliators defined as family dispute resolution practitioners in the *Family Law Act*, s 10G.

3. Not all mediators find phone mediation taxing at all; in fact some find it easier as there is no juggling of different rooms as in shuttle, managing parties having breaks, providing refreshments, keys to the toilet and so on.

4. I G Gewurz, 2001, '(Re) Designing mediation to address the nuances of power imbalance', *Conflict Resolution Quarterly*, 19(2) pp 135–162 for a comprehensive description of sources of power.

5. It is often said that approximately more than half of the meaning comes from facial expressions, about 38% comes from the speaker's voice and inflection and about 7% from the choice of words being used.

6. M Brandon and L Robertson, *Conflict and Dispute Resolution a guide for practice* (2007) at pp 147–148.

7. Above note 6 at p 167. See also L Fisher and M Brandon, *Mediating with Families making the difference* (2002) at pp 132 and 135–140.

8. Above note 6 at p 168, and p 8.

9. Above note 6 at pp 123–127 description of phone mediation adapted for this article.

10. In family dispute resolution processes, an assessment of suitability is mandated; however we also recommend that such a pre-mediation interview is conducted for most other disputes. These intake interviews, which establish the suitability of the case for mediation and how the process will be conducted, can be conducted by phone or face to face.

11. Referral to the Advice line on 1800 050 321, and verbal, and in written form relevant information details available in the Attorney-General's fact sheets available on <www.familyrelationships.gov.au>.

12. Australian Government, Attorney-General's Department, Information for Family Dispute Resolution Providers, Screening and Assessment Framework 14 August 2006, pp 1–89. <www.ag.gov.au/fdrproviders> viewed 10 December 2007.



13. R Field, 'A feminist model of mediation that centralises the role of lawyers as advocates for participants who are victims of domestic violence' (2004) 20 *Australasian Feminist Law Journal* at 65.

14. Terminology based on Ahrons and Rogers in CJ Beck and BD Sales, *Family Mediation* (2001) at p 66.

15. J McIntosh, 'Child Inclusion as a principle and as evidence-based practice: applications to family law services and related sectors' at <www.aifs.gov.au/afrc/pubs/resource/resource1/resource1.pdf> viewed 19 November 2007.

16. See chapter 3 in L Fisher and M Brandon, *Mediating with Families making the difference* (2002).

17. *Family Law Act 1975* (Cth), s 63DA.

18. *Family Law Act 1975* (Cth), s 65DAB.

19. J Kelly, 'Parents with enduring child disputes' (April 2003) 9 (1) *Journal of Family Studies* pp 51–62.

20. R Emery, 'Child custody alternatives schedules (children of all ages) — by Parents' divorce style' at Divorce Resolutions, Colorado Center for Divorce Mediation, <www.coloradodivorcemediation.com/family/schedules.asp> viewed 10 December 2007.

21. J H Haynes, G L Haynes, and L S Fong, *Mediation* (2004) p 24.

22. *Family Law Act 1975* (Cth), ss 10H and 10J. The information that the FDR practitioner must provide to clients is set out in *Family Law Regulations 1984* (Cth), reg. 63.

23. Parents are provided with relevant resources produced by the Child Support Agency and Relationships Australia. For example, the Australian Government, Child Support Agency, booklet 'Getting Started' or 'Dealing with Separation' CD and relevant booklets (see <www.csa.gov.au/repartner/down.htm> viewed 10 December 2007).

Relationships Australia also has a range of free booklets available: 'Women and Separation', 'Men and Separation', 'Share the Care' and many other pamphlets and information sheets, see Relationships Australia (see <www.relationships.com.au/resources/publications>).

They are also provided with the phone

number of the Family Relationships Online, Family Relationships Advice Line: see also Family Relationships Online, <www.australia.gov.au/familyrelationships>.

24. D Cooper and M Brandon, 'Non-adversarial advocates and gatekeepers: how lawyers and family dispute resolution practitioners can encourage cooperative post-separation parenting' (2008) *Australasian Journal of Dispute Resolution*.

25. Above note 21 at p 9.

26. LS Fong in Haynes et al. Above note 21 at p 173.

27. Fisher & Brandon, above note 7 at p 62.

28. I Laseter and J Stiles, 'Working with one party: Non-violent communication (NVC) approach to family conflicts', <www.mediate.com/pfriendly.cfm?id=1873>, 2006, pp 1–3, viewed 14 January 2006.

29. Phone property mediation where there are no children involved, can often be more commercial, matter of fact and legalistic, particularly where parties have access to their legal representatives and internet to find values and faxes to exchange documents.

30. B Mayer, *The Dynamics of Conflict Resolution* (2000) at p 173 or C Moore, *The Mediation Process* (3rd ed 2003) at p 75. Substantive interests, for example, adequate resourcing, needs for goods, money and time. Psychological interests, for example, relational and emotional needs for respect and acceptance. Procedural interests, for example, a fair opportunity to put their view, negotiations going in an orderly manner and that the process focuses on mutual interests. All three can be addressed within the same process. The satisfaction of the process can be measured against the parties agreements fulfilling all interests stated above.

31. C Moore, *The Mediation Process* (2003) at pp 361–366.

32. M D Lang and A Taylor, *The Making of a Mediator* (2000).

33. Above note 7. See Chapter 12 at pp 226–241 for reflection in and on practice, mentoring, informal and formal supervision.

34. Australian National Mediator

Standards, Final Approval Standards and Final Practice Standards.

35. NADRAC Secretariat 2003, Glossary of Terms pp 1–7.

36. L Boulle, *Mediation: Principles, Process and Practice* (2005) pp 43–47.

37. M Brandon, and T Stodulka, 'Federal Magistrate Court-ordered property conciliation at Relationships Australia Queensland' (2006) *ADR Bulletin*, 9(2) at 33–39.

38. Fisher and Brandon, above note 7 at pp 123–126.

39. For a comprehensive role of family lawyers in mediation see D Cooper and M Brandon, 'How can family lawyers effectively represent their clients in mediation and conciliation processes?' (2007) 21 *Australian Journal of Family Law* 288–308.

40. Fisher and Brandon, above note 7, at pp 131–134. See also M Brandon, 'Use and abuse of private sessions and shuttle in mediation and conciliation' (2005) 8(3) *ADR Bulletin* 41–46.

41. While conciliation can be seen as an 'advisory' process see above note 39.

42. J H Wade, 'Representing clients at mediation and negotiation' (2002) *Bond Dispute Resolution News*, 4 available at <<http://epublications.bond.edu.au/drcn/4>> at 282.

43. B Madonik, *I Hear What You Say, But What Are You Telling Me?* (2001) at pp 38–39.

44. J Crockett, 'Cross-cultural Mediation and the multicultural/natural model' (2003) 1 *Australasian Dispute resolution Journal* 257–265.

45. Rule C encourages online participants to behave in certain ways as per a 'Statement of respectful online Communication' which can also be used for telephone mediation participants. See <www.odr.info/rule.php>, April 2007. Viewed 30 December 2007.

46. Above note 45 at p 28.

47. J Gale, R L Mowery, M S Herrman and N Hollett, 'Considering effective divorce mediation: three potential factors' (2002) 19(4) *Conflict Resolution Quarterly* 389–420.