

Part 1 – Background information on the two new Alternative Dispute

Resolution programs

The purpose of this podcast is to discuss the two new programs in the New South Wales Children’s Court that have a focus on Alternative Dispute Resolution, or ADR. The two new programs are the new model of Dispute Resolution Conference, and the external care and protection mediation pilot.

We recommend that you also read the Children’s Court Practice Note Number 3, which sets out the purpose of these two programs, and includes important procedural information. This can be found on the Children’s Court’s website.

Both the new model of Dispute Resolution Conference and the external care and protection mediation pilot have resulted from recommendations of the 2008 report of the *Special Commission of Inquiry into Child Protection Services in NSW*, the Wood Report. Chapter 12 specifically focused on “other models of decision-making”, and ADR in particular.

The Wood report noted that the *Children and Young Persons (Care and Protection Act) 1998* already made specific provision for the use of ADR in care matters, through sections 37, 38 and 65. Notwithstanding this, the report stated that the Inquiry was consistently informed that in practice, there was no real form of ADR operating in the care jurisdiction.

Preliminary Conferences were originally intended to be less alienating than Court proceedings, and more accessible to people with low literacy levels. The inquiry however found that many preliminary conferences were very similar to directions hearings, and were very formal. This meant that many individuals felt unable to directly participate in the decision making process.

The report ultimately concluded that Community Services, the parties, and the Court needed to do much more to bring ADR into child protection work, and made two specific recommendations to address this issue.

Recommendation 12.1 provided that ADR should be used prior to and during care proceedings. Recommendation 13.12 provided that Children’s Registrars should be

legally qualified, trained in ADR, and sufficient in number to perform ADR and undertake procedural and consent functions.

The Government's response to the Wood report, *Keep Them Safe*, supported these recommendations. It committed to establishing an Expert Working Party to consider and report on preferred ADR models in the care and protection jurisdiction.

This Expert Working Party was formed in 2009, and consisted of Children's Court officers, Community Services, Legal Aid, representatives from the Law Society and the Bar Association, academics, and other relevant organisations. It delivered its final report in December 2009, and Government accepted all of its recommendations.

This brings us to the end of part one of the podcast.