

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) refers to a range of structured processes that seek to resolve issues without a judicial determination or magistrate's decision.

ADR processes are used in the Permanency Support Program (PSP) and by the Children's Court to encourage agreement on what action should be taken in the best interests of the child or young person (child).

ADR aims to improve understanding, agreement and cooperation in complex and emotional matters by creating a safe environment that promotes frank and open discussion between the parties.

ADR can empower families by shifting power and decision-making away from the magistrate and back to the families. It also shares the responsibility for decisions and risk between family members, family networks, service providers, the Department of Communities and Justice (DCJ) and the Courts.

Alternative Dispute Resolution (ADR) refers to processes where an impartial third person assists those in dispute to resolve the issues between them.

The Children's Court uses three types of ADR: dispute resolution conferences, external mediation and care circles. The Department of Communities and Justice (DCJ) and PSP Services Providers also use Family Group Conferencing (FGC).

ADR processes have advantages over legal applications as they can:

- produce care plans and other child protection measures that are supported by all parties
- strengthen and extend support networks to increase the chances of children living safely with their families and communities
- assist the early resolution of child protection matters (i.e. Consent Orders) by helping parties identify areas of agreement so that subsequent hearings are shorter and simpler
- divert child protection matters from court and reduce time in resolving matters.

Legislation that supports the use of Alternative Dispute Resolution

Section 65 of the *Children and Young Persons (Care and Protection) Act 1998* ([the Care Act](#)) allows a Children's Registrar to arrange and conduct a dispute resolution conference (DRC) between parties.

Section 65A of the Care Act empowers the Children's Court to make an order that the parties to a care application participate in a DRC.

Section 37 requires the Secretary to have offered ADR to families before commencing proceedings unless there are exceptional circumstances.

Section 86(1D) requires that, before a contact application is brought to the court, that there has been an attempt at ADR. If this has not occurred, the Court may refer it back for ADR.

The Children's Court of NSW [Practice Note No.3 Alternative Dispute Resolution Procedures in the Children's Court](#) (First issued 7 February 2011, Last Amended 11 November 2015) provides information about the procedures involved in conducting DRCs.

Proponents of Alternative Dispute Resolution (ADR)

The report of the *Special Commission of Inquiry into Child Protection Services in New South Wales* (known as the Wood Report 2008) recommended the increased use of ADR both before and during care proceedings.

The *Keep Them Safe* reforms (2009-2014) proposed that ADR would assist information flow and support collaborative decision-making between Community Services, children, families and service providers.

The Tune Report recommended the *Keep them Safe* reforms be extended for a further three years from 2018-2019.

In 2019, reform to the Care Act recognised the importance of ADR and introduced the requirements for ADR before commencing proceedings under Section 37.

The Role of PSP Service Providers in Alternative Dispute Resolution

The process and outcomes for ADRs are focused on solutions and the future so the involvement of PSP Service Providers in ADRs is also centred on support and solutions.

PSP Service Providers can be involved in court ordered ADRs, Family Group Conferences, Dispute Resolution Conferences, Aboriginal Care Circles and external mediation.

Court-ordered ADR

PSP Service Providers are rarely a party to proceedings in the Children's Court and so, PSP Service Provider casework staff can only participate in Court Ordered ADR, such as a Dispute Resolution Conference, if the Magistrate or Children's Registrar has granted leave for this to occur. However, in recognition that PSP Service Providers play a significant role in supporting children and their families and are usually lead agency with responsibility for case management, more PSP Service Providers casework staff are being granted leave to participate in ADR.

Family Group Conferencing

Family Group Conferencing (FGC) allows families, extended family and other important people to be involved in the planning for children where there are child protection concerns. Cases that would be considered appropriate for FGC include families who are being assessed for intensive support casework or where contact or family visit arrangements and supervision arrangements are being organised.

FGC aims to be family-centred, strengths-based, culturally sensitive and to empower families to protect and support their children. The role of PSP Service Providers in FGCs is to provide information, resources and knowledge to assist the family group to make appropriate decisions.

FGCs are facilitated by an independent convenor and will be offered to families to resolve disputes and make significant decisions at various points in a child protection intervention.

FGC can happen at any stage in the child protection continuum and can be held before or after care proceedings. PSP Service Providers are expected to use FGC at any point that a child or young person needs it including:

- after removal, including during care proceedings if appropriate
- after final orders
- during a period of instability for the child or young person
- if a significant change requires new decision making about a child's safety or wellbeing.

PSP Service Providers are expected to participate in FGC to help identify the non-negotiables and give information about support that can be provided to the child and family.

PSP Service Providers are also responsible for the financial costs associated with an FGC if the child has final orders.

Many PSP Service Providers have staff trained as FGC facilitators; however, PSP Service Providers must be mindful of any conflict of interest. An FGC facilitator cannot be involved with the child or family in any other capacity.

Dispute Resolution Conferences

Dispute Resolution Conferences (DRCs) are intended to facilitate the early resolution of care applications. They can occur at any stage during care proceedings and are ordered by a magistrate. Most commonly, a DRC takes place if there is a dispute about whether the child is in need of care and protection (also known as establishment) or when consideration is being given to what permanency plan will be proposed for the child. The DRC is conducted by a Children's Registrar. The Children's Registrar is responsible for the process, but they do not determine the outcome.

A DRC should aim to:

- identify the risks and safety concerns that have led to the intervention or involvement of DCJ
- identify and clarify the strengths within the family including any progress made by family members in addressing identified concerns
- hear any views expressed by the child from the child's legal representative
- focus the parties' attention on the child's best interests
- identify and clarify the issues in dispute
- identify and clarify areas of agreement

- develop options for ensuring the safety and welfare of the child and consider alternatives to the outcome sought in the care application
- enhance communication between parties
- reach agreement between parties to avoid or limit the scope of any hearing
- formulate final or interim orders that may be made by consent.

If an agreement has been reached by all parties, proposed consent orders will be prepared by one of the parties and presented at the next mention date of the matter before the Children's Court. If agreement is not reached, the matter will go to hearing. Even where parties might reach an agreement, the Court will not make Orders unless they are satisfied those Orders will meet the requirements under the Care Act.

The [Children's Court has created a short video to help parents understand what's involved in a DRC.](#)

Contact Mediation Provided by Legal Aid NSW

Legal Aid NSW can facilitate mediations in relation to contact disputes in Care and Protection matters under s86(1A).

After care proceedings have been finalised, parties can file an application for a contact order. Prior to granting leave in relation to the application, the Children's Court must consider whether the parties have attempted to reach agreement by participating in alternative dispute resolution. Legal Aid is providing that alternative dispute resolution.

Further information on how to request contact mediation is available on the [Legal Aid NSW website](#).

Reference

NSW Government Communities and Justice (n.d). Alternative Dispute Resolution. <https://www.facs.nsw.gov.au/>