



New South Wales Law Reform Commission
By email: nsw_lrc@agd.nsw.gov.au

Dear Sir

Re: Consultation paper – Dispute resolution frameworks in NSW

Thank you for consulting and inviting submissions on the above paper.

Community Services (Complaints, Reviews and Monitoring) Act 1993 (CRAMA) is legislation administered by ADHC which includes express provisions regarding ADR.

Section 3 (1) (d) of CRAMA provides that the object of the Act is to encourage, wherever reasonable and practicable, the resolution of complaints through alternative dispute resolution. CRAMA does not provide any further guidance on preferred ADR approaches or outcomes.

The current *Children and Young Persons (Care and Protection) Act 1998* contains a number of provisions for alternative dispute resolution and dispute resolution conferences.

It is incumbent upon me to inform you that that there are current legislative changes to the aforementioned Act. For your convenience I set out below a summary of the new provisions of the *Child Protection Legislation Amendment Act 2014* which will commence on 29 October 2014. The Act amends the *Children and Young Persons (Care and Protection) Act 1998* and the *Children and Young Persons (Care and Protection) Regulation 2012* in relation to Alternative Dispute Resolution by:

- Inserting a definition of ADR into the Act (s244A); and
- Expanding existing protection of information and confidentiality provisions in relation to ADR currently in the Regulation (cl 19), and brings these provisions into the Act (Chapter 15A).

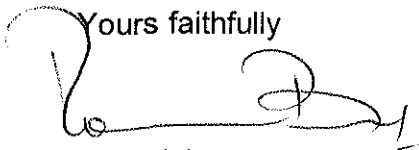
Other amendments expand the use of ADR to where the Court considers it appropriate before or at any stage during the hearing of an application for a Parent Capacity Order (s91D) and that the Court take into consideration whether ADR has been attempted prior to the bringing of an application under s86(1B) for a contact order.

Whilst supporting the formulation of a consistent model it is imperative that the proposed amendments to the Act are not delayed to accommodate the broad framework objective of the consultation paper.

In the event the consultation progresses further please note the interest of FACS and ensure that an opportunity is provided to participate and provide further comment on any proposed recommendations.

Family and Community Services (FACS), Legal Services supports the inquiry and endorses the approach, where appropriate, the adoption of a consistent model for dispute resolution including court mediation and alternative dispute resolution. At this stage all 3 agencies within FACS Legal Services - namely Community Services, Housing, Ageing Disability and Home Care see merit in rationalising definitions. Given the diversity of legislation it would appear preferable that any model provisions as to concepts and definition should be applied on a case by case basis as indicated in paragraph 9.17 of the consultation paper.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Roderick Best', written over a horizontal line.

Roderick Best
A/Director, Legal Services
30 June 2014