

## **10<sup>th</sup> National Mediation Conference**

### **Imprisoned fathers' experiences of the family law changes and how family dispute resolution can help them and their children.**

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Fathers in prison are physically and socially isolated from their children after separation and have very limited access to or information about the family law system. The Australian government is seeking (socio) cultural change in the way we approach family relationships through the recent family law reforms and promotion of effective conflict or dispute resolution. Alternative dispute resolution is a thriving phenomenon in Australia with deep roots in the community.

Where there is a severe power imbalance between parties and where criminal offences are either directly or indirectly involved, mediators require more than the skills and understanding of the objectives of mediation itself. Mediators dealing with such family relationship matters require specific training in relation to family and domestic violence and highly developed diversity in the application of dispute resolution skills. The apparent difference in family dispute resolution is the child focussed and sometimes child inclusive practice, high emotional component, mindfulness of safety for vulnerable parties affected by family violence and the needs of children. A case management approach to family dispute resolution is therefore required. Family Relationship Centres are a government initiative, badged by the Commonwealth Attorney-Generals Department and central to significant change in the Australian family law system, following the 2006 reforms to the Family Law Act.

Family Relationship Centres provide free information, advice and dispute resolution to help people strengthen family relationships, manage family separation and to make agreements on parenting arrangements without going to court. Through a process of case management, the family dispute resolution practitioner will also discuss with individual clients, help available in the family law system; referrals to counselling for both adults and children; and information about family and domestic violence support and other family support services. The centres are staffed by qualified and trained professionals as family dispute resolution practitioners, or family advisors and some Family Relationship Centres, have a child consultant practitioner to enable a child inclusive process to helping families.

Centrecare Midland Family Relationship Centre assists separated fathers in local men's prisons in accessing family dispute resolution. Fathers who in most cases have lost contact with their children, or may be seeking to make post-separation parenting arrangements for after their release. Feedback received from the men, has highlighted the important connection they have made with the family law system; dispute resolution processes and a drawing of attention to the impact of family violence on their own lives and their families.

This paper will outline this unique program and the ways in which it helps the hidden population of parents and consequently their children, in accessing the help and support of the family law system. Family relationship disputes and imbalance of power will be discussed and the issue of engaging effectively with families affected by violence.

### **Incarcerated fathers in Perth WA**

**Acacia Prison** is a privately owned medium security male prison.  
Operational capacity: 1006.

**Casuarina Prison** is a government owned maximum to minimum security prison.  
Operational capacity: 700

**Hakea Prison** is a government owned maximum to minimum security prison.  
Operational capacity: 890

**Wooroloo Prison Farm** is a government owned minimum security prison (transitional).  
Operational capacity: 374

Incarcerated fathers total 2,970 at 21 May 2010, *Department of Corrective Services*.

### **Incarcerated fathers access the family law system through Midland Family Relationship Centre.**

In response to a high demand from 1 July 2007 from separated fathers for family dispute resolution, when Midland Family Relationship Centre opened the doors for the first time, we have developed a process of internal referrals through the Transitional Services or Resettlement Services available at all of the above prisons. On prison entry men receive information about all the services they can access whilst incarcerated and prior to release. Prison staff have identified a gap in service provision, in that the men have very limited access to: direct information about the family law system, how to address or resolve parenting and child protection matters, legal assistance and the family court.

Following a successful pilot program initiated at privately managed Acacia Prison in early 2008, separated fathers in all of the above prisons now can access a one-off Family Relationships with Children in Focus psycho-educational group, and gain information about the recent reforms to the Family Law Act; family law system; how family dispute resolution can help or when it may not be suitable; along with the impact of family violence, separation and divorce on children, especially when there has been abuse, long-term conflict and family and domestic violence. This is followed by an intake and risk assessment interview. Participants are informed that family and domestic violence must be disclosed through their initial screening and assessment should they decide to proceed with the family dispute resolution process. In approximately 60% of screened and assessed cases a Violence Restraining Order (VRO) is in place protecting the other parent and in some cases the children. However, where family violence or abuse of children is disclosed a VRO is not always in existence. We are unable to proceed in contacting the other party without sighting a VRO which must include a "Save and Except" clause allowing family dispute resolution.

## **A case management approach**

About 20% of cases assessed as suitable for family dispute resolution proceed to joint party sessions. The remainder result in no further action due to the other parent not responding or an unwillingness to participate in any communication to discuss children's and parenting matters whilst the father is in prison. Unwillingness can arise out of a history of family and domestic violence during the relationship, or child abuse. Referrals to appropriate support services would be encouraged in such cases. When both parents are participating, the initial separate screening and assessment may reveal incidents or complex matters that result in a case management decision to refer the matter on for legal assistance or the Family Court, and a Section 60I Certificate is made available to both parents for this purpose. Cases progressing to joint party family dispute resolution mostly involve teleconferencing. This may be the first time the parents have spoken in years, or spoken about the impact of events on the children, along with any fears and concerns about the future.

In my experience, parents tend to focus on dialogue around addressing past events and impact on the current wellbeing of the family, children, parents, in the first joint session. Through this dialogue they try to get to a place of acknowledgement and acceptance and it is important that time is available for them to do this without pressure to focus on negotiating a "parenting plan" in the early stage of the process. Issues around family and domestic violence needs a level of acknowledgement and resolution before the "custodial" parent can begin to consider talking about what it would take for the children to have any form of contact with the imprisoned parent. Confidentiality protection in family dispute resolution under the Family Law Act certainly facilitates an environment of full and open disclosure and provides safety for parents in talking about these issues. Out of these discussions prioritising of support and other interventions is identified and the next step of the case management process could be establishing counselling for the children and long-term planning for family therapy. Directly linking the children and "custodial" parent into counselling and therapy is relatively straightforward, when waiting lists and funding allow. However, accessing the same for the incarcerated parent is more challenging, if not impossible. Access to government funded family relationship counselling, through the Family Relationship Centre as an element of the dispute resolution process, would help to overcome this.

Strong referral links through family dispute resolution practitioners, to counsellors and family therapists, and maintaining confidentiality, ethical and conflict of interest boundaries, is an effective way to help such families achieve healing and personal development. The Family Relationship Centre is an essential connection for imprisoned parents and their families to help them deal with relationship damage and build capacity, especially in the children, for resilience, personal development and relationship health and wellbeing. Incarcerated parents need such a place where they can continue to turn for reliable information, advice, and support on family relationship matters and assistance in addressing and transforming the thinking and behaviours that make being in and managing relationships so difficult. On release from prison they are disengaged from society and the Family Relationship Centre plays an important role in helping them manage change and a parenting future.

## **Help for children and families with an incarcerated parent.**

Help for incarcerated fathers and their families in strengthening family relationships, or managing separation is limited within the prisons system. Visiting spaces in prisons can be perceived as intimidating or “unsuitable” places for children. In some cases the children may not know their father is imprisoned. Families of incarcerated parents have special needs and issues that need support. They are vulnerable to higher rates of poverty, homelessness, drug and alcohol problems, abuse, social stigma, poor mental health, education and employment outcomes. The parent with the children can face barriers to making arrangements for the children to communicate with or visit their fathers due to: breakdown in their relationship, children not wanting contact, hardship, building a new life; managing their own depression and health. New partners and step-parents have their own needs and concerns, especially when new siblings and step-siblings are involved. Both parents may be incarcerated and the child or children are in the care of extended family.

Length of sentencing and long waiting lists can impact on eligibility to prison-based personal development programs such as: communication skills, addressing domestic violence behaviour and CBT programs. The federal government could help, with funding agreements for prison-based family relationships programs, enabling Family Relationship Centres to make available one-to-one counselling, therapeutic, domestic violence and psycho-educational support to parents actively engaged in family dispute resolution. Programs to assist with developing healthy relationships, conflict resolution and communication skills are essential for effective change. Men affected by a family history of family and domestic violence and abuse as children, have particular needs for counselling, therapy and relationship education for recovery and to address patterns of behaviour.

Furthermore, prisoners need easy access to prison based legal advice and information and legally assisted family dispute resolution for complex cases; including assistance with registering certificates for family court proceedings and applications for Parenting Orders. When there is no risk of abuse or violence, Family Relationship Centres are more appropriate venues for parents to address post-separation parenting arrangements in a safe and supportive environment . Family dispute resolution is strengths based and focuses on the needs of children after separation; strengthening the post-separation parenting alliance and helping separated families make workable arrangements for their children without having to go to court.

Parenting plans are especially useful when the parents have a reasonable level of trust. Furthermore, Parenting Plans can be reviewed when the circumstances of children or parents change, including the time leading up to and post-release from prison. Due to the easily accessible review process, parents have the capacity to take a staged approach to parenting planning, which is especially important for children when they have not seen or had any form of contact with the incarcerated parent for a prolonged period.

**Safety and support for vulnerable parties engaged in family dispute resolution and affected by family violence. The needs of children and families in building safe, secure relationships.**

Imprisoned fathers whose children are in child protection care have been able to establish stronger communication links with child protection case officers as an outcome of family dispute resolution. In one case, the father was able to discuss and negotiate a plan for safely re-establishing a relationship with his daughter living in foster care in another state, upon his release. The father's awareness of the importance of protecting the safety and security needs of his daughter was increased through respectful and open communication with the child protection case officer and the dispute resolution practitioner. Building a trusting relationship with the father has enabled open and honest communication about the best interests of his child.

Recent cases have involved children and mothers affected by family and domestic violence accessing counselling and family therapy through direct referral from the family relationship centre. These cases may not progress to resolution or future contact with the father. The referrals have resulted again from building trusting and respectful relationship, enabling open and honest disclosure. These families were not receiving any support or healing help prior to engagement with the family relationship centre through initial contact by the imprisoned father.

Transformative intervention is what is needed to: help children and parents recover from trauma and violence; where possible to re-establish family relationships and when not possible or safe to do so, move on with their lives in a healthy way. Children often express their feelings of "guilt" around wanting to love an imprisoned parent who has "done bad things" and need help with these thoughts and feelings.

Family dispute resolution is a process that moves along in a timely way for the imprisoned father and at a manageable pace for the other parent and the children, continuing if the imprisoned father is released mid-way through the process. During the process of engagement parents and step-parents identify the need for family healing and a sensitive and supportive way for the children to reconcile with their parent being in prison. This can include getting safely to the "truth" of what has happened.

When cases are in need of the assistance and intervention of a family court, the family dispute resolution practitioner, through a case management decision making process, would make available a Section 60I Certificate to enable access to the court. A case assessment process continues in the Family Court of Western Australia. Case conferencing enables family court staff to decide through information gathering and discussions with the parents, how proceedings will move forward in the best interests of safety for the child or children. Court staff can make arrangements through the corrections department to talk to relevant prison staff and the imprisoned father for case assessment purposes. Arrangements can be made for counselling, teleconferencing and shuttle conferencing in child dispute matters and safety procedures are arranged in advance.

## Practitioner Knowledge and Skills

Specific training in relation to family and domestic violence and highly developed diversity in the application of dispute resolution skills is essential for practitioners involved in the work of family dispute resolution and family mediation.

### **Family dispute resolution**

Parents are now required to attempt family dispute resolution before making application to the family court. Family dispute resolution is defined as a process in which a family dispute resolution practitioner, who is independent of all the parties involved in the process, helps people affected, or likely to be affected by separation and divorce, to resolve issues in dispute. Due to the wholistic nature of family dispute resolution, the practitioner uses a range of dispute resolution skills concurrently: mediation, conciliation, facilitation, and negotiation skills to assist the parties in making parenting agreements within a developmental and legislative framework. The family dispute resolution practitioner uses “mediation” at one stage of the process to manage joint meetings with the parents or family members following analysis of initial screening and risk assessment information that it is safe to do so.

In cases assessed as suitable for family dispute resolution, the practitioner engages with the parties in an interventionary way throughout a case management process. Meanwhile, the practitioner is required to maintain their neutrality and impartiality when engaging with the parties. This process, includes, assessment and risk screening interview, case management, referrals to other agencies, support and legal assistance, and provision of statutory and non-statutory information. They must be skilled in identifying and responding to the dynamics of family and domestic violence and be assertive in responding to the impact of controlling, intimidating and belittling behaviour, coupled with assessing client and child safety in engaging in the process. Termination of joint parent sessions results if abusive behaviour continues during the process and Section 60I Certificate issued for family court, outlining why in the relevant category.

The Family Dispute Resolution Practitioner may work in collaboration with a practitioner trained as a Child Consultant as the case moves towards joint party sessions. Children in their middle years, with parental consent, can participate in the process and have an opportunity to express their experience of the separation, how life is for them now, and contribute important messages about their experience, hopes for change and the future. This child inclusive approach is developmental and geared to give children a voice, help them achieve better post-separation parenting outcomes, and help parents shift from a position of conflicted communication to a parenting alliance.

Engagement with the parties would not proceed to the joint party stage for “mediation” when individual assessment identifies that children and parents are affected by domestic violence abuse. However, engagement in the dispute resolution process for such parents is valuable, as with the help of the practitioner, they can access information about domestic violence support programs, family law, referral for legal aid or assistance, and counselling programs.

## **Mediation**

Mediation is a powerful component in the application of “alternative dispute resolution” whilst there is no universally accepted model of mediation. In mediation, the mediator acts as an impartial and neutral third-party and may or may not be involved in the intake process. Their engagement with the parties is usually limited to the joint party sessions. The mediator encourages and empowers the parties to take an active central role in problem solving and resolution, and facilitates direct communication between the parties to guide them through the mediation process to settlement or termination.

The mediation session process is controlled by the mediator and the parties determine what will be talked about and are encouraged to offer options for solutions. When possible, with the support of the mediator, the parties negotiate a settlement or agreement. The mediator is focussed on the process of mediation, rules and code of conduct, and non-directive in the content of discussions, decision making and does not provide information or technical/legislative advice to the parties during the session.

Significant time is allowed for the parties to express their underlying issues, concerns and feelings in the matter of dispute and it could be said that this is a most challenging stage of the process for the mediator who must draw on a range of communication skills and strategies and monitor power-balance. It provides opportunity for the parties to accept mutual responsibility for the problem and address events, actions and behaviour that have contributed to the dispute and to express what their needs and interests are.

In order for mediation as a single intervention to work in resolving parenting and family relationship matters, the parties involved must have equal power and a vision of resolution and parenting alliance. Clearly, when domestic violence abuse has taken place in a relationship equal power and alliance is not present. The mediator would therefore need to be involved in risk screening and assessment in order to identify domestic violence and provide safety for victims of domestic violence abuse, children and parents, in accessing family court protection and intervention.

To comply with the new requirement to attempt family dispute resolution before making application to the family court on children’s matters, clients will seek mediators who are registered family dispute resolution practitioners. A shift in focus from person centred to child centred practice is required and a developmental approach to conflict and family relationship transformation. Specialised training in family and domestic violence, family systems and working with people from diverse socio and cultural backgrounds is essential.