



# MODEL OF PRACTICE FOR MEDIATION WITH ABORIGINAL FAMILIES IN CENTRAL AUSTRALIA

PREPARED THROUGH AN ACTION  
RESEARCH PROJECT UNDERTAKEN BY  
CHERYL ROSS, DON MALLARD AND STEVE FISHER

*Relationships Australia*



**FAMILY**  
RELATIONSHIP CENTRE  
HELPING FAMILIES BUILD BETTER RELATIONSHIPS



An Australian Government Initiative



## AUTHORS

**Cheryl Ross** is an Arrernte/Kaytete woman from Central Australia and the first Indigenous Advisor in the NT to become an Accredited Family Dispute Resolution Practitioner with the Relationships Australia Family Relationship Centre outlet in Alice Springs. Cheryl has been working with the FRC for nearly three years and was instrumental in helping to establish the outlet services for both Indigenous and non-Indigenous clients.

**Don Mallard** is Arrernte/Yamatji man of Central Australia. He is an accredited Family Dispute Resolution Practitioner (FDRP) and former Indigenous Advisor with the Family Relationship Centre in Alice Springs. He is currently employed as Ranger Mentor for Aboriginal men and women undergoing work readiness and training to become Rangers in their respective communities.

**Steve Fisher** is the Director of Community Works Associates, a small company that provides management consultancy and project management services to organisations in Australia and overseas. He has extensive experience in participatory training, facilitation and mediation in a wide range of community, Indigenous and cross-cultural settings.

The content of this publication is designed to achieved better mediation processes and outcomes for Aboriginal people. We request that use of the material is credited to Relationships Australia Family Relationship Centre, Alice Springs.

The citation is Ross C, Mallard D and Fisher S. 2010. **Model of Practice for Mediation with Aboriginal Families in Central Australia.** Relationships Australia Family Relationship Centre, Alice Springs.

Design and layout by Samantha Lemmens, Sidekicks FBR.

Contributions to background research by Dr Maria V Rodrigues.

© Relationships Australia

(Photo on cover: Shirley Turner of Irrkelantye Resource Centre, Alice Springs and her daughter Alexis. Photo by Cheryl Ross)



# CONTENTS

<b>Acknowledgements</b> . . . . .	2
<b>Introduction.</b> . . . . .	3
<b>Methodology</b> . . . . .	6
• Principles of action research	
• Action research for the model of practice	
<b>The region of Central Australia</b> . . . . .	8
<b>Aboriginal clients of the Family Relationship Centre in Central Australia</b> . . . . .	10
<b>Approaches to mediation with Aboriginal families in Central Australia</b> . . . . .	12
<b>Stages of mediation</b> . . . . .	16
<b>Features of mediation processes involving Aboriginal families</b> . . . . .	30
• Boundaries and expectations of the service	
• Trust and rapport	
• Appropriate pace and timing	
• Participants and perspectives	
• Privacy and confidentiality	
<b>The practice of mediation.</b> . . . . .	35
• Assessment of potential benefit	
• Explaining the process to clients	
• Responding to multiple points of conflict	
• Compiling the complete story	
• Shuttle mediation	
• Design of the mediation process	
• Handling privacy and confidentiality	
• Working towards impartiality and neutrality	
<b>Outcomes of mediation</b> . . . . .	55
<b>Raising awareness of the service</b> . . . . .	58
<b>Case studies.</b> . . . . .	60
<b>Development and support of mediators</b> . . . . .	66
• Dos and don'ts for mediators	
• Skills and competencies of mediators	
• Self-care for mediators	
<b>References.</b> . . . . .	Inside Back Cover

# ACKNOWLEDGEMENTS

The results of the action research described in this publication have benefited from the support of a number of people. In particular, the staff of Relationships Australia and the Family Relationship Centre in Alice Springs have taken a close interest in the work as it developed and offered advice and comments along the way.

Marie Morrison, CEO of Relationships Australia NT and Robyn Donnelly, Manager of the Alice Springs office, provided valuable support and encouragement for the project from the outset.

We acknowledge and thank Steve Fisher, Consultant, who provided valuable partnership and support with this publication by writing our findings and experiences. His unflinching support and encouragement to keep the process alive over such a lengthy period of time was invaluable.

We wish to thank Maureen Abbott for her support and thoughtful advice. Maureen is an experienced mediator in Central Australia and her influence on the work has been important from the beginning, including during the phase of developing the idea for a model of practice.



We are grateful to the Aboriginal staff from related agencies and services in Alice Springs who participated in a consultation workshop

and thank them for their valuable contributions.

Appar Wangkiji-Kari, the Council of Elders and Respected Persons in Tennant Creek took time to meet with us to discuss the model of practice.



Similarly, members of the Ngkarte Mikwekemhe Community provided feedback on the model during a meeting we organised with them. Our gratitude goes to both these organisations for their contributions.

We also acknowledge the contributions from people who have assisted us especially in terms of the community consultations: Graham Ross and Janice Dunn.

Anne Brown and Serge Loode of the Australian Centre for Peace and Conflict Studies at the University of Queensland made valuable contributions through reviewing the final draft and providing many helpful observations. We wish to thank them for their assistance.

Most importantly, we wish to acknowledge the many individual Aboriginal people and families for whom this work is dedicated and whose own experiences have informed the content.



**Cheryl Ross**

**Don Mallard**



## INTRODUCTION

Relationships Australia is a community-based, not-for-profit organisation providing relationship support to people regardless of age, religion, gender, sexual orientation, lifestyle choice, or cultural or economic background. It is a national, values-based organisation that has no religious affiliation. Most clients seek our services to help strengthen and build relationships or resolve relationship breakdown issues.

Relationships Australia delivers a wide range of services, including counselling, family dispute resolution, relationships education and parenting skills training, men and family relationships programs, early intervention services, child-focused programs and practices, and programs which specifically engage Aboriginal and culturally and linguistically diverse (CALD) families, groups and communities.

In Central Australia, Relationships Australia operates a Family Relationship Centre outlet, which is a place where families can go to access information and advice on:

- building and strengthening existing relationships
- early intervention and prevention services
- child-friendly services for families in conflict
- family dispute resolution services
- parenting plans
- re-partnering and step family arrangements
- child-focused workshops and information and referral
- child-inclusive practice.

Like other centres, the Family Relationship Centre in Alice Springs offers individual and joint sessions to assist separating families to create workable parenting arrangements for their children. The service is available to all families in Central Australia, which includes the APY Lands and the Barkly Region. They also offer group information sessions and workshops on a range of practical topics to assist families. The centres encourage separating parents and families to focus strongly on the needs of their children. The services at the Centres are funded by the Australia Government and provide for five free hours of joint Family Dispute Resolution service to families.

In working with separating couples, the Family Relationships Centre uses an approach called the Family Dispute Resolution Process, illustrated below. However, in our practice we prefer to use the term mediation as we find that this is more readily understood by clients than family dispute resolution. This is why we have called the work described in this publication a model of practice for mediation. The action research we have conducted shows how the standard process can be adapted to suit the needs, circumstances and expectations of Aboriginal people in Central Australia.

## Introduction (cont.)



Figure 1: The Family Dispute Resolution Process



## Introduction (cont.)

### The need for a model of practice

The need for the action research that lies behind this model of practice arose from the experience of the Relationships Australia, through its Family Relationship Centre, in providing services to Aboriginal families in Central Australia.

Throughout this publication, we will be referring to the Family Relationship Centre (FRC) as the agency that has developed this work, but the reader should keep in mind that Relationships Australia NT is the managing organisation for the FRC in Central Australia.

Separating or separated Aboriginal couples face problems and challenges that are distinct from those of non-Aboriginal people. These include cultural factors, different understandings of what constitutes settlement of a dispute and expectations of the process itself, who should be involved and how it is handled.

Through the development of its own skills and knowledge in this area, and particularly a small team working specifically with Aboriginal people, Relationships Australia NT saw the need and opportunity to conduct action research in this area. This would involve the team examining its practice against the established processes of Relationships Australia and contemporary mainstream models of mediation practice. It would identify key elements of mediation practice, understand how they apply in real situations and then commit the experience gained to a formal model.

The objectives of the model of practice are:

1. To improve our understanding of effective approaches to mediation for Aboriginal families in Central Australia;
2. To develop, test and formalise a model that acts as a guide and a resource for mediators working with Aboriginal families in Central Australia and enables them to achieve optimal outcomes for children and parents;
3. To share the knowledge experience we have gained with others working in this field.

The resulting model of practice for mediation with Aboriginal families is represented in this publication. It is designed for use by practitioners working with Aboriginal people who are in dispute, especially in cases involving separating couples.



# METHODOLOGY

## Principles of action research

The approach to developing this model incorporates the principles of action research as defined by the Attorney-General's Department (AGD) of the Commonwealth Government.

The requirement for Family Relationship Centres to undertake action research is set out in the Evaluation section and Appendix K of the Operational Framework for Family Relationship Centres - July 2007 (Operational Framework). In addition, the General Feedback Report on Action Research for Family Relationship Centres of July 2006-2007 provides an assessment of the experience to date and directions for the future.

According to guidance from the AGD, action research consists of a series of research 'cycles' of observation, preliminary reflection, planning, action and reflection. The value of action research lies in its capacity to assist the Centres to deliver effective and relevant services. In interpreting the national research questions for Family Relationship Centres to the particular local context of the Northern Territory, the AGD defined examples of corresponding local questions.

Those questions from the AGD to which this work responds are 'what would it take to':

- improve services for remote communities?
- improve engagement with the local Aboriginal community and encourage Aboriginal clients to attend the Centre?

- ensure the Centre assesses and refers clients appropriately in order to facilitate contact between a parent and their child(ren) and/or other parent?

The General Feedback Report from the AGD described achievements to date in action research as well as improvements that Centres are encouraged to integrate into their work.

### Action research for the model of practice

Feedback and guidance from the ADG has informed the methodology adopted for this work. In essence, the Family Relationship Centre believes that a model of practice for Aboriginal families is one effective way in which the three questions above can be addressed, as well as building our own capacity to achieve best outcomes for children and families affected by separation.

We have taken into account the approach to action research taken by other organisations working in Central Australia and which bring a national remit to their activities. Notable is the work of the Desert Knowledge Cooperative Research Centre, the Centre for Remote Health and the Centre for Appropriate Technology.





## Methodology (cont.)

The methodology for the work undertaken to develop the model of practice for mediation with Aboriginal families was the following:

- **Observation**, which involved discussing and describing the existing practice of Aboriginal mediators.
- **Preliminary reflection**, through comparing our practice in Relationships Australia in the Northern Territory with our knowledge and experience of contemporary models of mediation practice and the literature on mediation practice in Aboriginal contexts.
- **Planning** the work of mediators in specific cases with the aim of trying out and formalising methods and techniques, as well as developing our own skills. We also planned future action research activities of varying kinds, such as focusing on particular elements of the mediation process or different kinds of setting (for example, in small bush communities or cases involving traditional Aboriginal and urban families).
- **Action**, which involved both putting into practice the work we planned and ensuring that new opportunities were identified and used to inform the research.

- **Reflection** at points during the process to ensure that we were maximising the learning value and capturing insights to include in the model of practice presented in this publication.

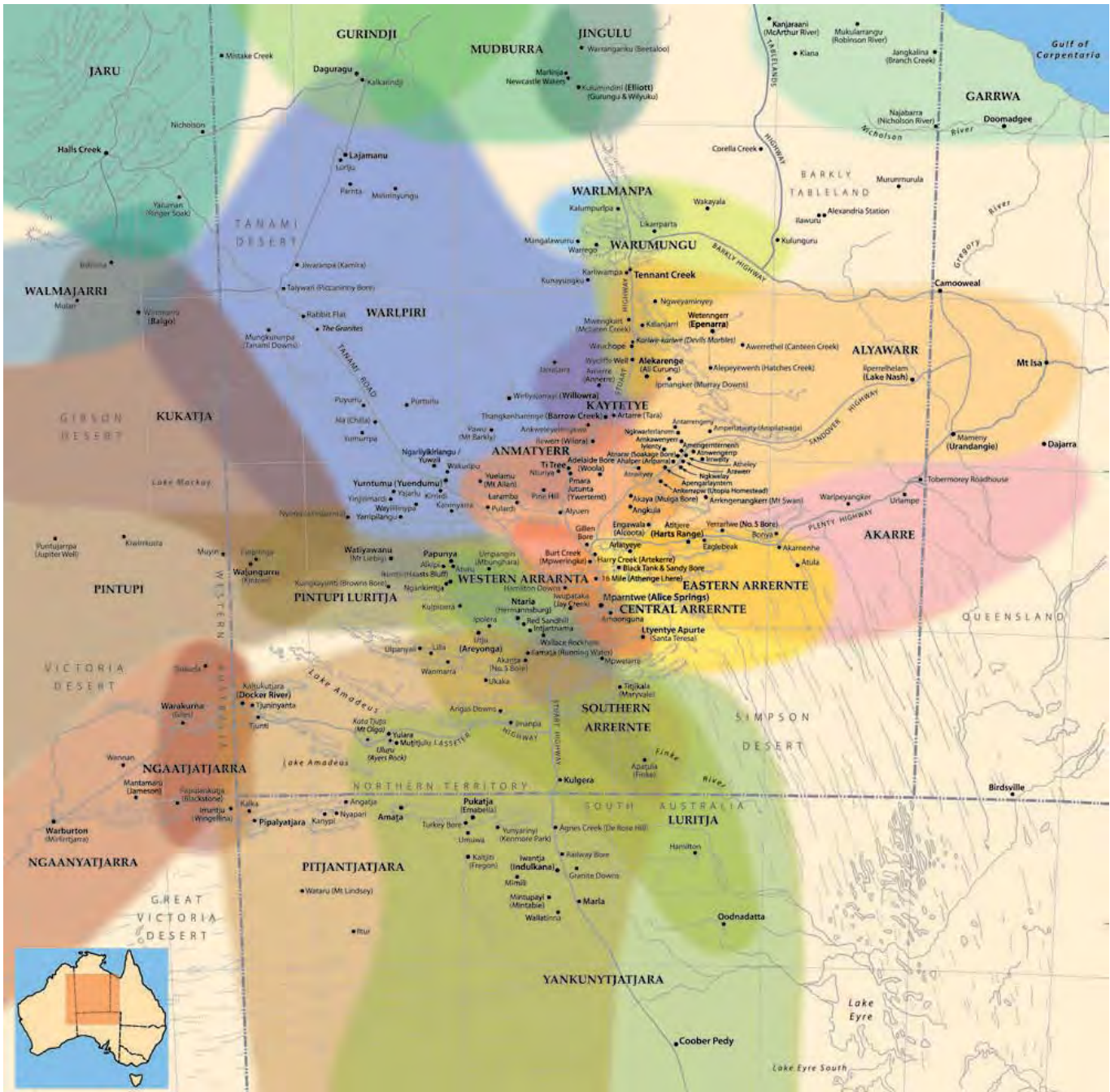
The methodology approaches mediation practice in four ways:

1. Through an overview of the overall process, including its design, pace, features and scope
2. By focusing on the participants in the mediation, including their expectations, their needs, their perspectives and their capacity to participate.
3. Through the skills and techniques required of mediators and how these are most effectively deployed.
4. By considering the particular factors that apply in mediation for Aboriginal families.

The model presented in this publication was developed in a way that reflects these elements. The results of the research presented in this publication represent our current thinking on the subject and are by no means the final word. As we continue to work so we will learn more about the practice of mediation for Aboriginal families in Central Australia. The experience will further refine and develop our practice over time.

# THE REGION OF CENTRAL AUSTRALIA

We define Central Australia as a region centred on Alice Springs and which extends 500km in each direction. For purposes of describing the reach of the mediation service of the Family Relationship Centre, the region covers the population that considers Alice Springs to be its major centre for services, facilities, shopping and so on. It includes the town of Tennant Creek.



## The region of Central Australia (cont.)

A feature of the towns of Alice Springs and Tennant Creek are the community living areas more commonly known as town camps, which have a population which is entirely made up of Aboriginal people.

The map below shows the 21 town camp areas of Alice Springs. A number of referrals to the Family Relationship Centre can include people living in town camps or involve them as parties or contributors to the mediation process.



Map of the location of the Alice Springs town camps, taken from Foster, D, Mitchell, J, Ulrik, J and Williams, R 2005, Population and Mobility in the Town Camps of Alice Springs, A report prepared by Tangentyere Council Research Unit, Desert Knowledge Cooperative Research Centre, Alice Springs.



## ABORIGINAL CLIENTS IN CENTRAL AUSTRALIA

This model is specifically orientated to the needs of working effectively with Aboriginal families in Central Australia. They are a diverse group of people with varying backgrounds, aspirations and expectations. A central characteristic of mediation by the Family Relationship Centre is therefore the need to be able to respond effectively to the wide-ranging needs of clients.

The value of building rapport and understanding between mediators and clients is emphasised in this publication. With Aboriginal families, the time spent by mediators on developing the relationship with clients also creates the opportunity to work out the best approach to supporting family members through a mediation process. It is important to remember that some clients are not only coping with the impact of separation but also come to the Family Relationship Centre with other problems too. These may include housing difficulties or homelessness, family violence or concerns about safety, financial problems and health issues.

For many Aboriginal people in Central Australia, English is a second, third or even fourth language. Their ability to express themselves precisely in English is often not as well-developed as a person for whom English is their native tongue. Their familiarity with technical or professional terms in English may also be limited.

Compared with the population as a whole, Aboriginal people living remotely rather than in regional centres may not be familiar with the roles of different agencies and services. Contact with the FRC may be difficult for people living in remote communities given the general lack of knowledge of and access to relevant services. This may be compounded by the often large distances involved and limited access to transport and telephone services.

It is also the case that many people living in town come to the FRC with good knowledge of local services and familiarity with particular agencies. The point is that, between the two ends of a wide spectrum of needs and expectations, there are many differences between clients. Mediation practice in Central Australia has to respond effectively and appropriately across this range.



## Aboriginal clients in Central Australia (cont.)

The experience of families with agencies and services affects their expectations of mediation. Where other services may have previously chosen to support clients in a way that is outside their brief, then clients may expect similar support from mediators, for example in helping them to resolve financial, housing or transport issues.

Finally, it is important to note that the factors described in this section vary from family to family. Cultural considerations are always important and include Aboriginal approaches to justice, avoidance protocols and the authority of individuals to participate and to speak about a dispute. Cultural factors may also determine the roles that male and female mediators play in working with individual parties.

A full description of cultural considerations is beyond the scope of this publication. Awareness should be developed by mediators through their own experience and knowledge. These factors are critical throughout the process, particularly when mediators are working out the best way to engage with the parties.



## APPROACHES TO MEDIATION WITH ABORIGINAL FAMILIES

The Family Relationship Centre in Central Australia uses a standard model of mediation that aims to achieve settlement of the dispute between parents to produce the best outcome for the children.

Within the typology of approaches to mediation used by practitioners, the organisation deploys a facilitative and settlement model. Alexander (2008) describes both settlement and facilitative mediation as process-oriented, meaning that the mediator acts as a coach to engage parties in the process of resolving the problem rather than intervening directly in the problem itself. This often means that the role of the mediator is to support the participants to achieve a set of outcomes which prioritise the needs of the children. In both practices the mediator aims to create the optimal conditions for negotiation between parties. Settlement approaches aim to reach a tangible outcome, which for the Family Relationship Centre is a parenting plan.

The Family Relationship Centre also follows a linear process, meaning that there are a series of steps that follow sequentially from each other and lead to a result. In developing this model, an important challenge has been to remain true to the linear nature of mediation within the organisation, while recognising that much work in the Aboriginal setting does not plot a steady course through measured steps.

In contrast to the linear model, mediators tend to spend a great deal of time preparing themselves and the parties for mediation through work which follows cycles of visiting family members, finding out more of the story and explaining and discussing roles and responsibilities.

The process of facilitative and settlement mediation with Aboriginal people by the Family Relationship Centre in Central Australia leads to progress in several ways that do not necessarily feature in the final analysis of the process. We call these 'spin-off benefits' of the contact between mediators and family members. An important example is the way in which individuals 'get stronger', meaning they improve their self-esteem and confidence having carried a personal burden from the dispute which they have now been able to address in some way. Some people may also see their engagement with the mediation process as a way of regaining respect if they have regretted their earlier actions and suffered 'shame' as a result. Of course, improved family well-being and harmony is also a benefit for many parties to mediation processes.



## Approaches to mediation with Aboriginal families (cont.)

The reduction of underlying conflict can be a valuable commodity in small towns where it can be difficult to avoid because the parties spend time in the same locations, such as supermarkets. These benefits are described in greater detail in the section on outcomes of mediation processes.

We have also observed that the act of contacting the parties can sometimes be a spur to them to address the dispute themselves rather than avoiding it. The impetus can lead to a change in the situation and at least partial resolution of the conflict.



### Example: Prompting the parties to consider the children in their plans

**A man lived with his children at an outstation after his relationship with his first wife broke down. He was convicted of an offence and sent to prison for a short period. The first wife lived at Community A. The children were left in the care of his new wife at Community B. The man's first wife contacted FRC and said that she wanted to see the children but that the man's new wife wouldn't let her.**

**FRC contacted his new wife by public telephone at Community B and discussed how the FRC could assist the parties to work this out. In the meantime, the man was released from prison and went to Community C where his family lived. FRC again contacted the new wife who said that she had spoken to the man who said that the families were working it out. When FRC contacted the first wife, she advised that the elders of the family had negotiated an agreement with the man which ensured she saw the children for visits while they remained living at Community B.**

**In this case, the interest taken by mediators in the situation was enough to encourage family members to talk to each other and resolve the matter in the interests of the children.**



## Approaches to mediation with Aboriginal families (cont.)

The process of working with Aboriginal families in Central Australia calls for additional techniques that draw on narrative, transformative, tradition-based and humanistic approaches described by researchers such as Alexander (2008); Winslade, Monk and Cotter (1998) and Umbreit (1997). Although no single approach represents the practice of the Family Relationship Centre in Central Australia as closely as the facilitative and settlement approach, there are certainly elements of each that already exist in our practice and have a place in the Model of Practice for Aboriginal Families.

The concepts that underpin transformative mediation are a good example of an approach that is generally unsuitable in our context. Nevertheless, some key elements are relevant and in many ways essential. **Transformative mediation**, as described by Bush and Folger (1994, 2004), considers the identity of people to be defined by the balance between themselves as individuals and their connections with others. Transformative mediation is about changes to interpersonal interaction. It encourages parties to make the shift from weakness to strength (through individual empowerment) and from self-absorption to understanding (through recognition of the perspectives of others).

Translating the transformative mediation framework to the context of Aboriginal people in Central Australia provides us with valuable insights. For example, the pre-mediation questionnaire of the Family Relationship Centre asks the parties to a dispute to describe their understanding of the views of the other party.

The work undertaken with Aboriginal families often helps individuals to feel stronger. Preparatory meetings with family members encourage people to tell the story of the dispute so that common ground can be explored.

In considering the principles of **humanistic mediation**, which frames the role of the mediator as a healer and emphasises the relationship between the mediator and all the disputing parties (Umbreit, 1997), we again consider the approach to be unsuitable to our objectives. In the Aboriginal context in central Australia, mediators do not consider themselves as central to the process or to be somehow fixing or healing the dispute, as this approach runs counter to our facilitative practice. However, it is apparent that many clients see mediators as there to fix the problem and can become passive in the process of addressing the dispute, preferring to leave it to the mediator to offer solutions. The need for mediators to be supportive, compassionate and empathetic with the parties can add to the misinterpretation of the situation by clients. This is another reason for mediators needing to reinforce, often repeatedly, their role in the process and to strengthen and support the participation of the parties. It is a challenge for mediators to work effectively as advisors and supporters to the parties without becoming mediators too early in the process when the parties are not yet ready.





## Approaches to mediation with Aboriginal families (cont.)

A third approach to mediation that has some relevance to the practice described in this publication is **tradition-based mediation**. Although this approach is more appropriate for disputes involving large family groups rather than a focus on the needs of children when couples are separating, it is important in all mediation practice to be aware of the way in which disputes have been addressed historically in Aboriginal communities. This particularly applies to work with people living in remote locations rather than urban settings. Tradition-based mediation acknowledges the role of senior community members (elders) in resolving disputes, drawing on their wisdom and authority. However, we consider it important to achieve a balance between respecting and bringing into the process the positive influence of senior family members and ensuring that the parties are taking full responsibility themselves for the decisions taken about the arrangements for care of the children.

The process of **narrative mediation**, which is described by Duryea and Potts (1993) as being well-suited to Aboriginal settings, only offers the model we have developed limited value. The impartiality that is critical in the facilitative approach taken by the Family Relationship Centre is not a key principle in narrative mediation, which is why it does not align closely with our practice.

Ultimately, our model brings together a set of techniques and approaches into a formalised process. It aims to serve both the need for an outcome-focussed and linear process that is the practice of the Family Relationship Centre and the particular features that are necessary for working effectively with Aboriginal families in Central Australia.



## STAGES OF MEDIATION

There are four stages to the model described in this publication. These are described below and illustrated in the diagram that follows. The mediation as a whole is supported by three ongoing activities by the mediators; explaining the process to clients, building the story behind the dispute and assessing the situation.

### **Explaining the process to clients**

Mediation is unfamiliar to many people. A common misconception is that the mediators are going to fix the problem for one or other of the parties or that they will make a judgement or provide advice. From the outset, mediators operate as advisors to the parties, explaining the process to clients with an emphasis on describing clearly the role of the mediator and how each party can benefit from participating in mediation.

Where clients are used to being in a position of being passive recipients of a government-provided service, it is important that the mediators encourage them to take responsibility for the outcomes of the mediation and to be active in the process. Where a large number of people may need to be consulted along the way, the message has to be reinforced on a regular basis and the mediators need to find the right straight forward and clear language to achieve that. More information on this aspect of the process is provided on page 30.

### **Building the story behind the dispute**

As described more fully on page 43, mediators need to invest time in compiling the full story behind the dispute, including any details that may be peripheral or relating to longer-term disagreements between the families involved in it. In judging the right timing for the transition from one stage of the mediation to the next, it is important for the mediators to assess when the full story has been compiled through discussion with all the parties and relevant people. The pre-mediation stage and the subsequent joint mediation cannot begin until then because the full story enables the mediators to:

- Properly prepare the parties for the joint mediation
- Ensure that the right people are involved
- Enable ongoing assessment against the needs of the children
- Focus the meeting on finding agreement rather than continuing the process of going through the details of the story behind the dispute on both sides



## Stages of mediation (cont.)

Completion of the full story in advance of the joint mediation reduces the possibility that new details will be introduced at the meeting that prevent progress or derail the process. Unmanageable surprises at joint mediation may lead to backtracking, waste of time and resources, damage the reputation of the mediators and may potentially lead to a worsening of the conflict.

In summary, the mediators are seeking to ensure that they can achieve most from the meetings. This depends on them understanding in depth the background to the dispute or, as we have called it, the full story on both sides. This puts them in the best position to help the parties open a new chapter, one which is better for the children. At all times, the use of interpreters will be considered by mediators in situations where the parties can explain the situation and the story more clearly in their own language.

### Assessing the situation

As mediators build the story, they will constantly assess the appropriateness of the dispute for a mediation process conducted by the Family Relationship Centre in Central Australia. An early consideration is whether a dispute related to the children actually exists. In some cases, for example, the character of the problem may not involve a disagreement about children and could be about other issues within the family.

Assessment includes consideration of important cultural sensitivities. For example, when an individual has been detained in prison, there may be unfinished business connected with the dispute within local cultural practice arising from either the offence, the prison term, or both. This can influence the way in which the mediation process is designed, usually meaning that mediation cannot proceed until cultural matters have been resolved. The mediators need to make sure they have the full information they require to make an assessment of whether mediation is appropriate and can proceed. The mediators should also find out whether the parties have received legal advice and may assist them to secure suitable advice.



## Stages of mediation (cont.)

---

### Example: Cultural issues in mediation

A father of four was incarcerated for murdering his wife. He contacted the FRC to arrange for his children to visit him in jail and live with his side of the family. He wanted his mother (children's grandmother) to use the FRC to mediate with the other family. The paternal grandmother had some contact with the children in the past and she and the family now wanted the children to live with her.

The initial assessment of this case raised questions regarding its sensitivity due to the murder of the children's mother, what cultural payback had or hadn't taken place and whether the two families would be able to mediate. The father informed the Indigenous Advisor that he was free of any cultural responsibilities relating to the murder.

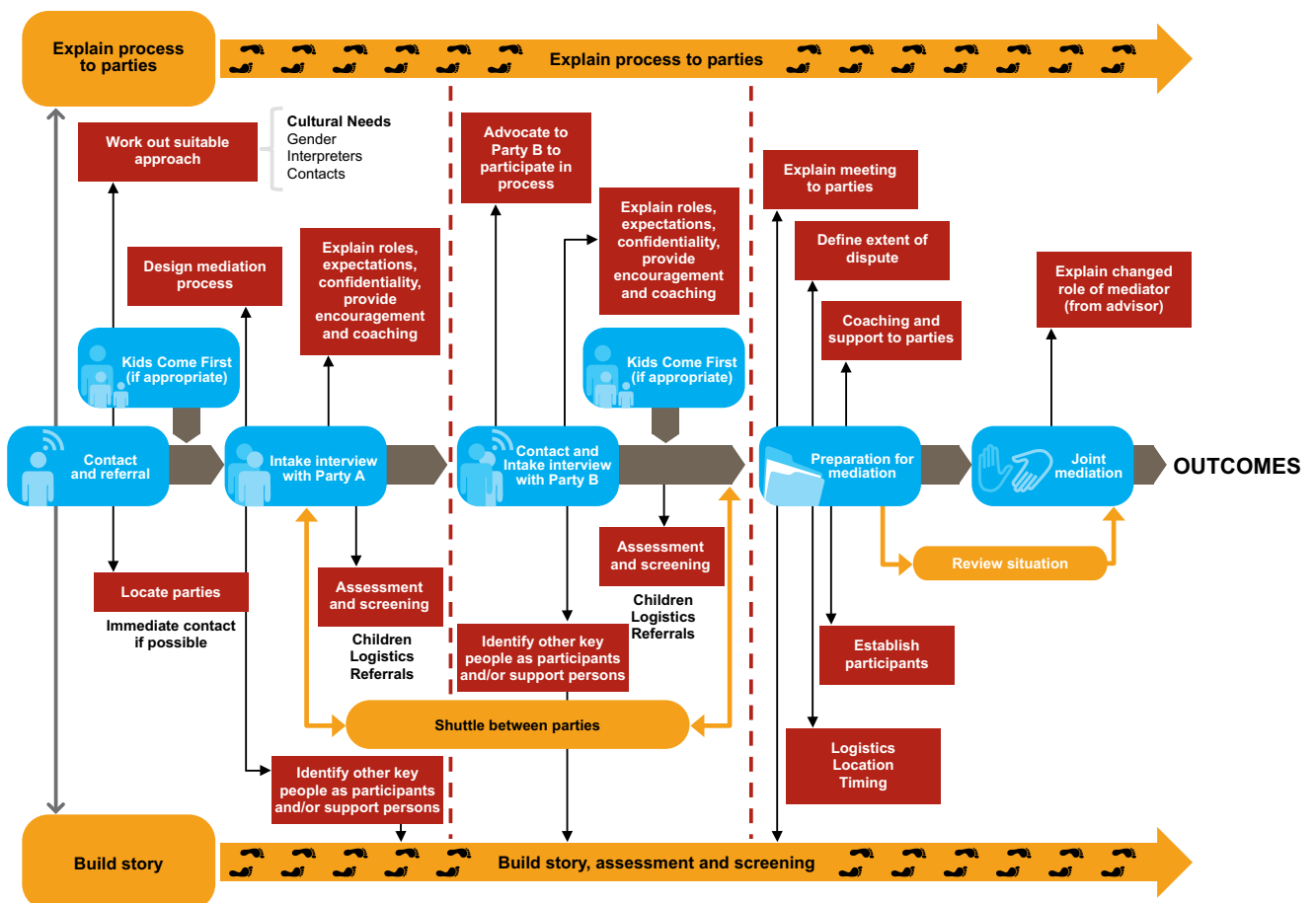
A pre-mediation was set up with the children's mother's family and an assessment made for joint mediation. The mother's family rejected all requests from the father to see his children and was not ready to mediate with the grandmother at this stage. The death of the mother was still very fresh and the family wasn't able to perform any cultural payback due to the incarceration of the father. They did leave a door open for the grandmother to visit the children, but insisted they were to remain with the mother's family.

After the pre-mediation with the deceased mother's family the case was considered inappropriate for mediation at that time due to the severity of circumstances around domestic violence and culturally sensitive issues and protocols.

---

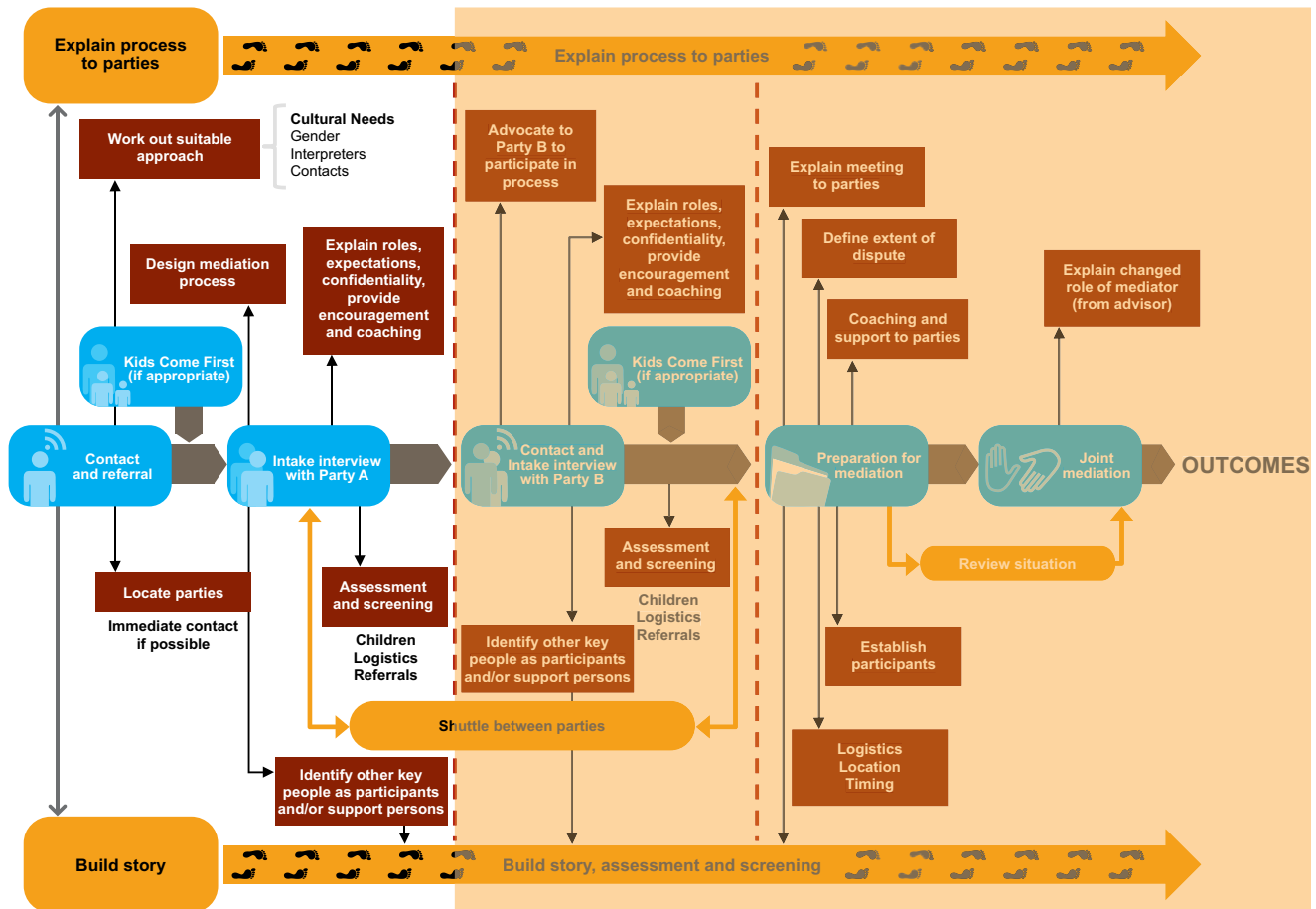
## Stages of mediation (cont.)

The flow diagram below illustrates the process of mediation that has been developed by the Family Relationship Centre through work with Aboriginal families in Central Australia. This will develop further as a result of ongoing experience.



# Stages of mediation (cont.)

## Stage One: Preparatory phase with Party A





## Stages of mediation (cont.)

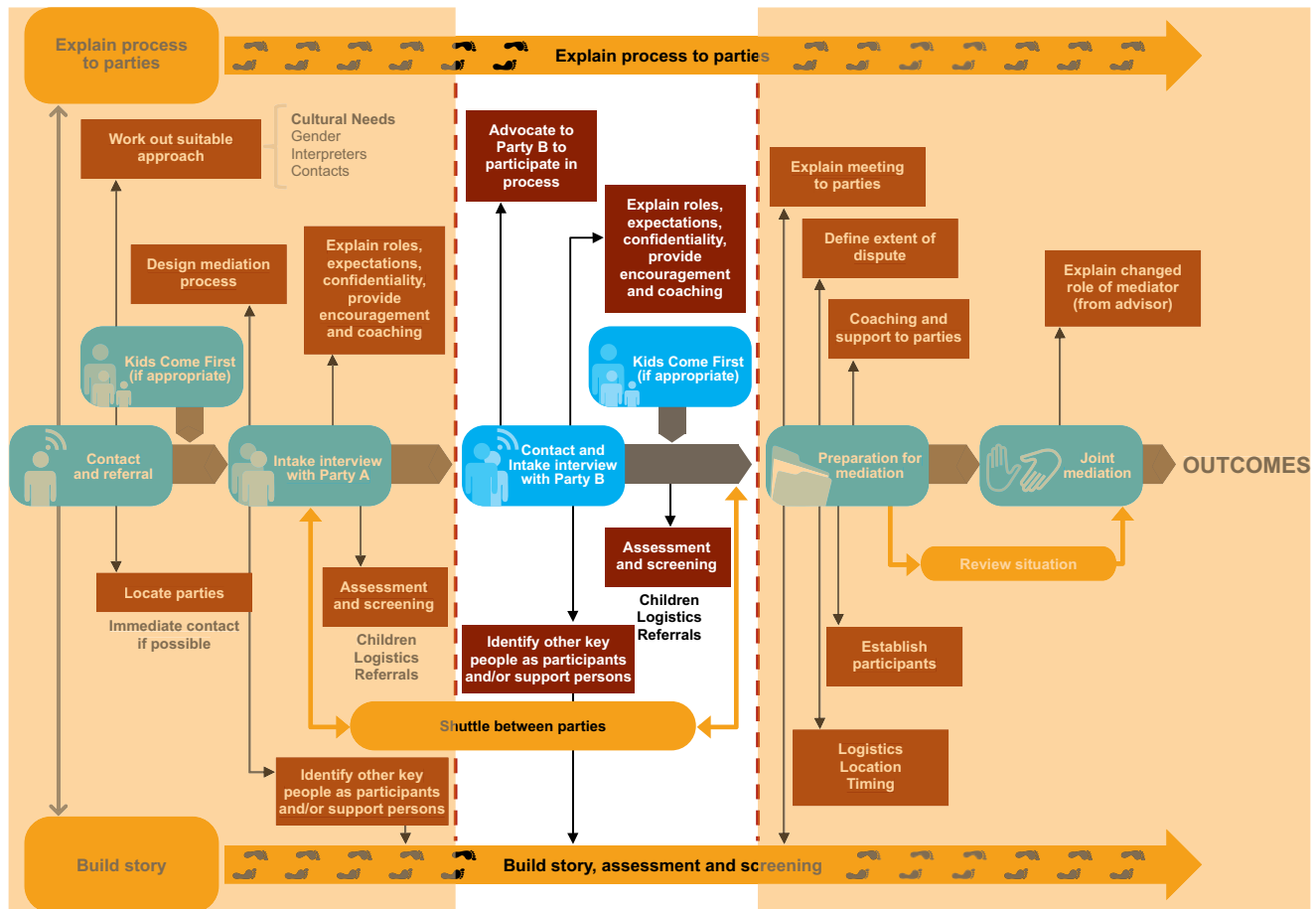
Following initial referral of the case, the mediators commence by meeting with Party A, the instigator of the mediation process. Sometimes, extensive work is required with Party A to understand the full story from their perspective and to identify other people who may need to contribute to the process. These can include members of their family and grandparents or others who have been involved in looking after the children. There follows a period of locating and meeting with all other individuals with an involvement in or a contribution to make to settlement of the dispute and especially to a suitable outcome for the children.

The preparatory phase also requires careful consideration of the range of factors that are influencing the dispute. This includes the care arrangements and current well-being of the children, new partners for either of the couple, housing, financial, health or safety issues and the attitude and motivation of the family towards resolving the dispute. In some cases, the mediator may conduct a 'Kids Come First' session with the parties, but sometimes this is not culturally appropriate since it refers to the non-Aboriginal context and can be perceived by them as a lecture. It is often preferable and more effective for the mediator to ensure that he or she refers to the children regularly as part of the ongoing discussion and reinforces proper consideration of their needs at key stages in the process.

During the preparatory phase, mediators will first of all assess suitability for mediation, whether there is any conflict of interest for them as mediators and whether outcomes favourable to the children can be achieved. If they decide to proceed, then the preparatory phase will start to design the process in the way that stands the best chance of achieving positive outcomes (as described on page 55). Mediators will start to determine how best they can work with Party A and work out the particular challenges or problems they face in participating fully in the process.

# Stages of mediation (cont.)

## Stage Two: Preparatory phase with Party B







## Stages of mediation (cont.)

This stage repeats the previous one, but with Party B. As described elsewhere in this publication, for processes with Aboriginal families, locating Party B may be a lengthy one involving a significant investment of resources. Mediators will usually have an address for the person but may find it difficult to locate them quickly if they move periodically between different places. As the mediators meet with people other than Party A, it is common to find that more people are relevant to the dispute and need to be contacted.

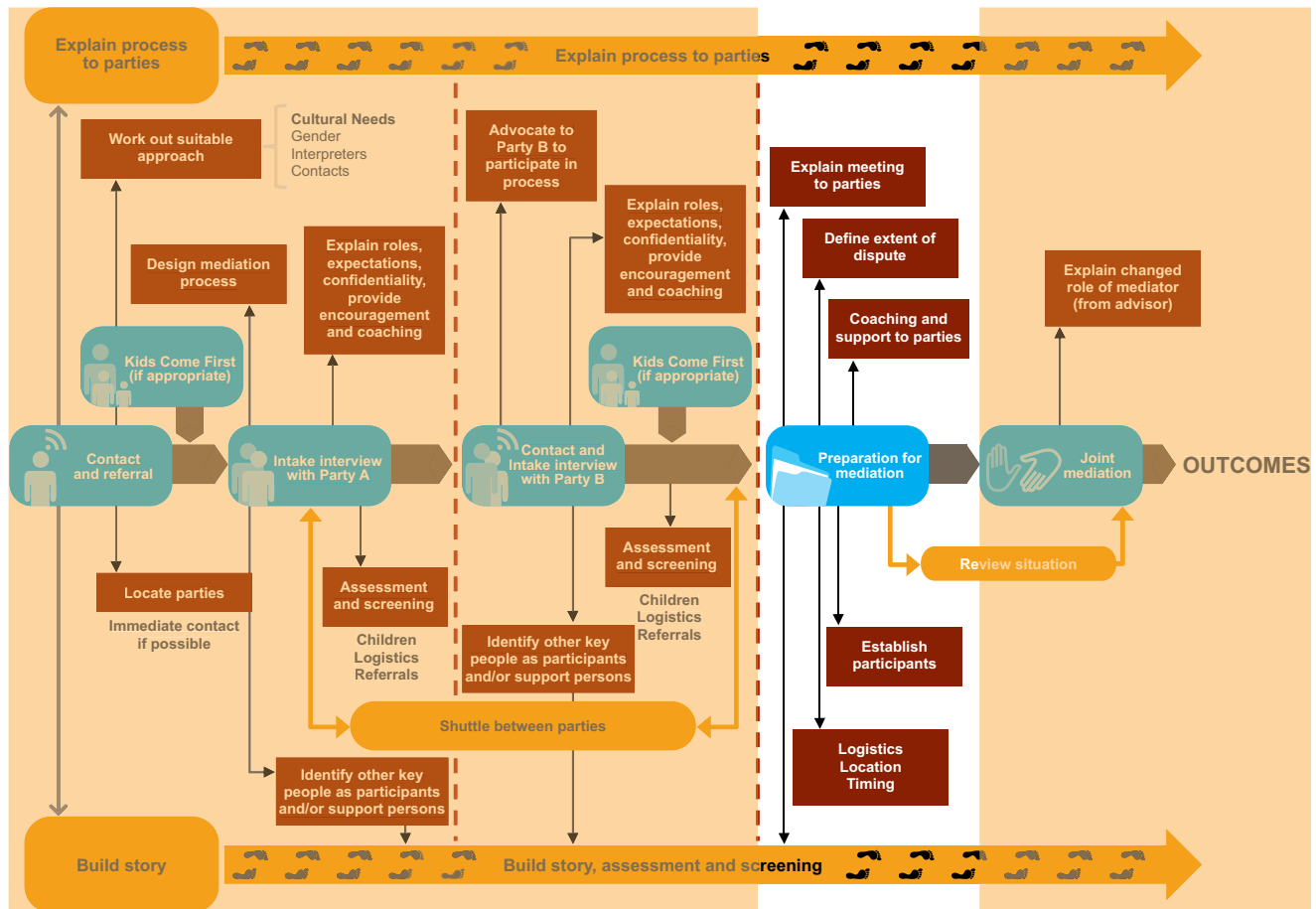
Once contact has been made with Party B, at the first meeting the mediators need to assess the potential for him or her to participate fully in the process. As is common in any mediation, he or she will not have instigated the process, may not recognise the benefit in participating or will not consider the dispute to be an issue that is even worth discussing. Reactions vary from disinterest to evasion or even hostility to the mediation process. This may be particularly the case if their position is a strong one, with care arrangements for the children that suit them, for example. On the other hand, Party B may also be very interested and open to the idea of mediation.

It can be a big step for the parties to venture beyond the existing pattern of the conflict itself, which may be characterised by avoidance on the one hand, confrontation and hostility on the other or a range of other situations between these extremes. For them to move into mediation is a challenge, especially for Party B, who did not propose it in the first place. The mediators may need to spend some time shuttling between the parties to arrive at the point where they are both considering the benefits of a joint mediation. Shuttling also enables immediate practical issues to be addressed in a way that is described in greater detail on page 46. For Party B, who may be satisfied with the existing arrangement, it may be very hard to establish reasons why he or she should participate. This is where legal advice to both parties may be valuable. If it is established that Party A, for example, could pursue a legal action against Party B, then the scope to encourage him or her to be involved becomes much greater.

In general, within the preparatory phase the mediators operate more as advisors to the parties, at the same time developing a relationship with them and building rapport and understanding. This involves helping them to work out their needs and priorities, the value of mediation to them and how to gain the most from it, especially for their children. Parties often ask for information or advice and the Family Relationship Centre provides it, including referrals to other agencies as required.

# Stages of mediation (cont.)

## Stage Three: Pre-mediation





## Stages of mediation (cont.)

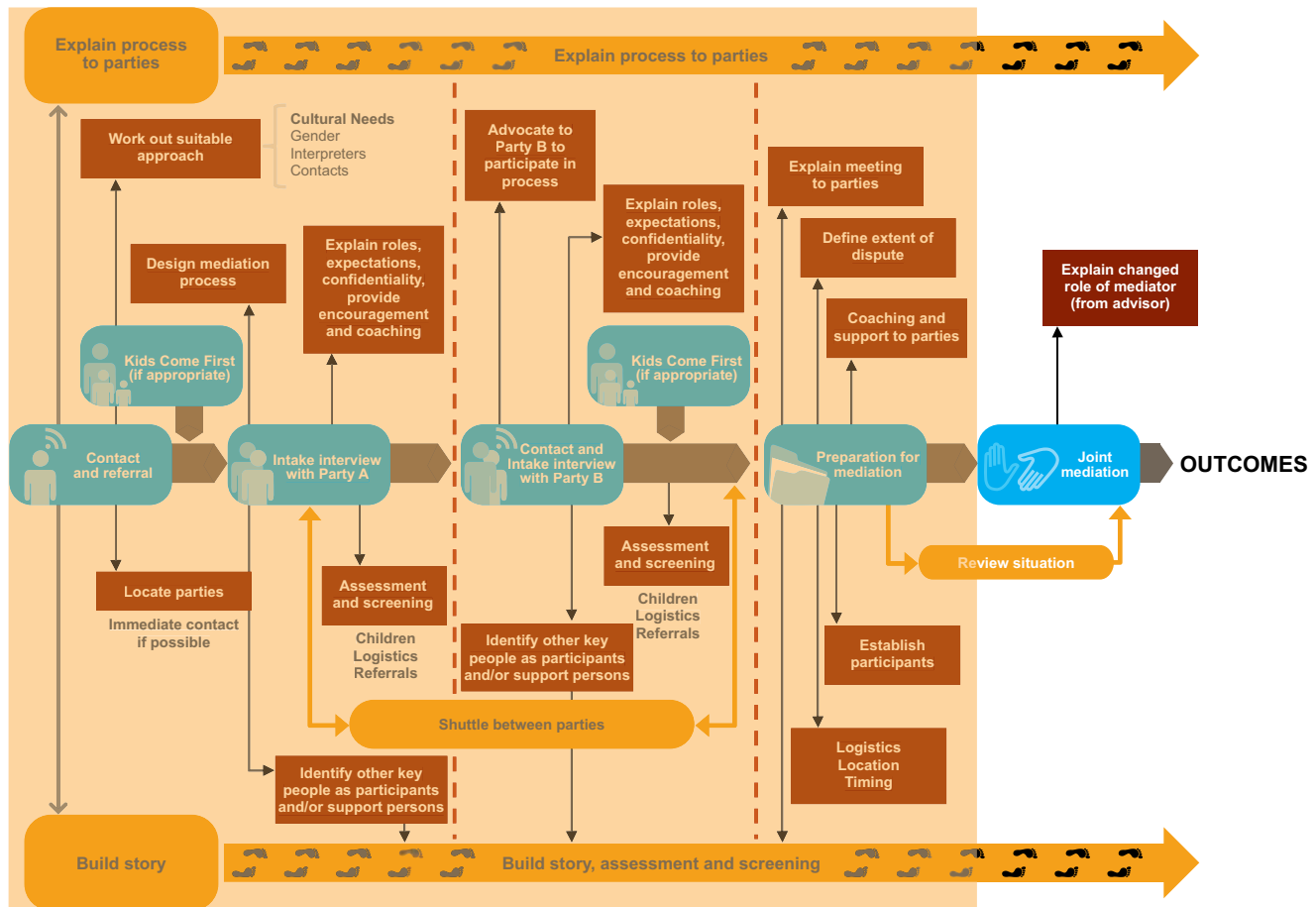
Once the full story has been compiled and the parties have agreed to proceed to joint mediation, the mediators prepare for the joint mediation. This involves working with the parties to ensure that they participate fully and are able to take responsibility for the options generated through the joint mediation and negotiating the final agreement. It is critical to continue to emphasise the needs of the children.

The best way for the mediators to do this is to reiterate the roles of each participant and then to describe how the meeting will work in practice. Talking through likely scenarios and encouraging them to ask questions that clarify details is valuable to the parties. The aim of this part of the work is to reassure and encourage the individuals so that they enter the joint mediation in the best position to achieve outcomes that are good for them and favourable to the children.

A second part of the pre-mediation process involves the logistics and practicalities of the joint mediation meeting itself. The location itself needs to be acceptable to both parties and the physical setting comfortable for them. The timing has to be suitable (especially for people needing to travel into town from a remote community) and accommodation may be needed. For families reliant on 'payday', the timing has to take into account when they will have the money available to travel to and spend time in town. And when a number of people are expected to participate, the arrangements have to suit everyone. These practicalities are critical to making sure that the joint mediation is effective. Occasionally, it may be appropriate for the FRC to assist in making the arrangements.

# Stages of mediation (cont.)

## Stage Four: Joint mediation





## Stages of mediation (cont.)

The joint mediation takes the form of a meeting between the two parties and associated people on either side of the dispute, together with the mediators. The location of the joint mediation is very important. The mediation will listen to the preferences of the parties and work out what is the most appropriate and comfortable place for the meeting to take place. For Aboriginal people, this means taking account of cultural influences such as avoidance protocols and kinship factors that would have been considered in Stages 1, 2 and 3. An interpreter may be required and should be a person who is trusted by the parties. It is particularly useful if the interpreter understands the process and has been involved earlier.

There are essentially four parts to a joint mediation; the opening statements, the exploration of issues, working out options and the agreement.

### Opening statements

The mediator starts the meeting by welcoming the parties, making sure that everyone knows why all the other participants are there, explaining the purpose and plan for the meeting and setting out some basic ground rules. These will focus on the need for the parties to speak respectfully to each other and to listen to each other's statements at the start of the meeting without interruption. The mediator makes clear his or her role and what is expected of the parties. The opening statement also emphasises the centrality of the welfare and needs of the children. The assessment of the situation by the mediator will determine the extent and content of opening statement.

The tone set at the outset is critical to the rest of the process. The mediator should continue the way in which he or she has used earlier discussions and the pre-mediation to encourage and support the parties to gain the most from the mediation. The mediator should also define the extent of the dispute, coaching the parties to focus on what can be achieved while recognising that there may be a long and wide-ranging history to the relationships and the dispute. However, here it must be made clear that the mediator is shifting their position from one where he or she was advising the parties individually, to a new situation in the meeting where they are offering advice and support to the process itself rather than the individuals. The success of this transition depends on the trust and rapport between the mediator and the parties.

Although many people are familiar with official processes of completing forms and participating in interviews in order to establish eligibility for benefits or to make an application for housing or services, most will be unprepared for the less predictable and more emotive setting of a joint mediation. The opening words of the mediator need to reassure the participants that progress can be achieved towards their aims. It is sometimes helpful for the mediator to ask each party why they have come to the meeting as this enables common ground to be established straight away in the sense that they both want an improvement in the current situation.



## Stages of mediation (cont.)

Conventional practice in mediation is that the parties are invited by the mediator to make a statement describing their side of the dispute. In working with Aboriginal families in Central Australia, it is sometimes appropriate for the mediator to provide an overview of the dispute first by describing what he or she has understood in leading up to the joint mediation. This helps to define the dispute where there may be a lot of information involved, some of which is not central to the needs of the parties and their children. It also sets a tone that encourages the parties to speak as it provides a statement to which they can respond.

However, on occasions it may be better for the mediator to proceed quickly to invite discussion between the parties rather than using time on making a lengthy opening statement. This may be appropriate where the parties are reluctant to participate and it is important to start the conversation without delay.

### Exploration of issues

Once the full details of the dispute and its background have been described by the parties, the mediator then asks them for their suggestions on subjects for further discussion. Examples might include the living arrangements for the children, ways in which family members will interact with each other in the future or subjects that they are willing to talk about. Where individuals have expressed particular concerns, then these subjects may be included on a list of headings that the mediator writes on a whiteboard or flipchart.

The role of the mediator now is to facilitate discussion of each subject. The principles that he or she follows should be:

- To ensure that the needs of the children are central to the process
- To take into account cultural sensitivities
- To ensure that the parties are listening to and understanding each other's perspective
- To encourage the parties to talk to each other rather than through the mediator
- To focus on the future outcome of the mediation, moving on from details of previous episodes in the dispute

Ideally, a pattern is established where the parties are openly discussing the issues in a measured and open fashion. The mediator supports them to make progress by asking questions that clarify details and encourage further discussion and exploration of the issues, as well as summarising at key points along the way.



## Stages of mediation (cont.)

### Working out options

The process of discussing each of the subjects in the list will enable the parties to start thinking about options for making an improvement to the current situation. The mediator supports that process by summarising at regular intervals and pointing to areas that offer scope for further discussion of options.

Once the subjects have been fully discussed, the mediator then suggests that the parties talk about options for settlement. This requires firm encouragement by the mediator and most likely private sessions with each party to give them time to reflect on what has been said so far and suggestions they could make as a way forward when the joint meeting resumes. Private sessions may also be useful where there are a number of people involved since it enables them to talk about the options in small groups or individually. Careful judgement is required by the mediator to ensure that the process is going at the right pace for both sides and that he or she continues to be seen as impartial.

When the parties come together after private sessions, the mediator then encourages each to provide an update on their views. There may still be some distance between the position that each is taking, which offers scope for a discussion of the gap between them and how this might be bridged. If there is more than one issue at stake, then the mediator can encourage give and take between different issues in dispute.

Essentially, the parties are encouraged by the mediator to consider the consequences of not reaching an agreement to improve the situation, while at the same time they review their standpoint in the light of possible outcomes for the children.

### Agreement

When the discussion reaches a point where the parties are moving close to agreement, the mediator summarises the situation. He or she can suggest they write down what this agreement would look like so they can talk further about the details. For example, if rotating childcare arrangements are to be established, then the periods may need to be worked out. In Central Australia, Aboriginal families are likely to agree periods that relate to key local events such as the school holidays, cultural commitments and local events such as key sporting events. This will need to be worked out. Or it could be necessary to agree who picks up or drops off the children.

Each subject is discussed in this way. The ones on which agreement is reached are then written down by the mediator as a formal agreement to be signed by all the people involved. Agreements should be specific and detailed so that the potential for later misunderstanding is reduced. This includes description of conduct that each side expects of the other when looking after the children, including reduced anti-social behaviour.



## FEATURES OF MEDIATION PROCESSES INVOLVING ABORIGINAL FAMILIES

There are important features of a large majority of processes involving Aboriginal people in Central Australia and which influence the design of mediation processes.

### **Boundaries and expectations of clients of the service**

In remote or small town locations such as Central Australia, where choices of service providers may be more limited than the cities, clients often expect more from an agency than the specific service that it provides. In the case of Aboriginal families, often there are several other issues for the family connected to the separation of the couple and the welfare of their children. While housing, safety, money and alcohol may be present as concerns for non-Aboriginal families too, the experience of the Family Relationship Centre in Central Australia is that clients often do not separate particular problems they face as being the province of one agency over another.

Some clients expect the Family Relationship Centre to be a one-stop shop for counselling, advice on financial management, support in situations of domestic violence and help with accommodation problems.






## Features of mediation processes involving Aboriginal families (cont.)



### Example: Housing and financial pressures

A client of the Family Relationship Centre who is a party to a dispute becomes overwhelmed by problems stemming from her housing tenancy and lack of money to resolve it. She visits agencies with responsibilities in these areas, looking for a rapid solution. However, none of them are able to respond with the urgency that she requires.

So the client comes to the mediators in a state of anger and frustration. Before any progress can be made with the mediation, her immediate practical problems need to be addressed. The mediators are also unable to respond immediately and the client becomes upset and storms out. She returns the following day and apologises for her behaviour. The mediator assists with 'warm referrals', meaning representing the client's story on their behalf, to appropriate agencies.



Of course, this presents challenges for staff in two ways. First, they need to be able to manage and often resist pressure from clients for additional support to be provided. And second, they have to apply good judgement in setting boundaries and knowing when it is appropriate, because of particular circumstances, to offer assistance to individuals and families that would not normally apply. As clients can present with complex and inter-connected needs and issues that limit their participation in the process, such as language barriers or transport problems, then it is important that the Family Relationship Centre fulfils its responsibility to refer them to other services that can support them.

### Trust and rapport

Although the quality of the interactions between mediators and the parties to a dispute is very important in any mediation process, a particular feature of work with Aboriginal families is the need for trust and a relationship to be built as part of the preparatory phase. In other words, trust should not be assumed to be granted to mediators simply because they are professionals working for an organisation. Building trust requires an investment of time to meet, listen to and understand people during the preparatory phase of the process and a willingness to be flexible.



## Features of mediation processes involving Aboriginal families (cont.)

We have observed that Aboriginal clients generally place their trust in the individuals working in the service rather than the system or process itself. The personal reputation of the mediators as individuals within the community is very important. This has a big impact on the ability of the mediators to conduct the process since a lack of trust and confidence in them will deter people from becoming involved. Factors that contribute to the reputation of mediators include their respect for clients, acknowledgement of cultural obligations and expectations and their ability to achieve progress in a way that suits the clients.

This situation contrasts with work with non-Aboriginal people, who tend to see professional staff as delivering a standard service and are more concerned with the quality of that service rather than the individual staff, who are assumed to be trained and competent. This is another reason why the building of trust is so important. It places great demands on Aboriginal mediators, who are considered by clients as much as individuals within the local community as they are professional staff of an agency. In many ways, mediators need to present themselves in both ways, depending on the setting and the situation.

### Timing and pace

Many Aboriginal people have different understandings of the pace of a mediation process when compared with most processes involving non-Aboriginal people. Often, urgency is not considered as important as proper consideration of the full story behind the dispute and adequate time for processing the issues between meetings.

An exception is when children are being recovered to a parent or deemed to be at risk, as this is when urgency is often paramount for him or her.

For people living remotely, there are additional circumstances that affect their ability to engage with the service provided by the Family Relationship Centre in Alice Springs, such as transport to town, access to a telephone and limitations on the resources they have available to become involved in an intensive process. Although the mediation should follow the stages described in this publication, it is unlikely that time pressures will be applied by clients and so the mediators need to assess the right pace at which the process can move forward, maintaining as a priority the needs of the children. To keep the mediation moving along, this is likely to involve the mediator regularly being in touch with the parties to plan the next steps and ensure that the process does not become stalled.

The right pace is essential to good communication. Throughout the process from initial meetings through to the mediation meeting itself, silence should be considered an important part of the communication between mediators and the parties and between the parties to the mediation themselves. Culturally, Aboriginal people are not uncomfortable with silences. Gaps in the conversation during which nobody speaks enable people to process the discussion and work out their response to it. Silence also contributes to the pacing of the process to suit the participants and enables people to communicate in non-verbal ways.



## Features of mediation processes involving Aboriginal families (cont.)

### Participants and perspectives

In mediation processes involving Aboriginal families in Central Australia, there is a need to include other family members in the process, sometimes including members of a wide extended family. Although it is not desirable to generalise across Australian Aboriginal cultures, in Central Australia it is common for grandparents to play the leading role in raising children. Separating couples sometimes expect their parents and other relatives to be directly involved in the mediation process. In some cases, grandparents of the children will be the main parties.

After the first meeting between mediators and Party A, time is spent identifying, locating and meeting with other key individuals. In Central Australia, the investment of time required for this process can be considerable. Aboriginal people are often highly mobile and spend time visiting members of their family living in locations that may vary from homes in Alice Springs, town camps, remote homelands and outstations or larger remote communities.

Disputes involving separating couples of which one or both parties is Aboriginal are frequently complex due to the numbers of family members potentially involved, the history of the relationships between family members and cultural considerations. Mediators need to invest sufficient time to understand the full picture and meet and gather all the knowledge they require before entering the pre-mediation or joint mediation stages of the process.

It is essential that mediators understand and compile the complete story before proceeding to the next stage of the mediation.

### Privacy and confidentiality

According to the Australian Bureau of Statistics, in Australia there are over 1,200 small remote communities of up to fifty Aboriginal people. The population levels of communities in Central Australia range from 10 to over 1,500, while the numbers of people living in remote communities fluctuates at any given time as people come and go for a variety of reasons.

In any small, isolated community, the meaning of privacy is different from that of city dwellers. People know what is happening in the lives of local people who are most likely to be members of their own family anyway. Events in the community are well-known to everyone, at least at a general level. In our experience, there is at times a lower expectation of privacy and confidentiality from Aboriginal clients of the Family Relationship Centre than would be the case for non-Aboriginal people. Where non-Aboriginal relatives will stay away from a dispute between a couple, Aboriginal family members may often consider their involvement to be essential.




## Features of mediation processes involving Aboriginal families (cont.)



### Example: Are you calling about the kids?

**In contacting the office of a small community in Central Australia, a mediator explained that he needed to speak with one of the residents. The person was not there and so he asked to leave a message to simply say that he had called and his telephone number. The person taking the message, who was an employee of the local community council, asked 'Is it about them kids?'**



At a general, rather than detailed level, most local residents and relatives of a separating couple involved in a dispute will be aware of it. This means that they will have heard about arguments and will most likely know at least one version of the background story. The spreading of information by 'word-of-mouth' has a big influence on general awareness of the dispute and has to be factored in to the design of the mediation process.

Mediators will assess who has been involved to date and which members of the family should participate in the process. These decisions will be influenced by the views of the family, who may prefer the involvement of particular individuals. Cultural considerations are important here, especially in the family deciding who is appropriate to speak about the dispute.



# THE PRACTICE OF MEDIATION

Through the experience of working with Aboriginal families in Central Australia, we have developed methods and approaches that together make up a model of practice. Through the action research that has led to this publication, we have sought to understand and formalise these approaches in a way that can assist others. This section presents our practice, describing how we follow the stages and features of mediation described earlier.

## Assessment

Mediators must constantly assess the parties and their dispute to work out whether it is appropriate for a mediation process conducted by the Family Relationship Centre in Central Australia. Key questions to be considered as part of the initial assessment process are:

- Is there a dispute?
- Are children involved?
- Are there risks for the parties and the children if the dispute is not addressed?
- What is the role of the mediators?
- Which other services or agencies need to be involved?
- How might cultural protocols affect the process?

The need to question whether a dispute actually exists may sound strange. After all, if there is no dispute, then why has one of the parties approached the Family Relationships Centre? The problem faced by families who may have other serious challenges in their lives, such as financial and housing worries, is that they are sometimes unable to separate one issue from another. Also, it may be hard to find the appropriate service to assist them. So, for example, if a child has travelled interstate with one parent and their return is delayed, this may be a legal matter and not necessarily be part of a dispute. Or if the family has been evicted and had to live in separate accommodation, then again this is not a subject for mediation but more likely requires support from the housing department.



## The practice of mediation (cont.)

The peak period for assessment is at the beginning of the mediation process, when the mediators meet both parties and gain an understanding of the key issues. But, as new information emerges, they continue to evaluate the situation before proceeding with further work. In this way, the mediator is able to work out what suitable goals for the process might be, what are reasonable and realistic expectations of the parties and how best he or she can be effective.

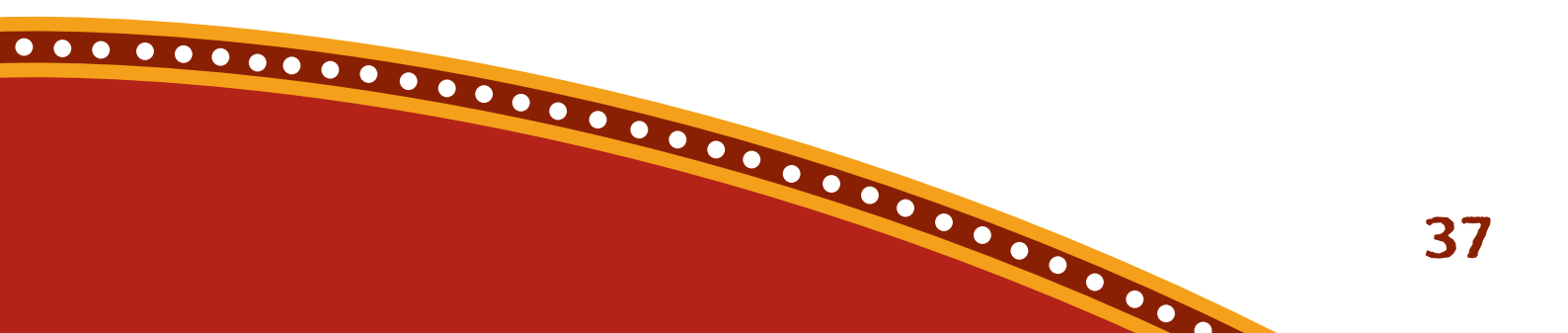
It is useful for the parties to know that the mediator is assessing the situation because it helps to define the role of the mediator in the process and also the emphasis of the Family Relationship Centre on the needs of the children. It also enables reality checks to be carried out with the parties on the limits of the role of a mediator, their commitment to the process and the practicalities of eventual outcomes.



## PRACTICE NOTES

The importance of the first meeting and discussion with each of the parties is absolutely paramount. The mediator needs to make sure that he or she can find out what is required for the key questions to be answered. If first contact is not the right time to do this, because of distractions or lack of time, then the mediator needs to make another time for that discussion.

At this stage, short open-ended questions are useful in encouraging individuals to talk. For example, 'Can you tell me about the children?' 'What happened when you moved out?'. The mediator can then ask short questions to establish some of the facts such as, for example, 'When did the kids last live with you?' or 'When did you last speak with him?'





## The practice of mediation (cont.)

### Explaining the process to clients

Once the Family Relationship Centre has been approached by one party to commence a mediation process and the organisation agrees to provide a service, the next step is for the individuals involved to be identified and approached. The techniques required to explain the process to a number of individuals take on critical importance, especially as several people will need to reach a similar level of understanding of what is to be involved. In many settings, leaflets and other printed materials can be left with clients to study and understand, but this may not be the case for some Aboriginal clients who will certainly prefer a face-to-face explanation.

For the process to achieve outcomes valued by all parties and beneficial to the children, the individuals need to understand their roles as well as those of the mediator and the FRC. The mediators must also facilitate the process so that people can contribute in an appropriate way. For example, where a relative is marginal to the actual dispute but is vocal about it, then he or she should be encouraged to allow more central figures to also have a say. Similarly, key individuals who are reluctant to speak should be supported by the mediators to do so.

In the Aboriginal context in Central Australia, effective preparation of the parties often involves mediators doing the following:

- Reinforcing the status of individuals as legitimate participants, through consulting with them and inviting their contribution.

- Working out where people fit within the history of the dispute and whether they are relevant to the mediation
- Asking how key individuals wish to be involved and negotiating with them a suitable place in the process.
- Encouraging and motivating people to take responsibility for their role and the outcomes of the process.
- Supporting people to feel safe and comfortable to speak up where they have specific contributions to make to the mediation.
- Making sure that all concerns are going to be discussed in the joint mediation meeting, to avoid later derailing of the process by issues that were not properly addressed at the time.
- Agreeing the way in which privacy and confidentiality will be handled and then reinforcing this agreement throughout the process.

As described earlier, the key principle here is that the parties must be supported and encouraged to become active in resolving the conflict between them and not passive in a solution devised by an outsider.

A potential problem for the mediators is that their encouragement and positive feedback to the parties can be misinterpreted as a loss of impartiality. It is important that encouragement is provided in a way that does not imply that the mediator supports the case being made by either of the parties. Support is provided to both parties to gain the most from the process.

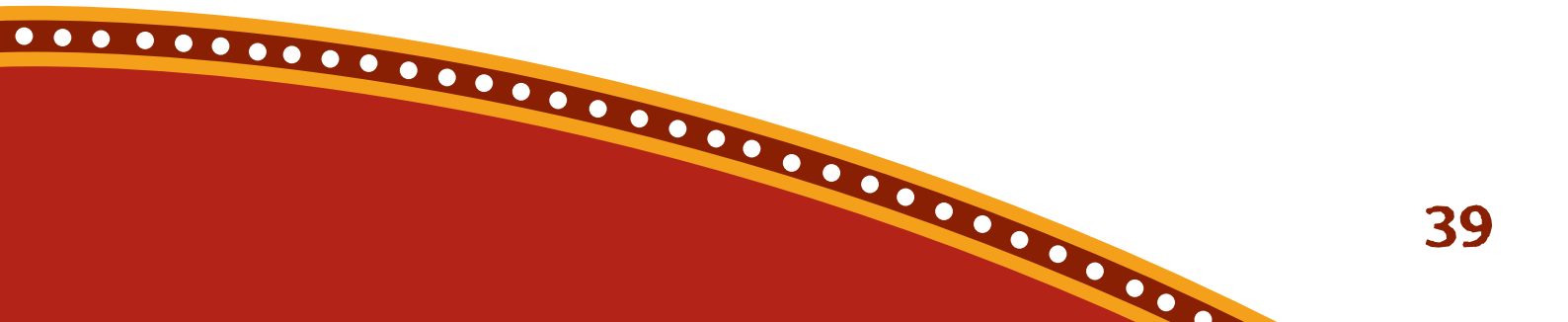




## PRACTICE NOTES

The mediator needs to be clear about his or her role in the process. This is likely to require terms that are clearly understood, such as peace, safety, 'less trouble' and 'not taking sides'. The location for the conversation needs to be the right one so that there are no unreasonable distractions. The mediators need to build trust and present themselves in such a way that clients are comfortable talking to them.

Often, explaining the role of the mediator will involve describing what he or she is not. This helps to narrow down the role in the minds of the clients. For example, the mediator will make it clear that he or she is not from the police or courts and is not a lawyer.





## The practice of mediation (cont.)

### Responding to multiple points of conflict

A characteristic of many disputes between separating couples is that members of the two families will often have known each other for a long time, including a period before the couple started their relationship.


It may be that incidents in the relationships between other members of the two families become part of the dispute around the separation between the couple. Mediators are then faced with these incidents being raised by one party as typical of the behaviour of the other and examples of why they are unsuitable to care for the children.



### Example: A dispute between family members impinges on work with the couple

**In this example, an ongoing dispute between members of both families about a separate issue relating to money and an unpaid debt becomes linked to the separation. One side is more aggressive than the other and brings up access to the children as part of their complaints about the other family.**

**The mediators take steps to understand exactly what has happened so that they can judge the most effective way to assist the parties. Acknowledgement of this issue and referral to an agency that can help to resolve the financial matter was one way for the mediators to assist, while not stepping outside the bounds of the FRC. Alternatively, the financial dispute could have been mediated as one part of the overall dispute between the parties.**





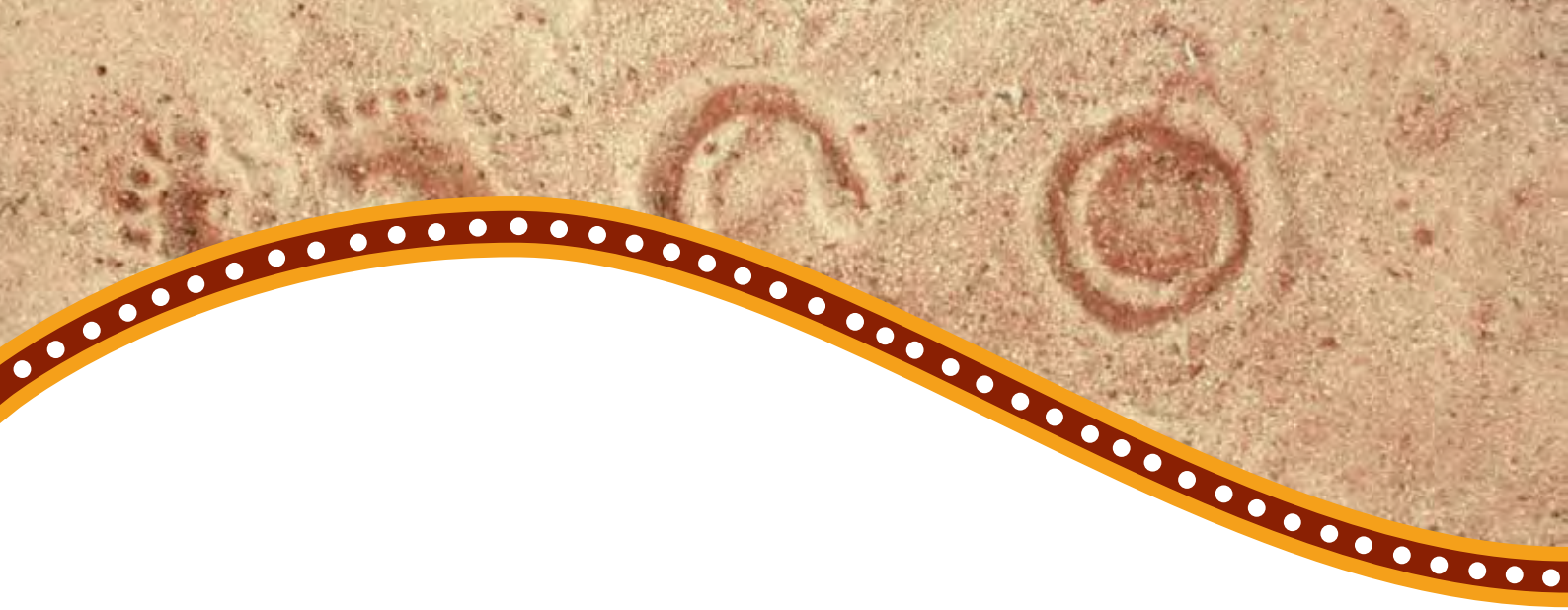
## The practice of mediation (cont.)

In this situation, important principles for the mediators are to:

- Allow people to describe the situation and encourage them to provide details.
- Acknowledge that these incidents have occurred.
- Be clear about the boundaries of their own role, so that the clients know what they can expect and what needs to be addressed by other services.
- Ask questions for clarification and to bring out the whole story.
- Use reframing techniques (see separate section) to clarify and challenge rigid language such as 'always' and 'never' (eg they always do this or they never do that).
- Understand the key people and the part they have played in previous incidents.
- Clarify how the history relates to the current situation and especially the children.
- Understand that some parts of the story might take a while to be shared with the mediator due to shame, cultural protocols or reticence to say too much early on in the process.

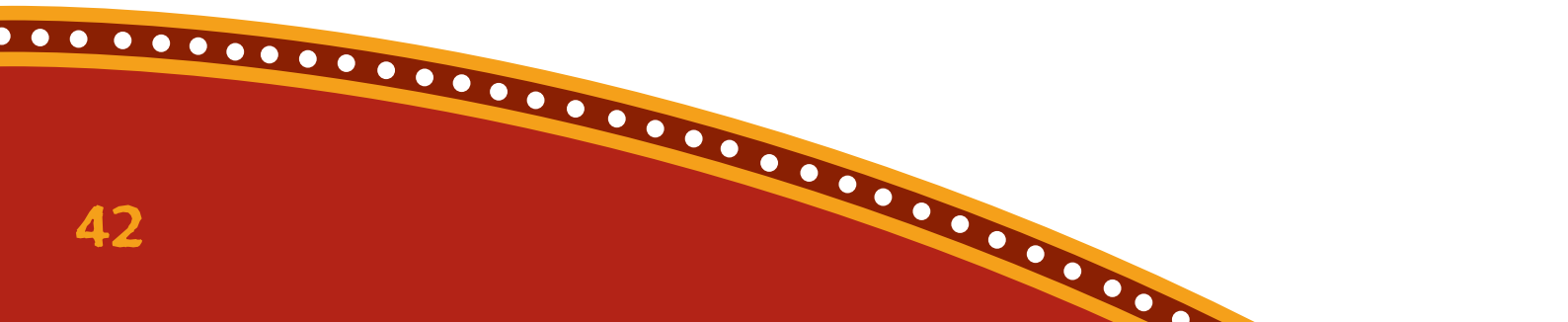
Given that many clients do not readily break down a dispute, its history and any related matters into well-defined compartments, mediators need to take this into account in working with them. This may require referral of clients to other agencies and services who can support them to address issues not directly relevant to the dispute and its effect on the children. And it calls for patient exploration of the full story behind the present situation.

However, mediators must exercise care so that they are not distracted from the work that they need to do in relation to the children. Pursuing, for example, the resolution of a financial problem that requires large amounts time and energy is not the best use of the mediator's role in the dispute. Ultimately, the facilitative role of the mediator requires walking the journey with the parties, understanding their preoccupations and working with them to reach a point where they can define the matters to be resolved through mediation.



## PRACTICE NOTES

Sometimes, it can seem that the history of the dispute becomes ever more complex as new information appears. It is important that the mediators maintain their willingness to hear the details and are not seen to be skipping over aspects of the story that might not seem immediately relevant to the separation but are still important to the parties. This calls for good practice in keeping a focus on making progress towards the objectives while at the same time being willing to accept diversions as new elements of the story come out.





## The practice of mediation (cont.)

### Compiling the complete story

The most important reason for mediators to talk to family members and other people referred to them by the parties is to build the complete picture of the dispute. Wide consultation also helps to identify the various factors that impact on the outcome of the mediation and assists with the design of the process. We call this building or compiling the complete story.

Much of the preparatory phase of work with Aboriginal families in Central Australia will involve meetings with individuals and groups of people to work out who the key individuals are and to collect details of the full 'story' behind the dispute. Mediators working with Aboriginal families should take advantage of opportunities to meet with people considered by the parties to be relevant to the mediation. The process should be inclusive in the sense that it encourages the involvement of the extended family, which may mean a large number of people with whom they have connections. The value of wide involvement for achieving the objectives of the mediation is:

- As a means of hearing the full story with all its facets and details;
- To build support for the mediators and the process itself;
- To avoid giving offence to people who should be consulted;

- To reduce rumours and suspicion of the process by making sure that relevant people are fully informed;
- To build a 'witness base' of people who have an interest in the mediation achieving a positive result, can vouch for the process and support the outcomes.

Ultimately, it is important for people with a stake in the dispute and its resolution to be heard and for the mediators themselves to understand the full picture. Without these two elements, the process as a whole is likely to be ineffective.

Along with the need for support to the parties to understand and make the most of the mediation, building the story is one of the key ongoing tasks of the mediators. As much as they are frequently reinforcing the knowledge of participants about roles, responsibilities, the stages and timing of the mediation process, so the mediators are constantly gathering information that contributes to a story of the dispute that may become more complex over time. The example in the box below illustrates what this part of the work looks like in practice.



## The practice of mediation (cont.)




### Example: New information changes the situation

The mediator visited an Aboriginal referred client in jail. The client was incarcerated for murdering his wife. He wanted to mediate with the deceased wife's family to have the children live with his family (mother) and visit him in jail. The client informed the mediator there were no ongoing conflicts or cultural obligations surrounding his incarceration.

The client wanted his mother to advocate on his behalf with the other parties. The mediator met with the grandmother who raised her own concerns about the children's welfare and informed the mediator there was no animosity between the two parties. The mediator approached the deceased mother's family. They were happy to meet, but had concerns with the requests. No interpreter was used at this stage.

The day of the scheduled joint mediation the mediator was contacted by the a third party acting on behalf of the deceased family and informed the mediator that parties weren't comfortable with the request as family members were involved in dispute overnight about the children. The mediator met with the clients again with the third party using an interpreter and was informed there had been ongoing conflict between the two families. The grieving family informed the mediator that cultural obligations had not yet been met and that it was too soon for them to agree to any request for the children to live with the grandmother. The case was referred to the courts.



It is critical that people feel that their individual knowledge is being respected within the mediation process. If this does not happen, then the joint mediation meeting may turn out to be more complicated than necessary due to new perspectives being introduced at that stage.

In achieving an inclusive process, consultation is essential, but pace and timing are also very important. Mediators need to make a judgement on when to move ahead with the next stage of the process.

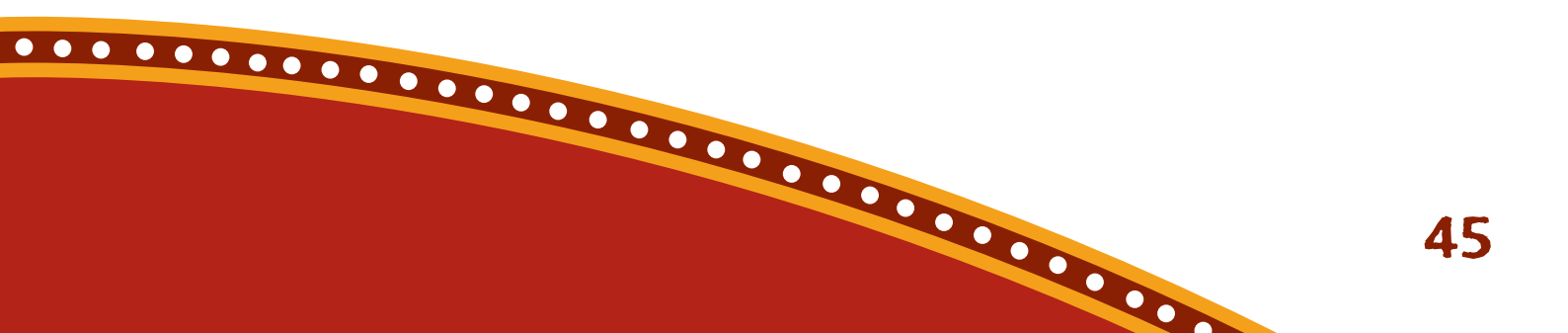
If they are being encouraged by the families to talk to other people, the mediators should ask questions to check whether further consultation will be relevant or necessary. On the other hand, even if the mediators feel that they have already compiled the full story behind the dispute, it may often be useful to meet others with a contribution to make.



## PRACTICE NOTES

As we have described earlier, certain cultural factors and obligations are likely to be uppermost in the minds of the parties as the mediation process is being planned. It may not be appropriate to talk openly about these issues but, especially for traditional people, they will certainly have an effect on the way that the mediation is worked out and taken forward. For example, individuals may prefer not to meet others face-to-face or they may feel that certain cultural obligations will need to be met before progress can be made.

The mediators must maintain an acute awareness of the existence of these issues. Instead of making assumptions about the reasons for the preferences of the parties, they should check carefully with them at each stage before proceeding.





## The practice of mediation (cont.)

### Shuttle mediation

The term 'shuttle mediation' borrows from notions of shuttle diplomacy, the process by which a third party visits the governments of countries in conflict in order to broker a peace agreement. This approach to mediation is generally considered within contemporary practice to be undesirable because it removes the need for the parties to meet and work together on finding a resolution to their differences.

In the Aboriginal context of Central Australia, shuttle processes have an important role in the preparatory phase and are considered appropriate by many Aboriginal people, for whom avoidance is not uncommon in cultural practice and is considered a suitable way to progress a conversation on a topic which is in dispute. For mediators, shuttle processes offer the following benefits:

- As a means of building trust as they enable the mediator to work with the parties for a period before they meet and for the mediators to prove themselves;
- To support short-term negotiations as a path to longer-term resolution of the dispute through, for example, addressing an immediate practical issue around living arrangements or time spent with children by parents. Again, this is a proving ground for the mediators and the process;

- To develop the discussion in the short-term as part of the steps that lead to a joint mediation meeting, in effect starting the process in a practical way;
- As a way to attract parties into the mediation process more effectively than intake meetings followed by an early mediation meeting, a prospect that does not sit well with the preferences of many Aboriginal people for the pacing of the process;
- To build the story on both sides of the dispute.

In many cases, shuttling between the parties becomes an early expectation and feature of mediation with Aboriginal families in Central Australia. It may be essential where domestic violence has occurred or where cultural protocols require avoidance of each other by individuals. We have found shuttle mediation to be one of the most valuable short-term elements of the mediation, often making a critical difference to the eventual outcome.





## The practice of mediation (cont.)




### Example: A break for grandfather

A couple had separated through severe domestic violence issues and neglect towards their children, the children were taken away from the parents and given to the grandfather on the mother's side. The father was sent to jail and the mother ordered to receive professional help.

After six to eight months of caring for the children the grandfather contacts the Family Relationship Centre. He asks for assistance to address the violence towards his family members relating to the children not spending time with the father's side of the family. The pressures of caring for the young children are already heavy on him and he doesn't want trouble between the two families. The paternal grandmother has some contact with the children and the father is now living back in the community. He hasn't had any contact with the children since his incarceration. The grandfather is willing to mediate with the father, but has concerns for the children's safety.

The mediator is aware that the grandfather is in desperate need of a break and the paternal father needs to make contact with his children. He acts to calm the dispute by shuttling between the two parties' options that can help them reach an interim agreement to aid the overall process. An early benefit of the mediation, achieved through shuttle mediation, is that no formal commitment is made and the grandfather agrees that the children can spend the next school holiday with their father and his family as a trial run, in the meantime he gets to rest. This process builds trust between the two parties, allowing for better communication and decision making later down the track.



However, it is important that shuttle processes do not become the mediation. People need to meet and take responsibility for the situation that they are in, rather than expecting the mediators to come up with solutions. The parties must become active in the process of mediation and not passive recipients of messages delivered by the mediators from the other party.

The mediators should therefore not allow a pattern to develop where they are taking messages back and forth. The overall challenge for the mediators is to set clear boundaries and not fall into a situation where they are doing unnecessary tasks for clients that detract from the overall objectives of the mediation process as a whole.



## PRACTICE NOTES

As in any mediation, particular skill and judgment is required in encouraging Party B to participate. A shuttle process opens the opportunity to encourage Party B to become involved in an initial short-term phase of the process. This initial shuttle can enable the mediators to demonstrate the value of the service, the process and themselves to both parties. It also helps the mediators to work out how a next phase should be conducted.

So, in working with Party B, the mediator can build on the process that has already begun to start a dialogue between the parties. Handled appropriately, this can be a way to engage Party B to address a short-term practical problem that exists. However, the mediators should make a careful assessment of whether suitable conditions exist for this approach to be effective, rather than using it in all cases. This short-term process is most valuable when it is a basis for longer-term mediation that is not expected to continue in shuttle mode.



## The practice of mediation (cont.)

### Design of the mediation process

From the beginning, the design of the mediation process is worked out with the clients. The mediators start to describe to them the options for how the process could be conducted. The early discussion of the process itself helps the parties to become comfortable and more familiar with it. It is important that their views and circumstances have an influence on the way the process is mapped out. The mediators work in a facilitative role rather than presenting a plan to fix the problem that the clients simply consider rather than play an active part in. This helps to empower the clients and their role.

Clients should be encouraged to consider the location of the meeting, the people to be involved, the level of inclusiveness, the confidentiality, the preparatory work required and the timing of that work. The attitudes and needs of the parties also affect the extent of the initial shuttle mediation, if required. Logistical support to the process is a critical consideration and needs to take account of pension 'paydays' and the financial situation of the parties. The venue itself will depend on the preferences of participants. Resources are critical, especially the ability of people to travel and spend time at a particular place.

The mediation process needs to take into account the changing circumstances and priorities of the parties over a period of time. Things can change and the mediators need to adapt to this. Overall, the mediators lead and guide the process itself, making an early assessment as to the best option for the clients depending on:

- The urgency of the situation, especially for the children
- The issues they describe as part of the dispute
- The likely participants
- Cultural considerations
- Their location and ability to travel

The diversity of backgrounds and expectations of Aboriginal families has been described earlier in this document. For mediators, the readiness and ability of the parties to participate will be a key factor in the eventual design of the mediation process.



## PRACTICE NOTES

Aboriginal people may state a preference for a location to meet that suits them for their own reasons and are not necessarily willing or able to explain that to the mediators. The need for people to avoid each other or not to enter certain places for cultural reasons is well-established in Central Australia and is therefore an important consideration in designing mediation processes. For example, they may say that one suggested meeting place is no good, too far or not neutral. The mediator should accept this and try to find another location that is more acceptable. A simple invitation to 'come to the office' may also not be suitable for people who are not accustomed to an office environment. Again, a key principle is to allow the parties to suggest locations.

Mediators should resist the urge to force a decision on the location, remembering that the mediation journey needs to be supported and not rushed. A considered approach will help clients to feel some control and responsibility for the process, which is favourable to the eventual result.



## The practice of mediation (cont.)

### Handling privacy and confidentiality

The background to this area of practice has been described earlier in this publication. In the practice of mediation, the boundaries of privacy are best defined by the clients. The mediator should ask them to explain who needs to know at a general and more detailed level about the dispute and the degree of confidentiality that they wish to apply.

The mediator navigates appropriate levels of confidentiality and inclusiveness of the process and makes judgements on these matters on a regular basis, depending on the situation and who he or she is speaking with.

It is useful to consider two levels of privacy:

1. General knowledge of the dispute, which can be assumed to apply to most family and immediate community members and local residents. For Aboriginal people in Central Australia, our experience is that general awareness is often normal and acceptable for those involved;
2. Detailed knowledge of the dispute, which is generally confined to immediate family members. Further sharing of information beyond the group that is already aware of the dispute is subject to the wishes of the parties.



### Example: Being specific about the reason for approaching Party B

**In conventional mediation practice, a standard protocol is that the mediators will not tell Party B why they have been approached by Party A, except in general terms, along the lines of 'he has contacted us about the children'. With Aboriginal clients, it is often appropriate to ask Party A if more information can be shared at the first meeting that mediators arrange with Party B. This helps the mediators to engage better with Party B at an early stage, enabling initial progress to be made.**

**If Party A agrees and describes what can be said to the other party, then the mediators say that Party A wants to arrange for the family to see the children, or she wants the kids back, or whatever is the main area or concern for Party A. Generally, a more direct approach is more productive and does not cause concerns with either party around privacy or confidentiality. It does mean that the mediators represent the views of the parties to each other in a way that was discussed in the section on shuttle mediation.**



## PRACTICE NOTES

As described earlier, the subject of privacy and confidentiality is challenging for mediators working with families in Central Australia. This is because the general rule of mediation of not talking about the dispute to any person except the couple does not always apply for the reasons described above. This means that mediators need to exercise judgement about what to say to whom when compiling the story.

For example, if one of the parties suggests speaking with one of the uncles because he can talk about one of the earlier incidents, the mediator should approach the uncle tentatively and without sharing too many details with him or asking leading questions. An appropriate opening might be 'Your son said I should talk to you about the kids. When did you last see the other family? Can you tell me anything about that?'

In this case, a general level of knowledge by the uncle that there is a dispute is assumed by the mediator. But any detailed knowledge is not assumed or shared with him. The mediator is in listening mode and simply seeking to hear other perspectives on the dispute.



## The practice of mediation (cont.)

### Achieving impartiality and neutrality

In working with Aboriginal families, mediators rely on their authority and credibility locally as a basis for the confidence that clients have in them being impartial. This credibility draws on the reputation of the mediators for being discreet, the level of trust that they command and their positive status locally. In remote towns like Alice Springs, individual professionals are well-known in the community and so their reputation is a precious commodity.

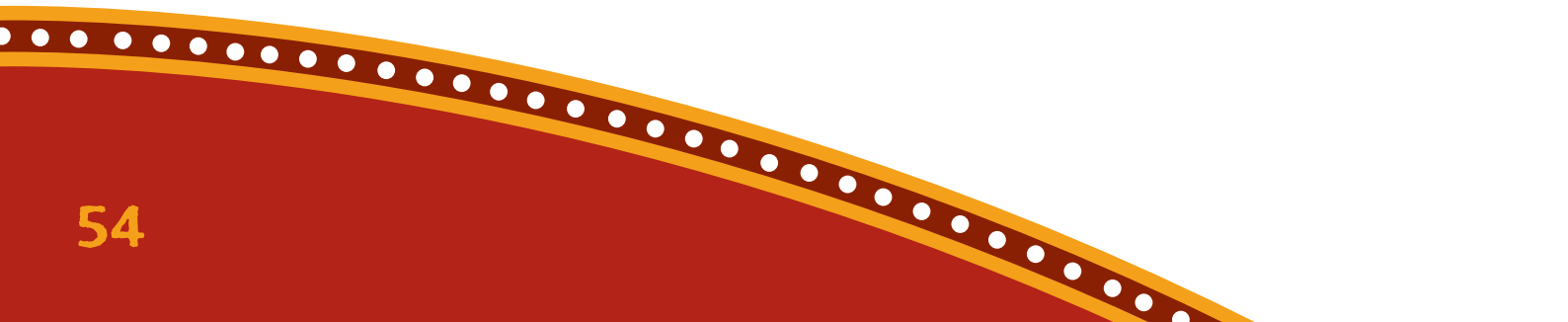
The concept of neutrality is best understood by most clients as 'standing in the middle'. The Law and Justice Group in Yuendumu, a remote community in Central Australia, talks about 'standing in the middle and not taking sides'. In being neutral, we seek to remain engaged with the parties but in an even and fair way, rather than stepping back from the discussion. For the Family Relationship Centre, our approach with Aboriginal families in Central Australia is to be objective about the problem but not the people involved in the dispute. We invest in the relationship we have with them because it is crucial to the eventual outcome.

Mediators have to work hard to ensure that no misconceptions about their role are created. Where a mediator is preparing one of the parties for the joint mediation or is engaged in shuttle discussions between the two parties, it is important that impartiality is maintained. This means that neither party thinks that they are receiving preferential treatment or that the mediator is expressing a view that their case is somehow stronger than that of the other party. This can be a challenge in small towns because sometimes the mediators will have connections to people involved in the dispute. In these cases, the FRC may choose to involve other mediators in the process so that there is no perception of loss of neutrality.



## PRACTICE NOTES

A simple way for the mediator to work effectively in these situations is regularly to remind the parties that they are supporting both sides to participate in the mediation. For example, he or she might say 'I am talking to the other mob in the same way' or 'I am talking to everyone so that I get the full story'.







## OUTCOMES OF MEDIATION

To achieve an outcome that favours the needs of the children, the primary result of mediation processes conducted by the Family Relationship Centre is a written parenting plan as part of a formal agreement between the parties.

This document meets the requirements of the organisation and follows an established format. It is a basis for both parents and other family members involved in the dispute to enter a new period where the dynamic of their relationship changes and the needs of the children are better served.

However, the parties to mediation often see the process as having other goals, which we summarise as:

### **1. To focus the parties on the needs of the children**

In any conflict between adults, especially where a number of people are involved, the needs of children can become relegated to lesser importance. Conflict between the adults can dominate. Central to the work of the Family Relationship Centre is the concept of 'Kids Come First'. Mediators reinforce this message throughout the mediation process. As a result, the needs of the children become better recognised by parties to the dispute, even if the whole process ultimately does not lead to formal settlement. This may manifest itself in simple changes to the care arrangements for the children or ways to reduce their exposure to arguments between the adults.

### **2. To achieve better interaction between people, promoting family well-being and harmony**

In small towns and remote communities in Central Australia, the presence of conflict can have a corrosive effect on the lives of those involved since often there is no place to escape the dispute and the people involved in it. In the store or supermarket, at sports events or in the street, the chance of coming across the people with whom you are in conflict is high. As a result, many people curtail their social activities, errands or visits to town, which has a detrimental effect on their lives.

Better interaction between family members can help build more cohesive relationships. As a result, mediation can have a positive effect where it enables at least some face-to-face discussions to be held that clear the air on certain matters. This can include situations where the ice is broken in a dispute that has continued for a long time or where some practical changes have been made to the parenting arrangements. Sometimes, relatively modest changes to behaviours by the parties towards one another are made.



## Outcomes of mediation (cont.)

### 3. To become stronger

Many Aboriginal people in Central Australia describe problems as having weakened them due to the burdens that they are carrying around. Tackling the issues they face is one way to become stronger. By taking responsibility for dealing with the conflict in a proactive way, people can feel empowered.

Of course, conflict is one of the heaviest loads that a person can carry. So a process of mediation, even one that is only partially effective, can help individuals and families to feel stronger. The 'venting' of the story to the mediators can itself be valuable to the parties because they feel that somebody has listened to them and they have been relieved of a burden. Clients describe talking about the problem as a 'release valve' and often express thanks for the chance to have their story heard.

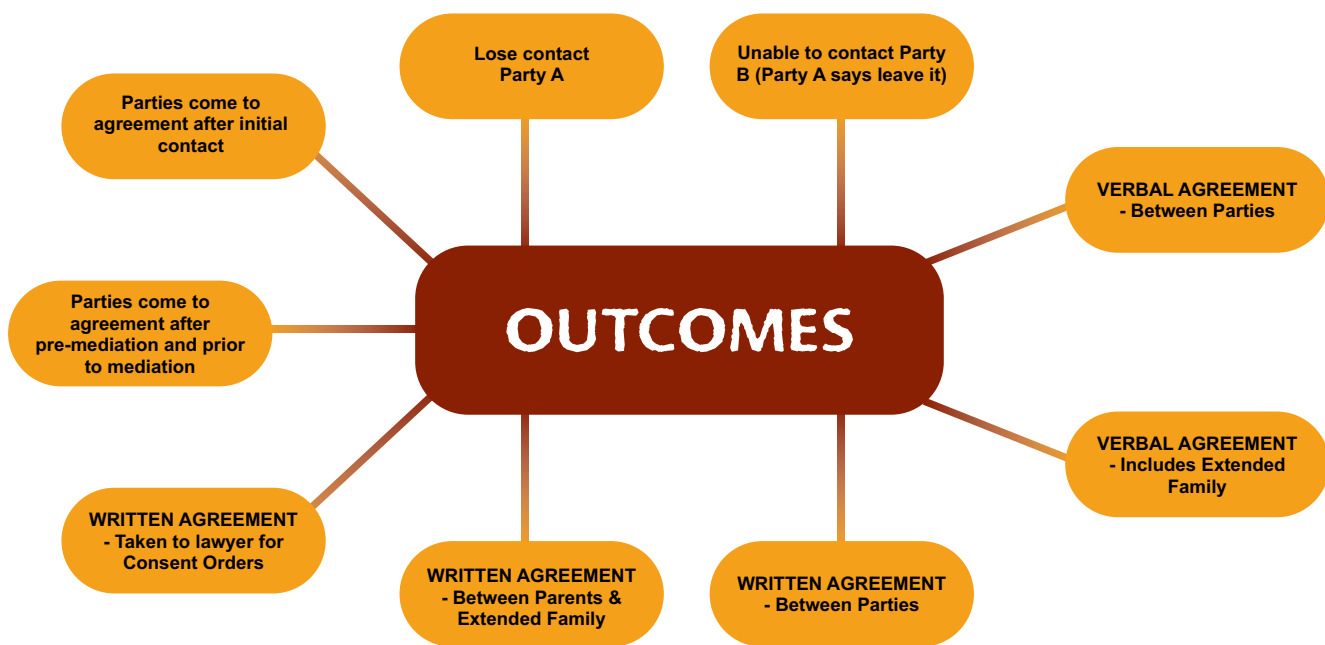
### 4. To regain respect

Conflict can lead individuals to say and do things that they later regret. Where their actions cause a loss of face or damage to a person's reputation, they may carry the shame with them for a long time. Mediation can enable individuals to regain lost respect by being seen to be involved in a process designed to resolve the conflict. In an important sense, they are able to close one unhappy chapter and open a new one in which they can restore their dignity and status. This can be achieved by the individual or family being seen to cooperate and compromise in order to achieve a better situation for all. Of course, a willingness of parties to cooperate assists the mediation process too.

While the dispute itself is a critical focus of the mediation, we have observed that other benefits are often achieved for family members during the process of the mediation. Our model seeks to identify these benefits, as summarised above, and to anticipate them. As a result, the wider outcomes are integrated into our practice as we believe that they also contribute to broader outcomes for children. In other words, a greater focus on the needs of the children, improved family harmony, people feeling stronger and restored respect are all achievements that benefit children. Progress can be made against all four of these goals even if a formal written settlement is not achieved.

## Outcomes of mediation (cont.)

To conclude by returning to the principal goal of FRC mediation processes, a formal agreement between the parties can take a number of forms, which are summarised in the diagram below.





## RAISING AWARENESS OF THE SERVICE

The volume of referrals to the mediation service of the Family Relationship Centre of Relationships Australia NT depends on the awareness and confidence shown in it by people in Central Australia. This is a vast and diverse area that relies on good quality information being provided to people in a way that is appropriate to their situation.

We have developed five channels of communication to raise awareness among Aboriginal people in Central Australia, which are described below.

### **Word-of-mouth**

The power of the bush telegraph in Central Australia is well known. For town-based services, its value comes through people telling others when they have had a good experience of mediation and have built up trust and confidence in the mediators. The Family Relationship Centre works to maintain contact with people who have used its service so that referrals of other people to the Centre are easier. Of course, developing a reputation for responding effectively to disputes involving Aboriginal people is essential. This is one reason for the work that has led to this model of practice.

### **Events**

A popular and productive way for organisations to meet residents of remote communities is by holding a modest event to which people can come along and hear about the service. We hold barbecues to which anyone can attend. These are open, relaxed and outdoors, enabling informal conversations and for people to come and go as they wish.

### **Visits to communities**

Making appointments to visit other agencies is one of the most effective ways to attract interest in the service because it focuses on building relationships with individuals who may be in a position to refer clients. Better still, maintaining follow-up contact with those agencies helps to ensure that the mediation service remains on their minds as they go about their business. Examples of agencies most likely to be able to refer people to the service include local shire council offices, women's groups, church organisations, housing agencies and community or non-government organisations working with families or community development programs.



## Raising awareness of the service (cont.)

### Networking

Keeping in touch with other agencies is a key activity for any service and visits are one way to achieve that, as described above. But it is also valuable for mediators to invite people from other agencies or from community organisations to visit them. In Alice Springs, this includes meeting and greeting people visiting town from other parts of the Territory or from interstate.

Most usefully for raising the profile of the service, this can include running workshop or information sessions on aspects of the work of the organisation to share ideas or to work out how to tackle particular challenges. Extending invitations to other organisations to attend is a good way to build relationships. In addition, staff of the service need to make sure that they are present at inter-agency meeting, that they accept invitations to attend important presentations and other events and that they contribute to the work of the social and community sector locally.

### Promotional materials and advertising

A simple pamphlet or brochure on the service is an essential priority as it can be given to anyone with an interest and so has multiple purposes for other agencies, potential clients and other enquirers. The most effective pamphlets often include visual representations of the work of the organisation rather than a heavy reliance on text. Advertising through local radio is another good way of building recognition of the service, especially through short community announcements.

A challenge for mediation services is explaining in clear and concise terms how it works and who can benefit, but this has been achieved before by agencies such as the Community Justice Centre in Darwin, which has used short examples of disputes in television adverts to promote their work.

## CASE STUDIES

The following case studies are practical examples taken from mediation processes in Central Australia. They are designed to show how a process has unfolded in each case and are written as transcripts from the notes of the Family Relationship Centre mediator handling the process.

The following case studies are examples designed to show our work in practice. The names of all individuals have been changed to protect their privacy.

### CASE STUDY 1:

**Mediation process for clients at a remote community located in South Australia, approximately eight hours south of Alice Springs**

#### Clients

Party A	Joan
Party B	Betty
Child	Jayden (10 years old)

#### Mediation process

The case was referred to FRC from Federal Magistrate during September 2009.

##### **2nd October - Intake with Party A, Joan.**

This intake was conducted through a meeting with Party A.

##### **6th October - Pre-mediation with Party A.**

Joan had been working in a remote community and had developed a relationship with the child's maternal grandmother. The child had been living with his grandmother because his parents were unable to care for him. Joan said that the child's grandmother had given him to her and asked her to grow him up. The child has been in Joan's care since he was 3 years old.

Joan said that she thought the family knew where he was and that family from both sides have visited him in Alice Springs at various times.

##### **20th October and 11th November - Intake and Pre-mediation with Party B, Betty, and sister Sue.**

Betty said she didn't know where the child was or who he was living with. She said she wanted him back at the community so he could grow up with his family. Betty also said that while she had spoken to the lawyer who visited the community and it was her sister Sue who would care for the child if he was returned to community. An intake was also done with Sue who advised that while she supported her sister in this application and knew the importance of the child returning to community, she also recognised that it had been some time since he had been there, that he was probably settled in Alice Springs and that discussion would focus more on the child spending school holidays with the family in the community.



## Case studies (cont.)

Arrangements were made to bring Betty and Sue to Alice Springs for pre-mediation and mediation. Initially pre-mediation was only done with the sister as Betty had remained at their accommodation with her 2 year old daughter who wasn't well. Sue confirmed her initial conversation with the mediator outlining the importance of the child getting a good education, having stability in his life as well as knowing his family on both sides. She also advised on their current housing arrangements in the community and acknowledged the difficulty in adding another child to the mix.

Pre-mediation with Betty was done at their accommodation. She agreed with Sue's comments but also said that they would like the child to visit the family at the community on a regular basis during school holidays.

At the same time, Betty's father, who lived and worked near Alice Springs visited. He expressed interest in the case and seeing his grandson. I indicated we would try and arrange that while all parties were in Alice Springs.

### 12th November – Mediators with Joan and Betty.

At mediation, all parties agreed on the importance of the child being in a stable environment, going to school and therefore staying in Alice Springs. They also agreed it was important for him to know his extended family in community. All parties acknowledged that this would require time to allow relationships to grow.

Joan said the family were always welcome to visit the child and provided her address and telephone number to facilitate this contact.

### Follow-up

Follow-up phone call with both parties in January 2009. Party B has not contacted Party A and advised she had lost her telephone number. Contact details were given to Party B again. There are also difficulties with travelling from community to Alice Springs in terms of access to transport and having enough time.

Party A advised that the grandfather has now established a relationship with the child which Party A fosters and supports.



## Case studies (cont.)

### Case study 2:

Mediation process for clients at a community located west of Alice Springs

---

#### Clients

Party A	Peggy
Party B	Mark
Children	John, aged 5 and Matthew, aged 3

#### 26th May

Peggy was referred to the FRC by the Coordinator of the Mediation and Justice Group at a remote community

Peggy attended an initial appointment for intake and assessment with her sister Lilly and the Coordinator. She stated she wanted her grandchildren John and Matthew returned to the community. The children were living with Peggy's ex-partner Mark interstate and had been there since early 2007. They were taken there after their father murdered their mother. Peggy said that the families at the community had agreed to send the children to live with Mark until the business associated with the death had been completed. There was no written agreement.

After the children left, Peggy had telephone contact with the children but that ceased in or about March 07. Peggy advised that all cultural business between the families at the community had been dealt with and they would like the children returned.

#### 5th June

Contact was made with Party B. He raised the following issues:

- He had concerns about Peggy's intentions and her ability to care for the boys if they were returned to her care.
- He had previously raised Peggy's other children because she was unable to do so
- Peggy and Mark's other son, Tony is currently living with him and his new wife.
- The families at the community had made the decision to send the boys to live with him.
- Before she died, the boy's mother had said that she wanted to move interstate with the boys and live with Mark.

The mediator gave Mark contact details for the interstate FRC. Both clients were advised by the mediators to seek legal advice, who also negotiated telephone contact for Peggy and the boys.

On 26th June, Mark gave permission for the mediators to give his landline number to Peggy for the purposes of telephone contact on the understanding that she would ring in the early evening before the boys went to bed.





## Case studies (cont.)

The mediators had some difficulty contacting Peggy in order to pass on these details. Her mobile phone wasn't answering and she didn't respond to messages left at Lilly's (Peggy's sister) house. Messages for Peggy were passed to Coordinator who proved a valuable resource at the community as well as being able to provide support to Peggy and other family members.

### 15th July

The mediators arranged to meet with Peggy at the community. Arrangements were made through Peggy's parole officer, to meet at the Women's Centre, who had confirmed with someone at the community Council that Peggy was at the community.

There was no one at the Women's Centre so we went to the health clinic where we met with Peggy's sister, Lilly. She said that Peggy was in Alice Springs but that she was able to sit down and talk to us. Lilly provided extensive family background, informed us of the relevant family connections and gave further insight into issues faced by Peggy and which impacted on her request for the boys' return.

While we were talking to Lilly another grandmother came over and asked to talk to us. She was able to provide further information particularly from the perspective of the father's family. She then took us to meet with the boys grandfather (a community elder) who provided further information as well as informing us of the need for a meeting of all families.

### 17th July

Further discussion took place with Mark who insisted we needed to talk with other family members both in the community and in Alice Springs. Mark also raised concerns about the assistance provided to Lilly and highlighted his lack of support where he lived down south. Contact was made with the interstate FRC who advised they only have customer support officers who were unable to provide support to clients such as Mark. They also advised they no longer had an Indigenous Advisor.

### 5th August

Visit to community – Initially unable to locate parties. The Coordinator was in an emergency community meeting and unavailable to assist. Finally found Peggy and went to Council office to meet. Also in attendance were Lilly, another of Peggy's sisters and a senior elder and grandfather.

The mediators conducted a pre-mediation, then went with the grandfather to find Mark's supporters.

The community had just had their sports weekend and there had been some trouble so the activities had been held over to the Tuesday. This made locating people all the more difficult and in the end we had to leave as it was late.



## Case studies (cont.)

### 7th August

Teleconference with Mark's support person, who is an uncle of Mark. The purpose of the meeting with him was to inform him of the role of the FRC in particular, the neutrality of all staff involved. Support person relays this information to Mark to allay his concerns.

### 11th August

A pre-mediation meeting was held with Mark. He outlined his issues and concerns in relation to the boys and further confirmed his stance that the boys' living standards and educational opportunities were better interstate than in the community. However, he acknowledged the importance of their culture and knowing their families in central Australia but was unable to commit to returning them for visits.

### 19th September

The mediators planned to go to the community to conduct a family information session and prepare for joint mediation. The trip cancelled due to most people from the community being in Alice Springs to watch their team in the local football grand final.

### 30th September

Visit by mediators to community. Meeting with Peggy and Lilly to prepare for joint mediation. Peggy informed us that she now wanted the boys to be returned to Alice Springs, not the community. We asked where they would live and who they would live. Peggy said they could live with her sister or brother who lived permanently in Alice Springs.

She gave names for us to follow up. She confirmed she didn't want the boys to remain interstate. We confirmed the date for the joint mediation. We tried to contact the family members who were supporting Mark's view but was unable to find them.

### 1st October

Mediators send request to Interpreter Service for assistance with the process.

### 2nd October

Visit to Peggy's brother and sister. The sister says she lives at an Aboriginal hostel, is currently caring for her own grandchildren and wouldn't be able to look after anymore. Brother not at home and neighbour says he goes to dialysis three times a week. We left a letter and card asking him to contact us.

The joint mediation was initially going to be done at the community with Party B on the telephone. However, due to our other commitments on the day, we decided to invite Peggy and Lilly to Alice Springs. Assessment was made as to how this would happen and what transport and accommodation costs would be involved. During this time, we are unable to contact Peggy or Lilly and the Coordinator was away on leave. We sent an email to him outlining joint mediation details.



## Case studies (cont.)

### 6th October

Mark and his support person confirm they are available for joint mediation. We are unable to contact clients at the community, despite leaving messages at home numbers, council and clinic. The Coordinator contacts us and says he will reach Peggy and Lilly and will bring them to Alice Springs.

### 7th October

Interpreter service advises that no interpreter is available. We looked for another possible interpreter located at a town camp, visiting to discuss her availability and work out the arrangements.

### 8th October

Joint Mediation – Shuttle teleconference.

Party A – Peggy with Lilly, mediator and interpreter.

Party B – Mark with mediator and support person

Agreement reached about continued telephone contact. No agreement reached on the boys visiting Alice Springs or the community.

### 9th October

Peggy contacted the mediator to request a lawyer.

### 27th October

Certificate provided to Party B

### 17th November

On authority from client, the certificate provided to the Central Australian Aboriginal Legal Advice Service (CAALAS).



## DEVELOPMENT AND SUPPORT OF MEDIATORS

Dos and don'ts for mediators working with Aboriginal people in Central Australia.

### **Dos.....**

- Be patient
- Resist the temptation to fill silences
- Respect individual knowledge
- Be flexible in defining your work duties and role
- Describe clearly the role of a mediator
- Know your boundaries
- Proceed at the client's pace
- Respect the level of engagement of the client and understand the reasons why it might be different than anticipated
- Be confident and demonstrate that to the clients
- Care for yourself
- Carry out a regular reality check
- Simplify language and jargon used

### **Don'ts.....**

- Rush
- Have unreasonable expectations
- Disrespect community space
- Force the process
- Introduce unnecessary issues
- Over-analyse the parties and their situation
- Give direct advice
- Promise unrealistic outcomes
- Overstate your role and knowledge



## Development and support of mediators (cont.)

### Skills and competencies of mediators for cases involving Aboriginal families in Central Australia

#### Professional skills

- Mediation skills
- Ability to identify the key issues, especially where referral to other services is required
- Effective communication skills with a range of people, especially cross-culturally
- Client assessment skills
- Interpretation of formal processes to Aboriginal clients
- Ability to analyse stories provided by clients to extract the relevant factors
- Adaptability to a range of different people and settings
- Crisis counselling
- Ability to refer clients to other services
- Casework skills

#### Personal attributes

- Interpersonal skills, especially in working between different cultures
- Patience in enabling people to work at their own pace
- Local knowledge and active networks
- Empathy and respect for others
- Ability to build trust and rapport
- Flexibility and adaptability
- Self-assurance
- Integrity
- Sound judgement
- Sense of humour
- Calmness



## Development and support of mediators (cont.)

### Self-care for Aboriginal advisors and mediators

There are three ways in which mediators who work with Aboriginal families in Central Australia can best look after themselves; keeping healthy, maintaining a strong sense of identity and avoiding burnout.

#### Keeping healthy

Mediators need to make sure they are able to withstand the rigours of work which is often complex, confusing and highly emotional. Finding ways to look after their physical, spiritual and mental health is important and, although different approaches suit different individuals, a few principles apply in common. These include solid family support, regular patterns of sleep, a good diet, exercise and interests outside work.

#### Sense of identity

There are several aspects to mediators maintaining their sense of identity. It includes having a strong sense of self through connections to family, country and culture. This includes meeting obligations to others and feeling properly located within the complexities of Aboriginal culture in an isolated region like Central Australia.

This adds up to a strong sense of self-worth, with mediators being respected by and contributing to the community.

### Avoiding burnout

Mediators are exposed to stressful and emotional situations. They work with people who may be facing acute problems and difficult living conditions. They are often called on to make judgements about their contribution to a mediation process and to share and receive information that may be sensitive for the individuals involved in the mediation. The cumulative effect of this work places pressure on the individual mediators. For this reason it is important that they can count on a support network within and outside the workplace. This provides opportunities to debrief after particular stressful processes or events as well as the strength that comes from living and working in a supportive environment.

Mediators look after themselves so that they can do their work effectively. Every person has their own ways of achieving this, many of which are likely to fall within the three categories above.



## REFERENCES

**Alexander, Nadja. 2008.**

*The Mediation Metamodel: Understanding Practice.*  
Conflict Resolution Quarterly 26(1):97-123.

**Bush R and Folger J. 2004.**

*The Promise of Mediation: The Transformative Approach to Conflict Resolution.*  
Hoboken, NJ: Jossey-Bass.

**Umbreit M. 1997.**

*"Humanistic Mediation: A transformative journey of peacemaking."*  
Mediation Quarterly 14(3):201-213.

**Winsdale J, Monk G and Cotter A. 1998.**

*In Theory: A narrative approach to mediation.*  
Negotiation Journal(Fall):21-41.

**Duryea M and Potts J. 1993.**

*Story and Legend: Powerful Tools for Conflict Resolution.*  
Mediation Quarterly 10(4):387-393.

