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| |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | | |  |  | | --- | --- | | |  | | --- | | August Newsletter  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/067132bc-3a2b-4762-a07a-40fcc5045c0a.png    ***FDR - Family Dispute Resolution – What Is it and is it any good?***  In 2006, John Howard concluded, after fielding representations from many interest groups including fathers’ associations and professionals associated with the welfare of children, that disputes between parents about children should, ideally, be determined somewhere other than in courts, if at all possible, and that courts should only decide such issues as a matter of last resort.   He considered a number of possible means of deciding parental disputes including setting up new tribunals which would not be bound by rules of evidence to hear such matters.   He was determined to ensure that *children’s interests* should be the prime consideration howsoever parenting disputes were to be resolved.   Ultimately, however, he was persuaded that *alternative dispute resolution* (“*ADR*”) was the way to go and, to his considerable and enduring credit, he ensured that government funding be provided for the establishment of a number of local *Family Relationship Centres* (“*FRCs”*) which would provide parents in conflict over, for example,*how*, *where*and by*whom* their children should be cared for, with professional, skilled and empathic mediation services at little, or no, cost to help parents reach agreements themselves about their children’s welfare, rather than have decisions imposed upon parents and their children by a third party – a court.   The *Family Law Act* was duly amended to provide that a parent could not, except in exceptional or urgent circumstances, commence an application in a court for parenting orders until one or both parties had attended, or at least attempted, mediation and obtained an appropriate certificate from a mediator.   Thereafter, the “*Section 60I* *Certificate*” was born.   Since 2007, when they were established, FRCs have proved very successful in assisting parents by the provision of a dedicated and high standard of mediation assistance by a variety of professionals including *Family Dispute Resolution Practitioners* (“*FDRPs*”) who provide mediation between parents – which is also known as “*family dispute resolution”* or “*FDR”*.   The whole process, from start to finish at busy FRCs, can take up to 3 months or more to conclude which is a longer period than the staff at FRCs and many parents might like.   For those who require a speedier mediation service, many excellent FDRPs provide FDR on a*private* (and costlier) basis – but at greater speed.   FDRPs in FRCs, and private FDRPs across Australia, have, since 2007, assisted hundreds of thousands of parents reach agreements about the welfare of their children in the interests, not only of children, but to society as a whole as many children have been given a far greater chance of reaching their potential and maturing into confident and positive adults than would have been the case if no such assistance had been made available.   We, and society in general, are all the beneficiaries of that development.   For reasons which remain unclear, FRCs and FDRPs rarely receive acknowledgement or acclaim for the excellent work which they do. From my own knowledge, the satisfaction FDRPs receive comes not from such acknowledgement, but from their own knowledge of the difference they make, and have made, on a daily basis to lives of thousands of children and their parents.   Sadly, some disputes are beyond even the skills of FDRPs and require determination by either the *Family Court of Australia* (particularly complex matters) or the *Federal Circuit Court of Australia* (more straightforward matters).   Having recently concluded another federal general election, it wasn’t long before the familiar post-election complaints about the Family Court and the Federal Circuit Court surfaced with calls from newly elected senators, including Ms Pauline Hanson, for the abolition of the Family Court and, from other quarters, for a Royal Commission into its workings.   As the Federal Attorney General, George Brandis, insightfully pointed out on 24 July on *“The Insiders”* ABC programme, there are few winners or happy stories that emanate from the Family Court and calls for improvement in the court system, and its outcomes, are, and no doubt will continue to be, commonplace and ongoing from a variety of sources particularly because probably more Australians are affected by these courts than any other.   Most people who have had any dealings with the family courts feel qualified to express opinions or complaints – after all, most of us, if not all, were children once and we feel that we know (on at least believe we know) instinctively what the best outcomes for children should be and how judges should decide matters.   Whilst we are all, of course, entitled to have and express our opinions, it is perhaps appropriate to consider that Judges and Registrars of the Family Court and Federal Circuit Court are dedicated and hard working professionals who do their very best for the interests of children and their parents often under difficult conditions and where their decisions are rarely met with glee or appreciation and where government funding is often said to be inadequate. They, not unlike FDRPs, rarely receive the acknowledgement of the difficult work they undertake which they deserve.   Clearly, no judicial system is, or will in future be, perfect and will always warrant review and revision in the interests of children and their parents whose futures they determine.   However, in my view, FDRPs and many other professionals in the Court system deserve our thanks and acknowledgement for the excellent work they do for us and our children.   Long may they do so and, belatedly, thank you Mr. Howard for what you have done for many children and parents in Australia..     Clive Mills | | | |  | | --- | | https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/ed6edaec-110d-4d6f-a05d-a11e9c7d5776.jpg      ***“Tying up Loose Ends” – 5 tips for avoiding disputes at the end of a business relationship***  When you are involved in a business venture with another person, be it a partnership, joint venture, “*quasi-partnership*”, or another form of arrangement, it is natural that, eventually, one or more of the people involved may wish to move on.   A person may wish to leave the business venture because they have achieved their original objectives, because they wish to retire, perhaps because they have “*run their race*” or “*had enough*”, or because personal relationships have soured.   There is considerable potential for a person leaving a business venture to cause serious problems down the track for the business venture and for its individual members.   For example, they may argue that they have not received their proper entitlements, that they were “*oppressed*”, treated unfairly or forced to leave, or that, in the event that they still have some form of interest in the business venture, that they ought to have been consulted about subsequent decisions which affect those interests.   These kinds of disputes, whether arising at the time when the person leaves or further into the future, may, potentially, result in significant legal costs and a personal toll upon the remaining members, especially if the person attempts to hold them *personally liable* for their losses.   Additional costs may arise as a result of the time involved in negotiating and consulting with the outgoing person and, if issues cannot be resolved through negotiation, from  *litigation*.   Below are five suggestions of how to potentially reduce the risk of serious disputes arising when a person leaves a business venture:  ***1. Have an Agreement in place from Day 1***  It is prudent at the outset of any business venture to have a formal agreement in place which sets out the boundaries of the business relationship, the objectives of the business venture, the persons involved and their obligations both to the business and to each other.   A carefully drafted agreement would provide for how a person leaving the venture, or the venture itself, being terminated, are to be dealt with.   Such an agreement would set out a formal procedure for bringing a person’s membership in the business venture to an end, set out their entitlements upon leaving, and may provide for them relinquishing any ongoing interests which they might otherwise have in the business.     ***2. Make a Clean Break***  In order to protect yourself and your business interests, you may wish to ensure that as many obligations as possible end on the day when the person leaves, or the business venture comes to an end.   It is best not to leave too many “*loose ends*”.   This might apply especially to obligations to pay money to the person who is leaving. It may be imprudent to agree to pay the person money over a period of time, or to allow the person to maintain an interest in the business venture, when you do not know whether or not the business venture, or you personally, will be able to meet these commitments in the long term.   Depending upon the circumstances, it may also be appropriate to bring the business venture as a whole to an end, creating a clear demarcation between the time when the outgoing person had some claim on the venture, and the time afterwards.   Your accountants will be able to consider with you the various options available to you.   Remaining members of the business venture may then be able to start afresh, without the overhanging concern that the outgoing person may bring some form of action against them later on.  ***3. Prepare an Agreement for Ending the Venture***  If you did not prepare a formal agreement at the commencement of the business venture, or if that agreement did not make provision for a person leaving or for the venture coming to an end, you may wish to prepare a comprehensive, formal agreement to deal with these "loose end" matters.   A formal agreement prepared at the end of a business venture might, for example, include provisions relating to who is to be responsible for debts incurred in the course of running the business venture, provide for the transfer of shares in any relevant companies between the members of the business venture, and impose obligations on the remaining and outgoing members of the business venture to keep information relating to the business venture confidential.  ***4. Review Constitutions and Any Other Formal Requirements***  A business venture may involve one or more companies, in addition to the individual persons involved.   When a person is leaving, it is time to bring the entire venture to an end, or you want to make important decisions *after* a person has left the venture, ensure that you review the constitution of any relevant company (or if the company does not have its own constitution, the “*replaceable rules*” contained in the *Corporations Act*). This is especially the case where a person leaving the business venture retains a shareholding in one or more of the companies involved in the business venture.   This is so that you can ensure that you both comply with the formal requirements of the company, and so that you may avoid taking any action which infringes on the rights of a shareholder.  ***5. Seek Out Competent Advice***  It is invaluable in these circumstances to seek out the advice of an independent professionals, such as a Solicitor and an Accountant.   In addition to possessing professional knowledge, such an advisor may be able to approach the matter more objectively than the remaining members of the joint venture.   Failing to incur little expense now in obtaining professional advice may, ultimately, prove to be "false economy" and a costly decision.   Ashley Rihak   2 August 2016 | | | |  | | --- | | https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/9b0122c9-a7ca-4a49-9ede-509cf6c7f8ef.jpg    **Smooth FM Radio Ads and Past Newsletter Articles**  For anyone interested in the  myriad legal issues encountered by  *Kyle*, *Lee*and *Russ,* our radio ads can be found at our website at:   <http://www.cmalegal.com.au/radio-advertisements>  Similarly, our past Newsletter articles can also be accessed at:   <http://www.cmalegal.com.au/blog>  **Testimonials**  Testimonials can be accessed at: <http://www.cmalegal.com.au/testimonials>  **Google My Business**  Some of our clients have posted reviews you can access following the link below:   <https://www.google.com.au/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=clive%20mills%20and%20associates&lrd=0x6b12aedd3c8a6051:0x60eecadea5ad0456,1>, | | | |