
Book review

THE MEDIATOR'S HANDBOOK

Ruth Charlton, Micheline Dewdney and Geoff Charlton, The Mediator's Handbook (Thomson Reuters, 3rd ed, 2014) ISBN 9780455233291, 426 pages

This review must begin by honouring one of the authors of the three editions of *The Mediator's Handbook*, Micheline Dewdney, who passed away in late July 2016. Micheline was a friend, colleague and peer to many fellow pioneers and early adopters of mediation in Australia. Micheline was a great supporter and mentor of younger practitioners and her consistent, wide ranging contributions to the field of ADR will continue to inspire many practitioners who are both learning and refining the art of dispute resolution practice.

The first edition was published in 1995 and the second edition in 2006. This third edition, published in 2014, includes Geoff Charlton as an author alongside the original duo of Ruth Charlton and Micheline Dewdney. How does the third edition differ from the previous edition a decade earlier? What were the drivers for the third edition? Ruth Charlton provides some pointers to answer the latter questions in the Preface when referring to “legislative and regulative changes with mediation having become mainstream in the resolution of disputes”. She also acknowledged that “a national accreditation scheme has operated since introduced in 2004” and that “[c]ourts now regularly exercise their power to order mandatory mediation” as a result of the introduction of Family Dispute Resolution on 1 July 2007¹.

As with previous editions, the book continues to be a “how to do it” book, hence the use of the term “handbook” in the title. New chapters have been added which expand upon aspects of process, eg, Chapter 14 – “Intake” and Chapter 16 – “Pre-mediation Issues” and in relation to skills, eg, Chapter 19 – “Questioning”. Further, the Preface discloses that the authors listened to suggestions from readers of the previous edition.²

The Mediator's Handbook is made up of six parts:

- Part 1 “The Mediation Process and its Practical Application”
- Part 2 “Procedural Variations to the Mediation Process”
- Part 3 “Pre-mediation”
- Part 4 “Mediation Skills”
- Part 5 “Strategies”
- Part 6 “Special Mediation Issues”

As in previous editions, the Appendix contains a precedent agreement to mediate, pro-forma letters to confirm arrangements for the preliminary conference and for the first session of mediation after the preliminary conference and a precedent agenda for the preliminary conference and mediation. The index has been revised, with some entries added and others omitted, and is the same length as in the last edition. The index is functional: think of a word or phrase from the world of negotiation or mediation and it will almost certainly be found in the index.

Part 1 – “The Mediation Process and its Practical Application” details the seven stages of the classical model of mediation. Chapter 1 – “Introduction to the Mediation Process”, outlines the classical model of facilitative mediation in detail and deals with the question “Why use a process?” from both theoretical and practical perspectives. The messages to readers are clear; process provides a scaffold and predictability for participants yet the capacity to be flexible in the application (and variation) of process is crucial to responding to the needs of disputants.

Chapters 2 - 8 cover the seven stages of the classical mediation model. Each stage is described and analysed to uncover the functional purpose of the stage in the overall mediation process. Each

¹ Ruth Charlton, Micheline Dewdney and Geoff Charlton, *The Mediator's Handbook* (Thomson Reuters, 3rd ed, 2014) xiii.

² Charlton, Dewdney and Charlton, n 1, xiii.

chapter includes didactic and more general observational content as to how practitioners go about the practice of mediation in each stage. The teachings in Part 1 are valuable to lawyers that represent clients in mediation processes and arguably constitute required knowledge for lawyers seeking accredited specialisation in Dispute Resolution in New South Wales.³ Case notes are included to illustrate the guidelines in the text.

Part 2 – “Procedural Variations to the Mediation Process” includes the Chapters 9 - 13 “Co-mediation”, “Doing the Job by Phone”, “Multi-party Mediation”, “Shuttle Negotiation and Shuttle Mediation”, and “Family Dispute Resolution”. While the new chapter on Family Dispute Resolution is perhaps too short, it comprehensively summarises the legislative and regulatory framework and the “gatekeeper role” of family dispute resolution practitioners in parenting cases under the *Family Law Act 1975* (Cth). The only controversial statement for this reviewer in the new chapter is contained in a short concluding paragraph which does not do justice to the elevation of parenting plans under the 2006 amendments to Part VII of the *Family Law Act 1975*, where the authors opine: “[p]arenting plans are really only suited where separate parents are amicable and have good communication.”⁴

The latter statement reflects a traditional, if not conservative, view about the utility of parenting plans. A liberal view is that parenting plans may be used by parents that run their post-separation parenting arrangements in parallel (although not cooperatively).⁵ In other words, parenting plans can extend beyond the sub-category of parents that are amicable and communicate well. Moreover, it is important to note that a parenting order may dovetail with a parenting plan under the *Family Law Act 1975*. That is, a consent order may deal with provisions where one or both of the parties want the comfort of the provisions being enforceable (by a subsequent contravention application being initiated by the aggrieved party against the party allegedly in breach; a remedy which is often illusory in practice) and a parenting plan may deal with other provisions.⁶

Part 3 – “Pre-mediation” is now comprised of three chapters: “Intake”, “Preliminary Conferences” and “Pre-mediation Issues”. The section on the assessment of “suitability” in Chapter 14 “Intake” is excellent, as epitomised in the pithy statement “The nominated mediator is often the first to assess whether the dispute itself or each party is suitable for mediation.”⁷ As a follow on from such wisdom this reviewer would like to have seen a section heading “One joint preliminary conference or separate preliminary conferences?” in Chapter 15 - “Preliminary Conferences”. There is still a misconception within the legal profession that a joint preliminary conference is a universal norm in all mediations other than family dispute resolution. Separate preliminary conferences may be necessary or desirable in other cases where considerations of family violence or significant power imbalance may exist or where high emotional content may be present, for example, family law financial cases, elder mediation and litigation of wills and estates.⁸

In the second edition, Part 4 of *The Mediator’s Handbook* was devoted to mediation skills and strategies whereas this edition sees a much expanded treatment of both at Part 4: “Mediation Skills” and Part 5: “Strategies”. Indeed, the number of pages devoted to the toolkit of skills, interventions, common pitfalls and strategies has grown by almost 50% (reflecting the inclusion of material from skills training programs that Ruth Charlton had previously developed).

Part 6 - “Special Mediation Issues” rounds out the *The Mediator’s Handbook* with five chapters entitled:

³ Assessment requirements may be downloaded by solicitors: see The Law Society of New South Wales, *Specialist Accreditation Scheme 2016 Dispute Resolution Assessment Requirements* (The Law Society of New South Wales, 2016) <<https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/1086675.pdf>>

⁴ Charlton, Dewdney and Charlton, n 1, 178.

⁵ See eg, Jill Burrett and Michael Green, *Shared Parenting* (Finch, 2006) Ch 8 “Designing a Parenting Plan”.

⁶ For example, where the content or drafting are not suited or able to be the subject of a parenting order.

⁷ Charlton, Dewdney and Charlton, n 1, 183.

⁸ Noteworthy in this context is that the National Mediation Practice Standards are silent on the point.

Chapter 25 - “Role of Legal Representatives”;
Chapter 26 - “How Neutral are We?”;
Chapter 27 - “Power Issues”;
Chapter 28 - “Party and Mediator Driven Problems”; and
Chapter 29 - “The Role of Interpreters and Support Persons”.

The Mediator’s Handbook has always been incredibly versatile in appealing to the novice, the trainee mediator, the advanced practitioner and lawyers and other professionals who need to acquire a practical understanding of the process. The reader with no prior knowledge of mediation would be encouraged to read the book from Chapter 1 onwards. Other readers may choose to read chapters of the book in whatever order they wish; according to their curiosity or needs at the time. Even when parts of the book focus on skills there is typically a link or explanation about process. For example, at Chapter 18: “Communication Skills” there are two pages on the skill of “reframing” followed by nearly three pages which deal with “Why do mediators reframe?”⁹

Charlton, Dewdney and Charlton occupy a unique place in Australasian ADR in explicating all that is involved in the practice of mediation from a skills based, and strengths based, perspective. A good part of the work is about the typical patterns of behaviour¹⁰ that occur when people attend mediation and the strategies and skills that mediators deploy to redirect disparate views and perceptions into constructive dialogue.

Australia has been blessed to produce many talented dispute resolution practitioners who write about conflict resolution, dispute resolution practice and negotiation (such as Altobelli, Ardagh, Boule, Brandon, Chinkin, Cornelius, Faire, Field, Fisher, Parker, Power, Redfern, Scott, Spencer, Street, Sourdin, Tidwell, Tillett and Wade, among others). In the hall of contributors to the Australian literature on mediation and other forms of dispute resolution that are practised in almost every pocket of life in Australia, none stand higher than the authors of this third edition of *The Mediator’s Handbook*. Their contributions to the “conflict competence” of our communities, our citizenry and our enduring institutions have been remarkable and *The Mediator’s Handbook* continues to be a “must have” compendium for any person who regularly deals with disputes and their resolutions.

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⁹ Charlton, Dewdney and Charlton, n 1, 217-221.

¹⁰ The reviewer first heard the phrase “typical patterns of behavior [in negotiation]” from Professor John Wade in 1988 during family law classes at the University of Sydney.