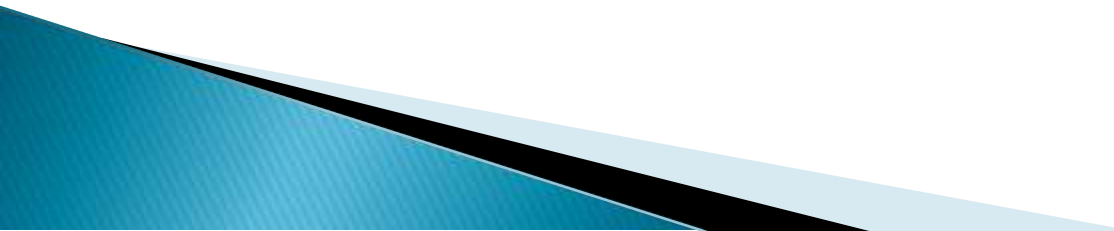


More than Mediation

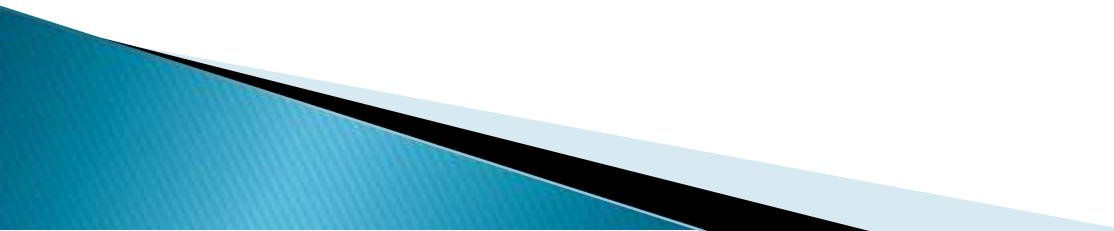
The Legal Aid Commission of Tasmania's
legally assisted approach to effective FDR

Jessamy Downie
Anthea d'Emden

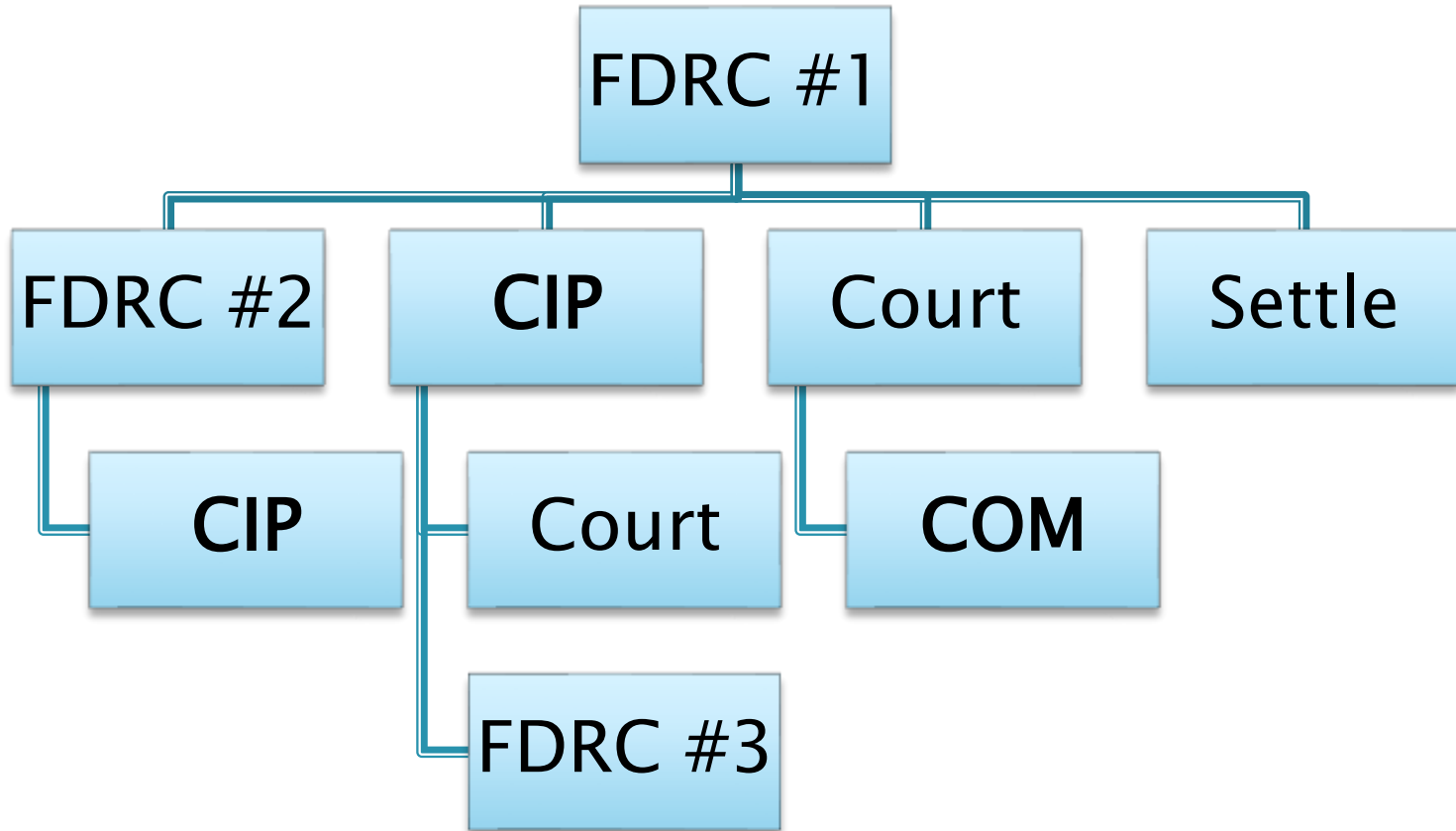
Our Mediation Models

- (a) Family Dispute Resolution Conference (FDRC)
 - commenced in August 2001
 - 91% settlement last financial year
 - (b) Child Inclusive Practice (CIP)
 - commenced in February 2016
 - 86% settlement last financial year
 - (c) Court Ordered Mediation (COM)
 - commenced in August 2017
 - 87% settlement last financial year
- 

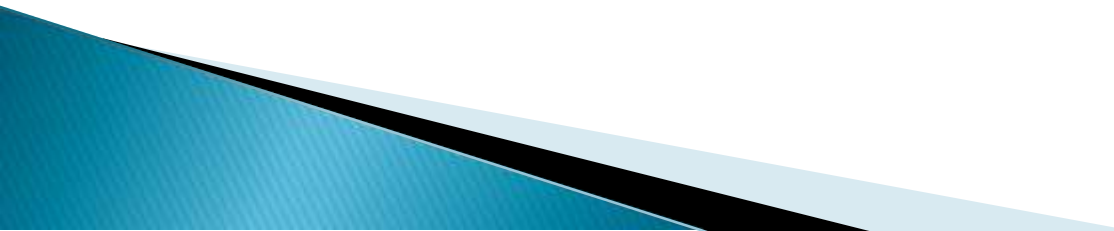
Similarities between the models

- All Legally assisted
 - All family law/children's matters
 - Most clients from similar demographic:
 - (a) Single parents
 - (b) Low socio-economic backgrounds
 - (c) Low income/government benefits
 - (d) Experiencing, or at risk of, family violence
 - (e) Limited parental capacity
 - (f) Drug and/or alcohol abuse
 - (g) Disability or mental illness
 - (h) Low education levels
- 

Our flexible model



Child Inclusive Mediation

- ▶ Introduced CIP as optional non-legal intervention
 - ▶ Brings the voice of the child into the dialogue in a safe, child-focused way
 - ▶ Catalyst for a higher level of parental reflective functioning
 - ▶ Informed decision making
 - ▶ Provides therapeutic loop
- 

The child's views




Search ID: jman40

**I DON'T CARE WHICH PARENT I GET
AS LONG AS IT'S THE SAME ONE
THAT GETS THE PLAYSTATION.**

CIP PROCESS

CIP recommended in FDR1 and agreed to by both parties



One lawyer applies for aid for disbursement for CIP



Once aid granted, lawyers send joint letter to child consultant

CIP PROCESS

Child consultant arranges child and parent consultations

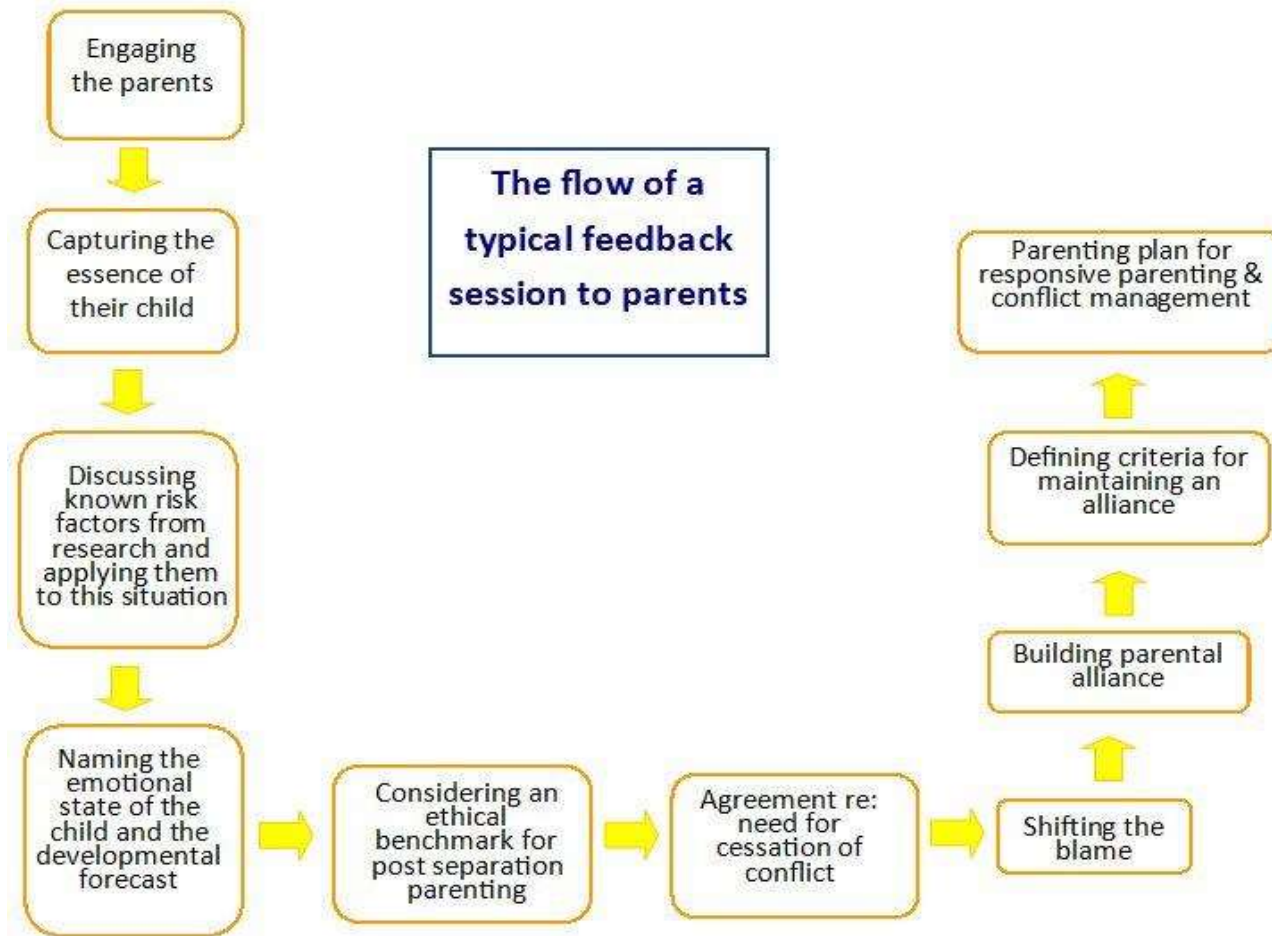


FDR2 / feedback session with child consultant in attendance

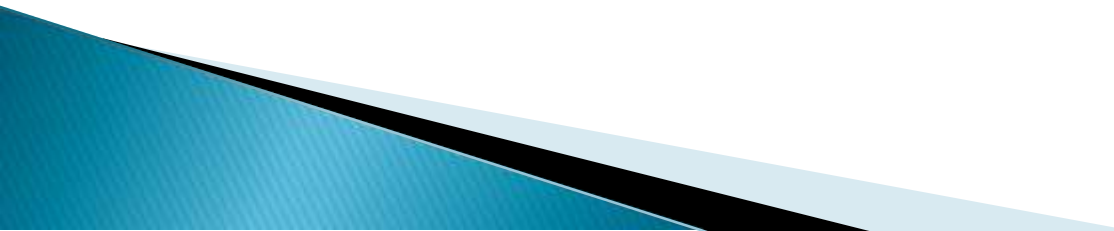


Feedback from child consultant is verbal and not admissible

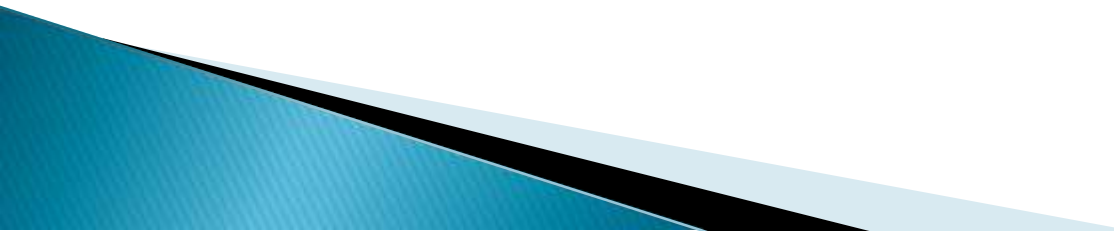
Feedback session to parents



Case study

- ▶ Three children, 'Bonnie' aged 12, 'Harry' 10, 'Ava' 7
 - ▶ Parents separated after 10 year relationship
 - ▶ Agreed Parenting Plan
 - ▶ Significant FV incident led to cessation of father's time end 2017
 - ▶ FDR1 to negotiate supervised time for 10 and 7 year old, 12 year old refusing
- 

Case study

- ▶ CIC end 2017 to consider children's wishes and best interests to progress father's time
 - ▶ CIP recommended because children of appropriate ages, both parents consenting and children had been expressing clear but inconsistent views to each parent
 - ▶ Feedback from child consultant
- 

Case study – Voices of the child

"I feel safe with Mum"

"Dad tried to kill her and I was really scared"

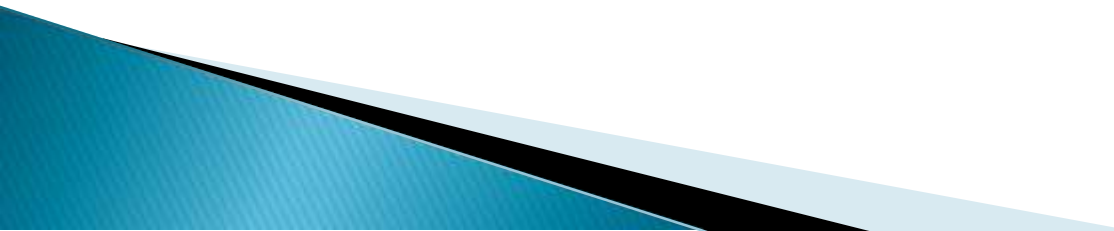
"Dad asks us questions all the time and I don't like it"

"I feel sick in my tummy when I see Dad"


"I want Mum and Dad to both be happy"

Case study

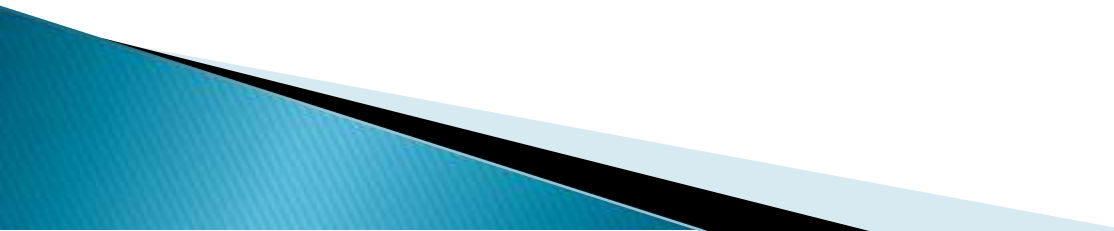
Recommendations of child consultant –

- Children worried about consequences of giving feedback
 - Carrying heavy load of ‘worries’ after witnessing father out of control
 - Will take time to rebuild relationship and trust
 - Bonnie shut father out as a way of psychological survival
 - Slow approach – ‘developmental apology letter’ and progression to non-confrontational activities and counselling
- 

Case study

- ▶ Children asked for second CIC 12 months later – parent sought aid
 - ▶ Child consultant noted significant commitment
 - ▶ Younger children happy and relieved
 - ▶ Bonnie progressed to short fortnightly visits but needs to ‘live’ the positive experience
 - ▶ Children still identify mum as ‘protector’ but building trust in dad
 - ▶ Child consultant cautiously optimistic
- 

Benefits of CIP

- ▶ Allows the child's voice to be heard in the absence of the child
 - ▶ Creates a supported environment for parents to consider the child's needs
 - ▶ Non adversarial
 - ▶ Facilitates a parenting agreement that reflects the child's developmental needs
 - ▶ Child Consultant and FDRP can work together
- 

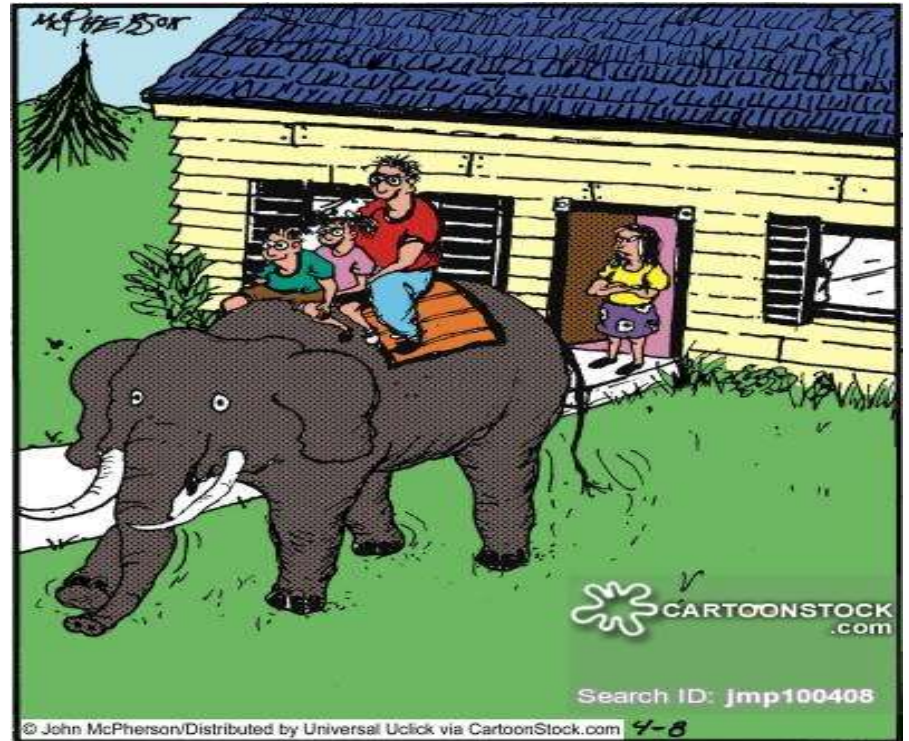
Benefits of CIP

- ▶ Supports parents to develop new skills and knowledge to assist with post separation parenting
- ▶ Fully funded by LACT
- ▶ Better alternative to Court



When CIP not appropriate

- ▶ Inadequate ego maturity of both parents
- ▶ Poor parental alliance
- ▶ Limited parental capacity for feedback



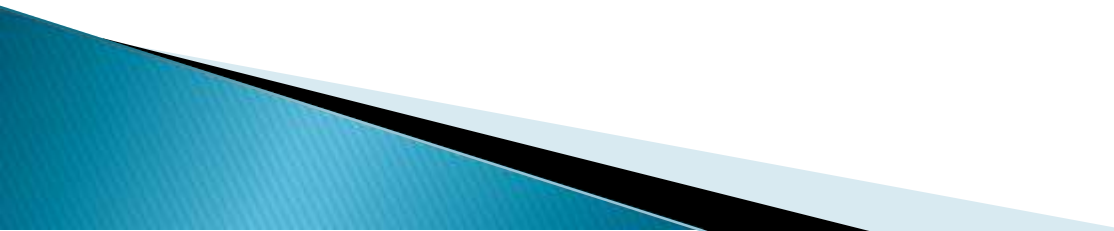
Erica hated it when her ex tried to upstage her when he picked up the kids.

When CIP not appropriate


- ▶ Significant family violence with current, active conflict
- ▶ Undiagnosed and poorly managed mental illness
- ▶ Current legal proceedings – COM option



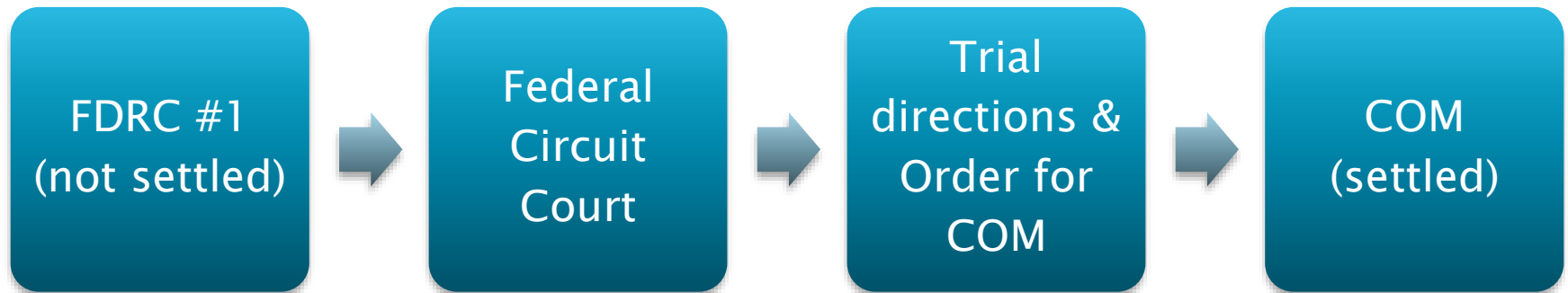
Court Ordered Mediation

- ▶ Our newest practice, commenced in August 2017
 - ▶ Initiated by the Legal Aid Commission of Tasmania after success in other States
 - ▶ Collaboration with Judicial and Court staff
 - ▶ *“THAT the parties will attend upon any mediation as arranged by the Legal Aid Commission of Tasmania”*
- 

Points of difference

- ▶ Not optional – parties are “ordered to attend”
 - ▶ Late intervention
 - ▶ Lengthy preparation by Conference Chair
 - ▶ Introduction at commencement of conference
 - ▶ Parties entrenched in, and fatigued by, Court system
 - ▶ More “views” in the room now, e.g. ICL, Expert and/or Family Reports
 - ▶ Longer running time
 - ▶ Chair’s knowledge of legal proceedings and recent judgements
- 

Example of simplified COM



Example of complex COM



Conclusion

- ▶ Vulnerable community
 - ▶ Maximum flexibility
 - ▶ Aim to maximise the funding dollar to achieve the best possible outcome for the child
 - ▶ Parties retain decision-making power through FDR and we know that agreements reached this way are more likely to succeed, while reducing time and cost. We will continue to explore new ways of doing this at the LACT.
- 