

Mediation and Community Justice Centres

Barking dogs, noisy kids, tree roots coming up through your driveway, old rotting fences, head pounding music ... sound familiar? Could this be your neighbourhood?

Neighbourhood disputes can be very stressful. Sometimes it becomes so bad, the police are called or you might end up in court, all the time knowing that you have to go back home to the same neighbourhood at the end of the day.

So, is there another way to deal with a neighbourhood dispute?

MEDIATION AS AN ALTERNATIVE

Mediation is people coming together to discuss the issues in dispute. Mediation sessions are conducted by mediators. The mediators are trained and impartial. They do not provide legal advice and they do not take sides. The mediators manage how the session is run, but the people in dispute decide what is discussed and what is agreed upon. A mediation allows for people to reach their own commonsense solution to their own dispute. This process is extremely effective and provides a level of ownership and accountability for the participants over their dispute. It is a free service and is confidential.

COMMUNITY JUSTICE CENTRES

In 1983, the *Community Justice Centres Act* (NSW) came in to being. The Act allowed for the establishment and operation of Community Justice Centres (CJCs) in New South Wales to provide mediation services in connection with certain disputes.

Today, CJCs is a business centre of the NSW Attorney General's Department. Its objective is to provide free and accessible mediation services to the people of New South Wales.

CJCs provide mediation through a co-mediation system. That means that two mediators are assigned to most disputes. This measure assists with quality control as well as peer support and assessment.

THE PROCESS

Let's go back to that barking dog.

One neighbour, we'll call her Sue, is becoming increasingly frustrated that she can't sleep at night because her neighbour, John, has a dog that just barks non-stop. Sue is an elderly lady, who doesn't feel so confident knocking on John's door to speak to him about his dog. However, she rings her local council. They tell her that there are rules about pets, but they suggest she talks to her neighbour. They refer her to Community Justice Centres.

Sue calls Community Justice Centres. She says she's been referred but she's not really sure why. The mediation advisor at CJCs will explain what mediation is, how the process works and decide if the issue is suitable for mediation. This includes explaining that mediation is free and voluntary – meaning that both parties need to agree to mediate. If Sue feels confident to proceed, then the CJCs will write to John inviting him to contact CJC to discuss the option of mediation.

John may say 'No' and that's where the mediation process may end. In those circumstances, Sue may have to look at legal advice and perhaps even legal proceedings. However, if John says yes, then a mediation session will be arranged. John and Sue can sit down with two unbiased, trained mediators who will facilitate an open discussion between the two of them.

What is likely is that John will not have been aware of how Sue was feeling. He probably wasn't aware she was having trouble sleeping nor that the lack of sleep and the anxiety of the thought of having to confront her neighbour was causing Sue considerable stress.

Sue gets to explain how she's feeling. John gets to hear about his neighbour's feelings but also gets to say how he's feeling.

In openly talking about how they're both feeling and with the help of trained people to keep them both on track the neighbours are likely to realise that they can reach an agreement.

LIKELY OUTCOME

It is highly likely that with skilled facilitation the parties will reach an agreement. That agreement could be that the dog's kennel is moved so that it is not so close to Sue's house and so, even if the dog barks, Sue won't hear it as much.

John might even agree to take the dog to training, so that the barking can be addressed.

Whatever the parties decide, their agreement can be written up and they can both sign.

The important thing is that the agreement is made by the parties – they both decide the terms and conditions and in so doing foster an environment in which the promises they make to each other, are more likely to be kept.

Agreements made in the course of a mediation are not court orders. They are not legally binding. They are agreements that parties make in good faith. So, in effect both parties make a promise or promises to each other about how they will behave in the future.

CONCLUSION

In October 2004 the Law Reform Commission produced a Research Report.¹ In undertaking the research a number of people who had used CJs were interviewed. Almost half those interviewed had mediated over a neighbourhood dispute.

For *most* of the participants interviewed the outcome of the mediation was either an agreement or partial agreement. The *majority* of participants reported they were either satisfied or partially satisfied with the outcome of the mediation. Certainly *most* participants felt that the mediation improved their situation.

The CJs own data collection shows that when people actually come to the table to mediate, there is a 70-80 per cent agreement rate regarding some or all of the issues.

Mediation is an alternative means of resolving a dispute. It provides an opportunity for parties to talk with each other, own their dispute, be accountable for it and resolve it by coming to an agreement together that fits their respective needs.

For more information about mediation go to: www.cjc.nsw.gov.au

1. The NSW Law Reform Commission. Research Report 12. Mediation and Community Justice Centres: An empirical study.