Chapter 6
Concluding Thoughts

Abstract This book has presented the case for the value of integrating technologies into the family law arena particularly within Australian contexts but with clear implications for family dispute resolution (FDR) services worldwide. Online dispute resolution (ODR) has already experienced success across a wide range of other conflicts, with preliminary evidence in the growing field of online family dispute resolution (OFDR) showing favourable outcomes for separating parents. The research presented in this book supports arguments that OFDR increases access to quality FDR services which in turn facilitates child-centered decision-making. This chapter will summarise the lessons learned to-date to inform recommendations for future OFDR program design and improvement. Both ODR and OFDR are relatively young developments in Australia, so the potential of these advanced technologies and their capabilities is yet unknown. Continued rigorous research into existing and future OFDR programs will further improve the field and the outcomes for families, an endeavour that will take the collaboration of many different stakeholders and a commitment to ongoing learning and future-focused change.

6.1 Introduction

Throughout this book, evidence has been presented to advocate for the use of online technologies in supporting the delivery of family dispute services. Far from being simply a more convenient way of accessing services, the case for online technologies to complement current face-to-face methods of family dispute resolution (FDR) is robust. In Australia, online family dispute resolution (OFDR) is a growing field of interest within both public and private sectors, with legal and social environments considered hospitable to nurturing its advancement.

Namely, as was detailed in Chap. 1, the establishment of the Family Law Act in Australia in 1975 helped to set the scene for later innovation via the implementation of a specialist family court (Nicholson and Harrison 2000). In 2006, the Commonwealth government passed legislation to make FDR a mandatory prerequisite for most individuals, excluding those in extenuating circumstances. Not just designed to
be a ‘tick-box’ exercise, separating parents were expected to make a genuine effort to resolve their disputes prior to court involvement, if necessary. To assist in the realization of these Family Law Reforms, the Australian government provided funding for 65 family relationship centres (FRCs) to operate across the nation. These centres facilitated free or heavily subsidised support to separating families by offering FDR services and information to reduce resource strain on the legal system and emotional strain on families (Parkinson 2013). Such a change from adversarial procedures was considered consistent with child-centred practices by keeping the child’s wellbeing and interests at the foreground of any family dispute process. This new era of family support also acknowledged the continuation of the parenting relationship after separation had been finalized, thereby taking a longitudinal approach to support as opposed to seeing the dispute as an isolated event in time.

It has been proposed that online technologies can provide additional options for families in lieu of court intervention. Although the focus of this book has been dedicated to investigating the potential of online family dispute resolution (OFDR) capabilities, Chaps. 2 and 3 identified some of the varying family services that can be enhanced through technological solutions. For instance, counselling services can be delivered in online formats (Augar and Zeleznikow 2014; Knight and Hunter 2013), apps have been developed to assist in co-parenting collaboration and communication (e.g., mymob, Our Family Wizard), and divorce educational programs can be disseminated through accessible formats (e.g., Bowers et al. 2011).

In addition, online tools have been developed to assist parents in interpreting and navigating the legal system (e.g., the Parent Plan Support System [Araszkiewicz et al. 2013] and AssetDivider [Bellucci 2008]) and to ultimately come to their own decisions regarding the division of property and determination of child custody arrangements. Through the integration of artificial intelligence with game theory, separating families can be supported in negotiating and making their own decisions, thereby restoring some autonomy in what has traditionally been a disempowering process for parents (Bellucci et al. 2004). These systems can also be designed to ‘learn’ by using imported data to continuously self-improve service delivery and decision-making processes (e.g., Split-Up; Zeleznikow 2004). Central to the development of these tools is just and fair processes and outcomes for all involved parties, while prioritizing the present and future interests of the child (Lodder and Zeleznikow 2012). These technologies often aim to encourage cooperation between parents or to generally ease the transition from parenting together to parenting apart. The law can be complex to comprehend for a lay person, so systems that support understanding while enhancing autonomy may create spaces for empowerment and relatively easy processes toward separation.

Of particular interest, however, are FDR services as translated into online formats. In Australia, FDR is preferred to ‘mediation’ (Ainsworth et al. 2019) with the former defined by the Family Law Act 1975 (Cth) as “…a process (other than a judicial process): in which a family dispute resolution practitioners helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; and in which the practitioner is independent of all of
the parties involved in the process". As such, the family dispute resolution practitioner (FDRP) reflects an independent third party who maintains a responsibility to the child and their best interests.

The change across time in Australia regarding the provision of FDR services has been gradual, commencing with the development of traditional face-to-face services at the aforementioned FRCs, to offerings of telephone dispute resolution services (TDRS; Thomson 2009), to finally the current emerging state of OFDR. The addition of each new approach increases the number of options available to families in terms of service delivery such that families have some flexibility in choosing an approach that is most suitable to their specific case requirements. In addition, as has been seen, OFDR itself is by no means monolithic—the term has been interpreted and developed as an overlying topic bringing together a range of different approaches to dispute resolution that rely on technology. For example, services can differ in terms of communication modalities (e.g., email, synchronous text-based messaging, telephone, apps, video-conferencing) and the involvement of independent third parties, such as courts or FDRPs.

The unique benefits of OFDR are many and varied, consisting not only of the advantages associated with alternative dispute resolution (ADR) but also those specific to online capabilities. Such benefits include but are not limited to: cost- and time-effectiveness; flexible options and outcomes; less adversarial; increased accessibility to quality services for rural and remote communities; solution- rather than blame-oriented; and increased access to justice (González Martín 2015; Relationships Australia 2011; Schramm and McCaulley 2012; Tait 2013).

Access to this technology and its associated benefits, however, may be hindered if the service design and implementation is not considered with due diligence for the way that culture intersects with technology. Without this consideration, these services instead become another way to exclude and oppress those who are most vulnerable. Under-researched in both Australian and international contexts are cultural considerations for online service engagement. Chapter 5 begins to address this gap in the literature by presenting the findings of a rigorous investigation into the needs of Aboriginal and Torres Strait Islander communities in Queensland, Australia. Through the development of a collaborative research partnership which adhered to participatory action research principles (Dickson and Green 2001), the research team was able to identify several best-practice recommendations for the design and implementation of a culturally and contextually responsive OFDR system. These recommendations spoke to promoting community ownership over the system, adopting community strengths-based perspectives while facilitating appropriate capacity building, acknowledging within and between cultural diversity, and taking a holistic approach to implementation. Although a time-intensive process, the creation and maintenance of genuine, ongoing partnerships with the community was identified as critical in reducing the perpetuation of colonizing practices.

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1Family Law Act 1975 (Cth) s 10F.
The remainder of this chapter will compile and offer the lessons learned from the research presented within this book to assist in the future development and improvement of OFDR services before then identifying some of the areas in need of further investigation in order to optimize the utility of online technologies for separating families.

6.2 Lessons Learned

First and foremost, services should prioritize increasing access to justice by ensuring that online systems are working according to the child’s best interest. When independent third-parties (such as FDRPs) are involved in the process, there is a greater likelihood that this principle will be respected. Careful consideration is required, however, when developing artificially intelligent software. Automated systems must be programmed to facilitate fair processes and outcomes that not only satisfy the requirement of upholding the child’s wellbeing, but also take into account the parents’ interests as well (Araszkiewicz et al. 2013).

Practitioners in the OFDR area must ask ‘Do we have technology for which we are looking for an avenue to utilize, or do we have problems in which we should use the technology to support our decision making’. Hopefully we are now choosing the latter path. We must also address the level of automation of the OFDR. What is the role of the human in the process?

6.2.1 Considerations for Uptake

Despite increasing use of technology, FDR service providers should avoid assuming that all members of the public would be interested in engaging with online methods of service delivery if they were available. Instead, prospective clients and professionals may feel intimidation or suspicion towards technology, especially regarding systems or processes that are unfamiliar. These feelings may result from faulty assumptions and misconceptions about the technology. To understand and therefore address the content and origin of these beliefs, thorough readiness assessments should be conducted with both potential clients and staff. These assessments should take into account user competence, user knowledge (particularly for staff), attitudes toward the technology, and trust in the system. Site readiness is an equally important consideration, thereby requiring a separate readiness assessment for the technological infrastructure which assesses the system, the organizational environment in which the system will be implemented, and the readiness of the supporting organizational staff.

While respecting an individual’s right to freely choose the service appropriate for their family or their practice, a number of techniques may be employed to overcome resistance to using new systems (Conley Tyler and Bretheron 2003). For example,
program ‘champions’ within an organisation may encourage staff to experiment with the system (Markham 1998) while respected community gatekeepers may help provide endorsement among a specific client population. In addition, targeted promoting and marketing campaigns can help to increase awareness and knowledge of proposed technologies. Social media has been found as particularly useful in reaching large audiences, with the selection of the media platform tailored toward the target population (Augar and Zeleznikow 2014; Tait 2013). Finally, trust in the technology affects technology uptake and can be facilitated by the development of tools, programs, and services that are evidence-based and then the clear communication of this evidence to prospective users (Augar and Zeleznikow 2014; Bowers et al. 2011).

### 6.2.1.1 Client Considerations

Not all cases are suitable for intervention by and with online technologies, with more stringent inclusion criteria required by pilot studies. Careful selection and screening tools should be used to determine appropriateness for OFDR services as compared to other services (e.g., TDRS, face-to-face FDR, or court involvement). Screening tools should be evidence-based and subject to rigorous testing and staff training procedures (Relationships Australia 2011; Tait 2013). These tools should assess for case complexity and characteristics, clients’ OFDR-conducive home environment, client preference and motivation, and clients’ access to and competence using technology. The latter should also be confirmed via technology checks (e.g., internet connection tests) prior to allocation to the technology-enhanced service (Relationships Australia 2011).

### 6.2.1.2 Pre-OFDR Education

Although the current research on OFDR preparation sessions is sparse, some lessons to inform development of these systems can be drawn from existing face-to-face pre-FDR sessions as well as online separated parenting education programs, which have similar underlying principles. Online delivery of preparatory sessions should be engaging, skills-based, and should make use of the technology available. That is, multimedia should be used where appropriate, quizzes to assess understanding accompanied by feedback should be incorporated, and opportunities for shared discussion should be enabled (Bowers et al. 2011). Unlike traditional group-based pre-FDR, online approaches lack the sense of community and ability to hear and participate in shared experiences. The inclusion of group discussion boards where stories can be shared, and questions can be posed may improve upon this shortcoming to a degree (Bowers et al. 2011).

An advantage over traditional methods, however, is the potential to individualise content to specific case characteristics. For example, upon registering for the online module, clients may be required to answer a number of questions about their specific
situation (e.g., presence of domestic violence, age of child, number of children, support accommodations for visual or hearing needs) which would then direct them to case-appropriate preparatory information (Bowers et al. 2011).

These sessions may also be used not only to discuss the procedural elements of FDR, but also to assist in preparation for the technical requirements of the OFDR system. As preliminary FDRP feedback suggests that clients enter their first OFDR session without having completed the requisite administrative aspects, such as changing passwords upon first log-in or completing the connection test (Relationships Australia 2011), the nature of the pre-OFDR session (i.e., the fact that it is already online) makes it an ideal setting in which to embed learning around the technical elements of OFDR participation.

6.2.1.3 Staff Considerations

When developing and implementing software, it is important not to discount the needs of the FDRP in favour of an exclusive focus on the client. OFDR will ultimately be ineffective if the preferences and requirements of the FDRPs and other staff who engage with the system are not taken into account. To this end, system development should plan for staff training, needs analysis and readiness scoping, and continued support throughout system use.

Staff training should be informed by an organizational needs analysis as well as contemporary and evidence-based research. General elements of training plans may include: transferring and adapting FDR techniques to an online platform, managing and overcoming diminished non-verbal cues, and using the software and supporting clients to use the software. Training should be intensive, experiential, and offer opportunities for ongoing learning and support across time. Practical engagement with the system is essential to successful training and preparation. Not only will staff be able to obtain a concrete understanding of the system, but it can also help to alleviate concerns or misconceptions held around the system.

FDRPs should also be trained in how to manage their on-screen presence when using video-conferencing capabilities. Due consideration should be paid to learning how to interact with the web-cam technology as well as how to adjust the physical location, lighting, and general room appearance in order to be conducive to quality OFDR sessions (Jani 2012; Relationships Australia 2011).

In addition, training should be conducted as temporally close as possible to the actual use of the system. Only minimal training may be required to achieve an appropriate level of proficiency prior to use (e.g., two full days; Relationships Australia 2011), with additional ‘booster’ sessions to follow where required. The answer to what level is considered ‘proficient enough’ should be driven by the consumer’s needs. As access to quality technology becomes more widespread, the proportion of the general public who are already proficient in technology use increases, with FDRPs needing skills that match their level (Larson 2003; Relationships Australia 2011).
On-call technical support should be made available to FDRPs during the sessions and peer support networks should be developed to help consolidate and share learning, particularly in the beginning stages of system navigation (Jani 2012). Similarly, peer-led training may be appropriate once more practitioners become proficient with the system, such that less experienced FDRPs may ‘shadow’ or co-facilitate OFDR sessions with more experienced FDRPs (Lavi 2014).

To be considered appropriate to practice OFDR, FDRPs should first have robust mediation skills (Tait 2013). The learning curve associated with navigating the technology requires a solid foundation of FDR skills as not to reduce the quality of the service when compared to traditional face-to-face methods. Determining an appropriate FDR skill level may involve self-assessments, years of practice, and observational assessments to determine readiness. Additional specialized skills are required for work with culturally and linguistically diverse communities and/or working in cross-border cases. FDRPs interested in pursuing this area of work need to be aware of all-involved countries’ and/or states’ laws pertaining to mediation and family law (LaMarca 2012).

6.2.2 Considerations for Technology

Common sense dictates that due to the constantly advancing nature of technology, developers and users of online systems cannot remain complacent, instead they must continuously respond and adapt to changes in information technology research and practice. Systems need to engage in ongoing monitoring, evaluation, and improvement processes either through in-built self-improvement processes (e.g., as in Split-Up; Zeleznikow 2004) or through periodic and systematic developer intervention. On the latter, development of this technology should not occur in isolation but rather should be the result of a multidisciplinary effort representing a range of different interests, knowledges, and perspectives, including representatives from artificial intelligence, law, computer technology, and family relationship domains. The technology vendor responsible for the online solution, should be selected with care and open, continuous communication should be established early in the relationship (Relationships Australia 2011).

Systems should also be co-designed with the intended clients of the platforms, with subsequent iterative cycles of planning, testing, feedback, and adjustment (Knight and Hunter 2013; Relationships Australia 2011). Such processes would help to develop programs that are responsive and relevant to the needs of their clients.

The adjustment of an existing online system or the development of new capabilities should also always be subject to extensive trialing and testing periods prior to implementation. Time and resources should be allocated for this process during the planning stages of project development. Central to the development and evaluation should be the consideration of the user. That is, the system should be easy and comfortable to use, trust with the technology should be forthcoming, and at no point
should the technology, this ‘fourth party’ (Katsh and Rifkin 2001), detract from the overall objective (that is, a fair and just outcome for disputing parties). Less important but also to be under consideration are the aesthetics of the user interface. The deliverance of these objectives can be facilitated through user feedback, as previously described.

Regarding system use, users should avoid assuming the infallibility of the technology after it has been subjected to rigorous testing. Even the most extensive of testing procedures cannot resolve all issues prior to implementation of the system. As such, FDRPs should discuss and develop back-up plans with their clients during pre-session inductions or intakes in the event of technology malfunctioning (Tait 2013). During the planning phases, the team developing the technology may also wish to adhere to principles of ‘granular redundancy’. As described in the RAQ OFDR pilot program, this principle allows for connection to be maintained via audio-only means when video-conferencing capabilities are disrupted.

OFDR platforms in particular should be developed to allow for the use of multiple technologies as a means to not only accommodate different clients’ needs but also to reflect various stages of the FDR process (Tait 2013). For example, email may be used for administrative activities while video-conferencing software may be used for the actual mediation session. The unique tools and features afforded by technology should also be optimized in order to make the most of the unique, value-added capabilities (Lavi 2014). At all times, the technology and all its associated components should be under the control of the FDRP to minimize misuse.

6.2.2.1 Ethics and Safety

In addition to the usual ethical considerations involved in facilitating FDR processes, there are further concerns that should be addressed and managed when using technology to assist in family disputes. Of utmost concern is privacy and confidentiality of information. The choice in technology used in the service needs to balance the security capabilities of technology against user familiarity of technology. That is, one may need to sacrifice easy accessible and cheaper technical solutions for more secure options (Jani 2012). A risk-averse approach should therefore be applied when creating online solutions for family dispute purposes.

Multi-layered and secure processes should be incorporated into the technology through dual authentication procedures such that the FDRP can verify the identity of the client(s) and the client(s) can verify the credentials of the FDRP (Augar and Zeleznikow 2014; Conley Tyler and Bretheron 2003; Relationships Australia 2011). The latter may be facilitated via professional websites to which the client can be directed to view and assess the relevant qualifications of the third-party (e.g., Augar and Zeleznikow 2014).

The steps taken to protect confidentiality and the limits of these provisions should be clearly communicated, in plain language, to the users of the technology. Potential clients should be able to review these stipulations prior to service engagement in order to make informed decisions about whether this service is appropriate for their
6.3 Recommendations for Future Research and Practice

Following the extensive research undertaken to outline the current state of OFDR research and practice for this book, a number of recommendations can be proposed to assist in the continued advancement of this field.

6.3.1 Mobile Device-Supported OFDR

Attention and resources should be invested in investigating the efficacy and effectiveness of using mobile devices for OFDR and related services. As more of the general public in Australia and worldwide obtain access to powerful hand-held technology, researchers and service providers should capitalize on this opportunity to understand how FDR services can be adapted to meet this gap in the market. Already identified in this book are current co-parenting and communication-enhancing apps designed to address the needs of separated families, however the application of FDR services or negotiation support systems on mobile devices has yet to be explored. Mobile applications are likely to offer additional tools to enhance
the wellbeing and decision-making of transitioning families that both complement and are distinct from current approaches (e.g., web-based, telephone, and face-to-face). However, Schmitz and Wing (2020) caution that while the option of mobile-supported OFDR can increase access to justice, it may also have the unintended effect of reducing privacy and safety. The advantages and disadvantages of this technology therefore warrants further review.

6.3.2 The Suitability of Domestic Violence Cases to OFDR

There is currently mixed opinion in the research as to whether cases of domestic violence are appropriate for OFDR intervention. Although comprehensive screening tools and case-by-case assessments will always be necessary to determine suitability to OFDR, there is a need for systematic research to identify the conditions under which the presence of domestic violence may or may not disrupt achievement of FDR objectives. For example, does OFDR effectiveness depend on the severity of the violence, the type of violence inflicted, the current geographical proximity of the parties, and whether the violence is ongoing or how recently violence ceased (Tait 2013)?

In addition, the roles and responsibilities of the mediator when domestic violence is disclosed or suspected must be carefully considered. Extending on discussions in Chap. 3 regarding power imbalances, one must also consider the power of the mediator in directing and controlling the narrative of the FDR session(s) (Flynn 2005; Grillo 1991; Hughes 1995; Ver Steegh 2003). The very act of managing power imbalances between the disputing parties is argued to disrupt the idea of the mediator as a passive and neutral party (Grillo 1991). The offline FDR literature contemplates which of the disputing parties the mediator meets with first, that is, whose version of events do they hear first, and what implications this decision has for ongoing mediation processes within domestic violence cases (Flynn 2005; Rossi et al. 2017). How is this consideration extrapolated to the online environment?

Offline FDR literature also presents insights regarding post-mediation contact. The mediator must be mindful that the interaction between the disputing parties may continue after the session has concluded. In domestic violence situations, there are serious concerns raised about the potential for physical violence to ensue following mediation (Field 1998; Grillo 1991; Rossi et al. 2017). These concerns may be mitigated in OFDR if there is geographical distance between parties, however there are other types of violence and controlling behaviour that may occur.

Despite a significant minority of registering clients in the RAQ study reporting the presence of past or current domestic violence in the relationship for which they were seeking mediation, minimal attention has been dedicated to understanding how violence impacts OFDR engagement. For instance, surveys with 152 domestic violence advocates and 46 victims show that technology—including phones, tablets, computers, and social networking websites—is commonly used in intimate partner stalking (Woodlock 2016). Here, technology was used to create a sense of the
perpetrator’s omnipresence, and to isolate, punish, and humiliate domestic violence victims. Perpetrators also threatened to share sexualized content online to humiliate victims. The prevalence of technology facilitated domestic abuse can therefore prove a major drawback to engaging in FDR.

Alternatively, Rimelspach (2001) argues that there does not seem to be a clear case to reject mediation for family disputes, despite the prevalence of domestic violence. He claims that one of the key factors in the area of dispute resolution is to offer as many alternatives to parties as possible, so that the most appropriate method can be chosen for each case. Further, Rimelspach stresses that considering the numerous benefits that mediation can offer over the adversarial system, it would seem a senseless loss to exclude all court mediation programs as an option for individuals whose interpersonal relationships contain elements of domestic violence.

Future research may also consider whether separate guidelines need to be developed for online practice in cases of domestic violence as well as including specialized components in staff training (Ainsworth et al. 2019).

6.3.3 Expanding the Capabilities of OFDR

Many of the OFDR systems cited in this book have been pilot projects and have therefore been subjected to strict restrictions in order to maximise service quality. As such, there is a need to explore the full capacities and identify the limitations of OFDR systems. For example, although it has been posited that hybrid models may be effective (e.g., González Martín 2015), there is no evidence to-date that combinations of face-to-face and online modalities within the same case are beneficial for clients. The few studies that have included both approaches have compared them against each other (e.g., Rossi et al. 2017; Schramm and McCaulley 2012) as opposed to including a condition in which both were combined.

In addition, there remains a gap in understanding whether OFDR systems are capable of managing more than three parties (i.e., the FDRP and the two disputing parents) and what adjustments may need to be made to the system to ensure that the technology remains seamless, cost-effective, and of a high quality when additional parties are involved. As one example, several OFDR systems mention making accommodations for interpreters and other support persons to be present during the mediation session, however it remains to be seen how the logistics of this arrangement are navigated.

Similarly, the voices of the children in question could be considered, with implications for their involvement in online environments. Research would need to determine the advantages and disadvantages of their inclusion in the service, the considerations and concerns for engagement in online as opposed to face-to-face FDR, best practices and guidelines for children’s inclusion, and at what age a child may be considered suitable to have input into the process.
6.3.4 Cultural and Contextual Considerations

Although there has been much anecdotal evidence about the application of technology to disempowered groups to increase access to justice, there has been minimal investigation into what this looks like when applied. Following best practices outlined in Chap. 5, research with vulnerable and disadvantaged groups should seek collaboration and participatory approaches to ensure appropriateness in development, implementation, and evaluation. These practices should encourage community ownership and support self-determination to guide decision-making concerning the system. Guiding these processes should be the commitment to developing technology that provides spaces in which empowerment can occur, rather than exacerbating oppression and inequality (e.g., the ‘digital divide’ [Cullen 2001] prevalent in Aboriginal and Torres Strait Islander communities).

Rao (2004) outlines some considerations for system design and mediator preparedness that should be examined further using evidence-based methods. For instance, she discusses the capabilities of ODR services to accommodate language options other than English, how limiting non-verbal cues can impact meaning-making, and the cultural competencies of the mediator to be able to interpret cultural nuances. She also brings awareness to the fact that the online environment is itself a unique cultural setting that must also be appreciated and understood.

While Rainey (2012) echoes some of these points, he cautions not to potentially overstate the effects of cultural differences on ODR engagement (i.e., a “Type II” error). He distinguishes a “Type I” error as the ignorance of cultural differences. Further, while acknowledging the need for mediators to make gains towards “cultural competency”, he also issues a reminder that mediators themselves bring their own cultural biases and beliefs to the session. Of note is the culturally embedded professional training of the mediator which has been argued to predominantly take place within the ‘North American Model of mediation’ and subsequently has implications for the generalisability of these practices.

6.3.5 Advancing Research and Evaluation

As a final recommendation which bears relevance on all previous points is that more methodologically rigorous research and evaluation is required to provide evidence for the effectiveness of OFDR. It will be difficult to encourage widespread adoption of technologically-enhanced dispute resolution services if the evidence on which the argument for use is founded is fallible and/or sparse. Additionally, in order to make accurate decisions regarding case suitability for OFDR and other online services for families, more research needs to be conducted with a range of client populations, including same-sex couples, culturally and linguistically diverse groups, and individuals who have hearing and visual impairments or other support requirements.
This research should include a longitudinal focus such that outcomes can be assessed across time.

OFDR systems of the future should provide the following facilities:

1. Case management: the system should allow users to enter information, ask them for appropriate data and provide for templates to initiate the dispute;
2. Triaging: the system should make decisions on how important it is to act in a timely manner and where to send the dispute;
3. Advisory tools: the system should provide tools for reality testing: these could include, books, articles, reports of cases, copies of legislation and videos; there would also be calculators (such as to advise upon child support) and BATNA advisory; systems (to inform disputants of the likely outcome if the dispute were to be decided by decision-maker e.g. judge, arbitrator or ombudsman);
4. Communication tools—for negotiation, mediation, conciliation or facilitation. This could involve shuttle mediation if required;
5. Decision Support Tools—if the disputants cannot resolve their conflict, software using game theory or artificial intelligence can be used to facilitate trade-offs;
6. Drafting software: if and once a negotiation is reached, software can be used to draft suitable agreements;

Of course no single dispute is likely to require all six processes. However, the development of such a hybrid ODR system would be very significant.

6.4 Conclusion

Although as compared to the history of alternative dispute resolution in Australia OFDR is relatively young, the latter has piqued public interest and engagement which suggests the fulfilment of a community need. From modest beginnings in online-originating consumer disputes (Ebner and Zeleznikow 2016), the vision for online capabilities has expanded over time to include flexible options for a range of conflicts and concerns. The capacities and function of future tools and services are yet to be known, but likely only to further multiply the options available to the consumer. As Conley Tyler and Bretheron (2003) note: “The search for more convenient, cost-effective, efficient and durable ways of resolving disputes will continue for as long as disputes exist” (p. 3).

Indeed, a previously unknown and unexpected force has recently driven technological advancements in mediation service delivery. During the writing of this book COVID-19 was declared a pandemic across the globe. Although the long-term impacts of this public health issue remain to be seen, Sourdin and Zeleznikow (2020) have discussed the early trends affecting the courts and ODR. Social distancing guidelines have prevented in-person dispute resolution which has forced the uptake of technology to continue delivering services. Technological innovation has increased in response, however the authors question the readiness of the justice system in integrating these technologies into their service delivery approaches.
Integration of ODR into the courts was already growing, however these events have expedited demand. Prior to COVID-19, leaders in eCourt innovation included Canada’s Civil Resolution Tribunal, the United Kingdom’s Her Majesty’s Online Courts, China’s Hangzhou Internet Court, and the United States’ use of Matterhorn for small claims, family disputes, and traffic citations. Both Schmitz (2019) and Sela (2019) have identified a number of considerations that should be taken into account in eCourt system design in order to make it efficient, fair, accessible, and user-friendly.

Giglione (2019) argues that there have been three stages of ODR expansion since its conception in the 1990s, and that a fourth stage is currently underway. This stage is defined by a continued growth in ODR usage across the world, the development of standards and regulations, and an integration of AI with dispute resolution. Pearlstein (2012) has also noted an increasing trend of individual practitioners, separate from organisations, providing OFDR services. Additional trends that may see future growth include crowd-sourced ODR (which are argued to be, in their current state, more like focus groups than ODR but have the potential for development) and hybrid systems combining offline and online dispute resolution processes (Sela 2017).

While it is claimed the online services will not and should not ever replace traditional face-to-face mediation and rather technology-enhanced tools should be another option in a mediator’s toolbox (e.g., Augar and Zeleznikow 2014; González Martín 2015; Jani 2012; Knight and Hunter 2013), the rise of technology in alternative dispute resolution appears inevitable (Larson 2003). To this end, it is even more crucial that high quality research be conducted in order to inform the development of technologies that enhance mediation outcomes and the wellbeing of separating families.

It has been the intention of this book to outline the current state of OFDR services as they are used within Australia. Although Australia has been identified as a leader in ODR and OFDR services, a comprehensive documentation of its history in the field, its services, and its unique considerations for service development and provision. This book has brought together a collection of evidence, both theoretical knowledge and case examples, to elucidate the how OFDR is flourishing both in Australia and worldwide in order to meet the needs of a technologically advancing and dispersed population. With an understanding of the foundations on which OFDR was formed, program developers can ensure that they are creating and implementing services that are continuously improving. Further, through a rigorous synthesis of current research and practices, this book has been able to present guidelines for future service development that enhances fair and just outcomes and the efficiency with which those outcomes are obtained. Through this research process, this book has highlighted gaps requiring amendment to show the worth of OFDR to both public and private potential consumers and to maximise the effectiveness of these services. It is inevitable that the OFDR landscape in Australia and abroad will change dramatically in the coming years, however the learnings, recommendations, and guide points in this book will continue to offer important insights to professionals who are looking to enter this rewarding and exciting field.
References

Ainsworth N, Zeleznikow L, Zeleznikow J (2019) Readiness for online family dispute resolution. Int J Online Disp Resol 6:243–263

Araszkiewicz M, Łopatkiewicz A, Zienkiewicz A (2013) Parent Plan Support System – context, functions and knowledge base. Paper presented at The International Conference on Business Information Systems Heidelberg, Berlin, Springer, 19-20 June 2013

Augar N, Zeleznikow J (2014) Developing online support and counseling to enhance family dispute resolution in Australia. Group Decis Negot 23:515–532

Barsky AE (2016) The ethics of app-assisted family mediation. Conflict Resol Q 34:31–42

Bellucci E (2008) AssetDivider: a new mediation tool in Australian family law. In: Proceedings of the First International Working Conference on Human Factors and Computational Models in Negotiation, Delft University of Technology, Delft, 8-9 December 2008

Bellucci E, Lodder AR, Zeleznikow J (2004) Integrating artificial intelligence, argumentation and game theory to develop an online dispute resolution environment. Paper presented at the 16th IEEE International Conference on Tools with Artificial Intelligence, Boca Raton, Florida, 15-17 November

Bowers JR, Mitchell ET, Hardesty JL, Hughes R Jr (2011) A review of online divorce education programs. Family Court Rev 49:776–787

Conley Tyler M, Bretheron D (2003) Developing an online mediation culture: The fourth generation of online ADR. Paper presented at the 2nd Asia-Pacific Mediation Forum, Singapore, 19-22 November

Cullen R (2001) Addressing the digital divide. Online Info Rev 25:311–320

Dickson G, Green K (2001) The external researcher in participatory action research. Educ Action Res 9:243–260

Ehner N, Zeleznikow J (2016) No sheriff in town: governance for the ODR field. Negot J 32:297–323

Field R (1998) Mediation and the art of power (im)balancing. QUT Law J 12:264–273

Flynn D (2005) The social worker as family mediator: Balancing power in cases involving family violence. Aust Soc Work 58:407–418

Giglione T (2019) Recent growth and developments on online dispute resolution in Southeast Asia. World Mediation Organisation Conflict Insight. https://worldmediation.org/recent-growth-and-developments-on-online-dispute-resolution-in-southeast-asia/

González Martín N (2015) International parental child abduction and mediation. Anuario Mexicano de Derecho Internacional 15:353–412

Grillo T (1991) The mediation alternative: process dangers for women. Yale Law J 100:1545–1610

Hughes SH (1995) Elizabeth’s story: exploring power imbalances in divorce mediation. Georgetown J Leg Ethics 8:553–596

Jani S (2012) Mediating from a distance: suggested practice guidelines for family mediators, 2nd edn. MediateBC, Vancouver

Katsh E, Rifkin J (2001) Introducing the fourth party: the critical role of technology. In: Online dispute resolution: resolving conflicts in cyberspace. Jossey-Bass, San Francisco, pp 93–116

Knight K, Hunter C (2013) Using technology in service delivery to families, children and young people, no. 17. Child Family Community Australia (CFCA). https://aifs.gov.au/cfca/publications/using-technology-service-delivery-families-children

LaMarca J (2012) Virtually possible - using the internet to facilitate custody and parenting beyond relocation. Rutgers Comput Technol Law J 38:146–172

Larson DA (2003) Online dispute resolution: do you know where your children are? Negot J 19:199–205

Lavi D (2014) No more click-click in here: e-mediation in divorce disputes-the reality and the desirable. Cardozo J Conflict Resol 16:479–541
Lodder AR, Zeleznikow J (2012) Artificial intelligence and online dispute resolution. In: Wahab M, Katsh E, Rainey D (eds) Online dispute resolution: theory and practice. Eleven International Publishers, Ten Haag, Netherlands, pp 61–82

Markham SK (1998) A longitudinal examination of how champions influence others to support their projects. J Prod Innov Manage 15:490–504

Nicholson A, Harrison M (2000) Family law and the family court of Australia: experiences of the first 25 years. Melbourne Univ Law Rev 24:757–783

Parkinson P (2013) The idea of family relationship centres in Australia. Family Court Rev 51:195–213

Pearlstein A, Hanson B, Ebner N (2012) ODR in North America. In: Abdel Wahab MS, Katsh E, Rainey D (eds) Online dispute resolution: theory and practice. Eleven International Publishing, The Hague, pp 431–452

Rainey D (2012) ODR and culture. In: Abdel Wahab MS, Katsh E, Rainey D (eds) Online dispute resolution: theory and practice. Eleven International Publishing, The Hague, pp 185–201

Rao S (2004) The cultural vacuum in online dispute resolution. Paper presented at the Third Annual Forum on Online Dispute Resolution

Relationships Australia (2011) Development and evaluation of online family dispute resolution capabilities. https://www.ag.gov.au/Publications/Pages/OnlineFamilyDisputeResolutionEvaluation.aspx

Rimelspach RL (2001) Mediating family disputes in a world with domestic violence: how to devise a safe and effective court-connected mediation program. Ohio State J Disp Resol 17:95–112

Rossi FS, Holtzworth-Munroe A, Applegate AG, Beck CJ, Adams JM, Hale DF (2017) Shuttle and online mediation: a review of available re-search and implications for separating couples reporting intimate partner violence or abuse. Family Court Rev 55:390–403

Schmitz AJ (2019) Expanding access to remedies through E-court initiatives. Buffalo Law Rev 67:89–163

Schmitz AJ, Wing L (2020) Beneficial and ethical ODR for family issues. Fam Court Rev. Forthcoming

Schramm DG, McCaulley G (2012) Divorce education for parents: a comparison of online and in-person delivery methods. J Divorce Remarriage 53:602–617

Sela A (2017) The effect of online technologies on dispute resolution system design: antecedents, current trends, and future directions. Lewis Clark Law Rev 21:635–683

Sela A (2019) e-Nudging justice: the role of digital choice architecture in online courts. J Disp Resol 2:128–163

Sourdin T, Zeleznikow J (2020) Courts, mediation and COVID-19. Aust Bus Law Rev 48(2):138–158

Tait C (2013) Evaluation of the Distance Family Mediation Project: report on Phase III of the technology-assisted family mediation project, MediateBC, Canada. http://www.mediatebc.com/about-mediation/mediating-at-a-distance.aspx

Thomson M (2009) Annual report of the telephone dispute resolution service to the attorney general. Relationships Australia, Queensland

Ver Steegh N (2003) Yes, no, and maybe: informed decision making about divorce mediation in the presence of domestic violence. William Mary J Woman Law 9:145–206

Woodlock D (2016) The abuse of technology in domestic violence and stalking. Violence Against Women 23:584–602

Zeleznikow J (2004) The split-up project: induction, context and knowledge discovery in law. Law. Probab Risk 3:147–168