

Review of the family law system

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Approximately 7 years ago I decided to upgrade my Psychology degree and capitalise on my mediation training and experience and undertake the Graduate Diploma in Family Dispute Resolution.

On graduating and having completed my supervision, I looked for work only to find the profession was dominated by NGO providers with very few graduates setting themselves up as private practitioners. Wanting to earn more than was on offer via a paid position, I decided to set up my own practice.

Just 5 1/2 years ago I opened my office in Highett (Melbourne), where I practice FDR full time. Mine is a standalone practice, I do not offer other practice modalities and have built a business with a turnover of about \$100,000.00 per annum. In addition, we offer Child Inclusive Mediation, Solicitor Assisted, Shuttle and remote mediation services. I have just recruited an associate and am planning on expanding my business later this year with the acquisition of a second office.

My experience in Family Law is limited, I have not worked in the sector prior to my recent career change and I think this is my strength. I came to the work with no preconceived ideas and with the hope and enthusiasm of someone wanting to help others and to make a difference.

The following are my observations:

The profession is dominated by NGO's and Solicitors. The NGO's on the whole, provide a good service that is available to the socioeconomically disadvantaged at a nominal cost. In my view this sector is very well catered for by the current funding model. However, the NGO's are not necessarily invested in outcomes, NGO's see themselves as part of the process of FDR, they are not focused on resolving client's issues. I consider issuing a 60(i) certificate as a 'fail' whereas, for the NGO's it is just part of the process. There is very little personal accountability. Statistically our private practice will reach an agreement with clients significantly more often than the NGO's. In our practice we reach an agreement with approximately 85% of our clients whereas NGO's reach an agreement around 30% of the time.

Solicitors then cater well for those individuals with large pools or complicated matters requiring specialist knowledge and resources. Or matters where there is significant risk to their client or the children of the relationship or risk of children being removed overseas.

What is missing in my view, are services that cater for the middle classes, those with assets below 5 million. Those who just need someone to help them understand the Family Law process and give them guidance and support, so the clients can come to an amicable resolution of their issues. Those who don't want to spend the 10-30 thousand dollars each it takes to have their matter resolved with the aid of Solicitors or don't want to attend court. These are the clients who would prefer their matter was handled through a private mediation service.

Unfortunately, there are obstacles to individuals finding private practitioners, the following are some of my observations:

Government advertising and literature only mentions the NGO's, there's no clue given that people have a choice and that private practitioners exist. Even if a person goes looking in the Attorney Generals database they will be shown the NGO's over all other FDR's, no matter what search criteria is entered. This is reinforced

in my practice almost daily, when clients call the first number in a Google search (mine) and assume we are an NGO. This is akin to the government only acknowledging the existence of Legal Aid.

Some NGO's market themselves aggressively, with very little consideration for the clients they attract and their outcomes. This aggressive marketing also makes it difficult and expensive for private practitioners to compete for Google space. (the only place we get seen)

Some solicitors actively discourage their clients from using FDR or refer them only to NGO's with the view of getting the 60(I) Certificate to take the matter to court.

Many solicitors have no idea of the real process of FDR, they think they must manage and control the process, much the same as if they were using a barrister.

Some law firms have put a junior solicitor through the FDR Grad Dip so as to have an in-house FDR practitioner. Raising concerns about the separation of Solicitor/Mediator roles.

Other solicitors have trained as FDR's, but practice primarily as a Solicitors, and are charging solicitor rates when mediating, again, this is not in the spirit of mediation.

Other impediments to the role of FDR in Family Law matters are:

Courts do not take into consideration the 60(I) Certificate when making their judgments. The certificate will indicate the intent of one or both of the parties, but it is never considered.

The Court does not penalise those who refuse to mediation or who do not make a genuine effort, even though it has the legislative power to do so.

The Courts don't recognise the legitimacy of non-Solicitor FDRP's. Matters are never referred to mediators who are not barristers/solicitors and the service barristers offer is very different to FDR. Judges need to understand that good FDR practitioners are very capable of helping clients negotiate both children's and financial matters.

There is nothing that truly requires individuals to attempt mediation, there are no real sanctions for those who refuse. Even though the Act does provide Judges options to penalise those who refuse to mediate or who do not make a genuine effort. Further to this point the Act should protect FDR's who provide the court with such information.

Judges and the Court do not afford non-solicitor FDR practitioners the same respect and consideration as other professionals that work within the Family Court system.

In Conclusion:

Mediation offers a quick, efficient and non-adversarial alternative to litigation. Mediation done well keeps people out of the courts, provide children with a voice and helps families heal and move on.

Should the matter go to court, a 60(I) certificate is uniquely placed to advise the court of the intentions and attitude of the parties involved, given a practitioner has spent several hours interviewing and working with both parties to the dispute. We are often the first people who hear both sides of the story from the parties themselves.