



**AN EVALUATION OF THE PRIMARY
DISPUTE RESOLUTION SERVICES OF
THE FEDERAL MAGISTRATES COURT**

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EXECUTIVE SUMMARY

This project was designed to evaluate the delivery of Primary Dispute Resolution (PDR) services managed by the Federal Magistrates Court (FMC). The aim of the evaluation is to provide feedback on the effectiveness of service delivery to clients by the contracted community based service providers.

The primary focus of the evaluation is to provide the PDR Unit and the FMC with information based on an evaluation of client, agency, Federal Magistrate and legal practitioner perceptions of the effectiveness of PDR services. This report provides data in relation to:

1. The relevance and appropriateness of PDR services delivered to clients.
2. Matters that should not be referred to PDR at all.
3. The satisfaction of key stakeholders with the processes and services of the PDR program.
4. The convenience of services delivered to clients in their local community.
5. The degree to which clients re-engage with agencies when agreements break down.
6. The time spent on managing and delivering PDR interventions.
7. The inconsistent uses of terminology in the PDR process.

The design for this evaluation involved data collection processes over three stages. A series of 13 telephone interviews were conducted with 6 Federal Magistrates (FMs) and 7 agency representatives from various States. The second stage of the evaluation required the development of a number of surveys designed to examine perceptions of key stakeholder groups. Following a preliminary analysis of the interview data, three surveys were developed. The surveys were tailored for the three groups to be surveyed - namely community agencies, clients and lawyers. In stage three, a preliminary analysis of the survey data was conducted to provide an early indication of important issues arising from the data. These issues were used to inform discussion in focus groups. Two focus groups were conducted, one in Melbourne and one in Brisbane, to obtain further feedback and clarification on those issues and to capture new data. Focus group participants in Melbourne included eight metropolitan agency representatives and one legal practitioner. In Brisbane, the focus group participants included eleven representatives from both regional and metropolitan agencies.

The central findings of this report are that the FMC PDR program is well regarded and works well. The program can be improved so that future growth of the program is not impeded by organisational impediments and lack of knowledge. Improvements to the process revolve around enhancing information flows and knowledge; refining organisational and inter-organisational knowledge; and organisational flexibility and structure.

Enhancing information flows and knowledge: Central to the future success of the PDR process is information. FMs need more data and information about how PDR matters proceed and on their outcomes to help make decisions about referring matters. Community Based Organisations (CBOs) need more information from the courts about disputes sent to them to assist them to more quickly understand the clients needs (and expedite matters). Legal practitioners need more information on the progress of their clients through the PDR process. Clients need more information about PDR so that they arrive better prepared to understand the nature of the processes involved and the roles of each party (including their own) in those processes.

Refining organisational and inter-organisational knowledge: While it is clear that the FMC and CBOs share a common concern for better, more effective and more efficient dispute resolution through PDR, room exists for negotiating how to better articulate the needs of each organisational sector in the PDR process. To achieve this, information flows (discussed above) need to be reviewed to provide common understandings and knowledge about critical issues. Based on common understandings of the issues, refinements to the program can be made.

Organisational flexibility and structure: FMC and CBOs highlighted the need to build more organisational flexibility into the PDR system to facilitate speedier and more appropriate dealing with cases. Suggestions included an improved system for emergency referrals and more flexibility in varying time allocations spent by CBOs on individual matters. An improved tailoring of the FMC's administrative and funding arrangements to better align with CBO business models (such as Child Inclusive Practice models) need to be addressed to ensure that the FMC and CBOs properly understand the cost implications for CBOs of performing PDR work. The FMC should

consider how to better integrate legal practitioners within the organisational framework of the PDR program.

While it is the case that the FMC PDR service is considered both valuable and effective there is, as it is with any organisation, always room for improvement. Communication Partners therefore propose that the FMC respond to these findings through the following recommendations.

Communication Partners recommends:

- **That the FMC respond to the above findings by implementing a well designed process to engage a representative sample of all stakeholders in the PDR program to facilitate discussions around our findings.**
- **That the FMC respond by implementing a process for tracking each matter through the PDR system. The tracking system, which could be a bar-coded and/or web-based data entry system, should be designed to provide necessary information to assist decision making and research about PDR by the FMC, individual FMs, and by CBOs.**
- **That a larger and nationally significant research project is developed by FMC and collaborating CBOs in conjunction with university researchers to address fundamental gaps in knowledge about the operation and long-term effectiveness of the PDR program.**

METHODOLOGY

The design for this evaluation involved data collection processes over three stages. Because of the small scale of the evaluation, a mixed method approach was adopted to maximise the efficacy of the findings. Methods used were telephone interviews, surveys of key stakeholders, and focus groups.

Stage One: Telephone interviews

A series of 13 telephone interviews were conducted with 6 FMs and 7 CBO representatives from various States. FMs and agency representatives are critical stakeholders for the PDR program as they are the providers and receivers of referrals from the program. We interviewed representatives of these stakeholder groups from both metropolitan and rural areas.

Stage Two: Survey development and administration of survey

The second stage of the evaluation required the development of a number of surveys designed to examine perceptions of key stakeholder groups. Following a preliminary analysis of the interview data, three surveys were developed. The surveys were tailored for the three groups to be surveyed - namely community agencies, clients and lawyers (see Appendix A for copies of the surveys). The surveys were designed to gather stakeholder perceptions about their experience of the PDR process, and to assess the degree of satisfaction with outcomes from the process.

To guarantee confidentiality and anonymity of respondents, the PDR unit of the FMC administered the distribution of surveys utilising their own databases for names and addresses of clients, agencies and legal practitioners. A covering letter explained the purpose of the evaluation and requested the respondent to complete the relevant survey. Completed surveys were returned directly to Communication Partners in reply paid envelopes to respect confidentiality and improve response rate. It is possible that only those respondents who were either very satisfied or very dissatisfied with the PDR process answered the surveys. In other words, the responses could be biased. However, the respondents (described later in this report) and the range of opinions expressed in the surveys indicate that this is not the case and the opinions expressed by the respondents are likely to represent the broad opinions of key stakeholders.

Stage Three: Focus groups

Prior to conducting focus groups a preliminary analysis of the survey data was conducted to provide an early indication of important issues arising from the data. Two focus groups were conducted, one in Melbourne and one in Brisbane, to obtain further feedback and clarification on those issues and to capture new data. Focus group participants in Melbourne included eight metropolitan agency representatives and one legal practitioner. In Brisbane, the focus group participants included eleven representatives from both regional and metropolitan agencies. Despite considerable efforts by the PDR unit, no clients were able to attend either group.

SURVEY RESPONDENTS

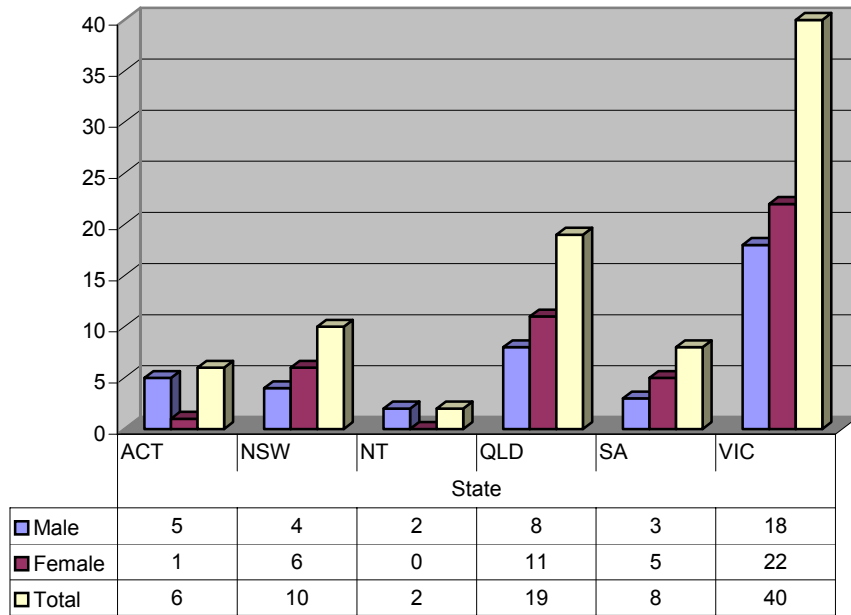
This section of the report briefly describes the sample of respondents to each of the three surveys. A large proportion of the respondents on all three surveys were from Victoria and Queensland. This represents the fact that the majority of referrals to PDR services occur in Victoria. We elicited responses from agencies and legal practitioners from both metropolitan and regional areas, and the sample of clients included male and female respondents from both metropolitan and regional areas.

1. Clients

Of the 535 surveys sent to clients, 45 were returned to sender and 85 completed surveys were received for analysis (response rate 24%). This response rate is typical of mail surveys, especially where it is likely that the client database may contain information that is not up to date. For example, many clients may have changed address since their last dealings with the service. One indication of this is the 45 surveys returned to sender.

As indicated in Figure 1, almost half (40) of the respondents were from Victoria and 19 were from Queensland. In total, 40 respondents were male and 45 were female, with a relatively even distribution across each State. The age of respondents ranged from 23 to 65 years (average age males = 44.5yrs; average age females = 40.4yrs). There were 42 respondents from regional areas and 42 from metropolitan (one missing value). Fifty-two (52) clients responding to the survey had not previously been to mediation.

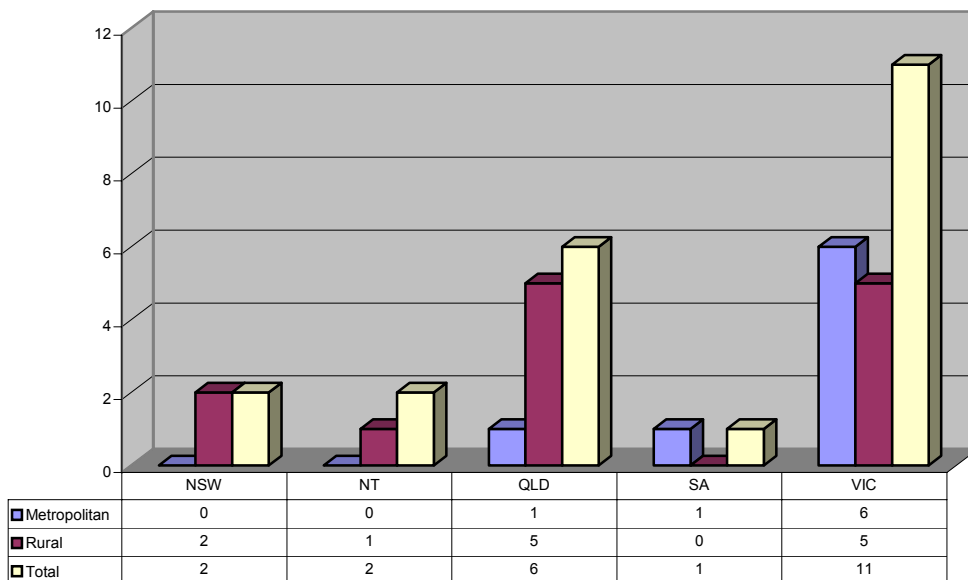
Figure 1: Respondents by Sex and State (Clients)



2. Agencies

The population for the agency survey was all CBOs with a current contract to deliver PDR services under current arrangements. In total, 44 surveys were sent to agencies of which 22 were returned (response rate 50%). Of the agencies responding, 13 were from regional areas and 8 were from metropolitan centres. Figure 2 provides a breakdown of respondents by State and region.

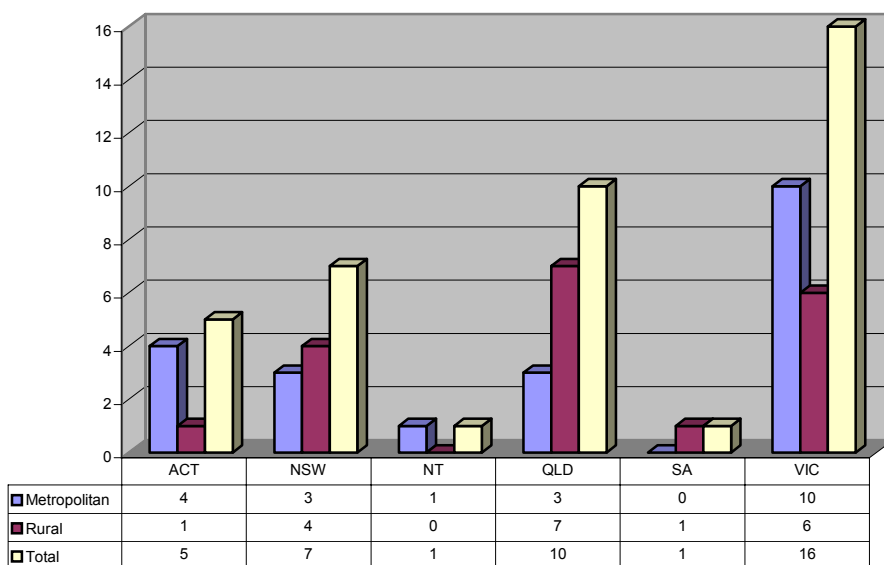
Figure 2: Respondents by State and Region (Agencies)



3. Legal practitioners

Two hundred legal practitioners were surveyed and 40 responses were received (response rate 20%). This response rate is not unexpected for a survey of this nature. Nineteen (19) of the respondents were from regional areas. All of the respondents had clients who had been referred to PDR services. Again, a breakdown by State and region (Figure 3) reveals that the majority of respondents were from Victoria (16), while the next largest group of respondents was from Queensland (10).

Figure 3: Respondents by State and Region (Legal)

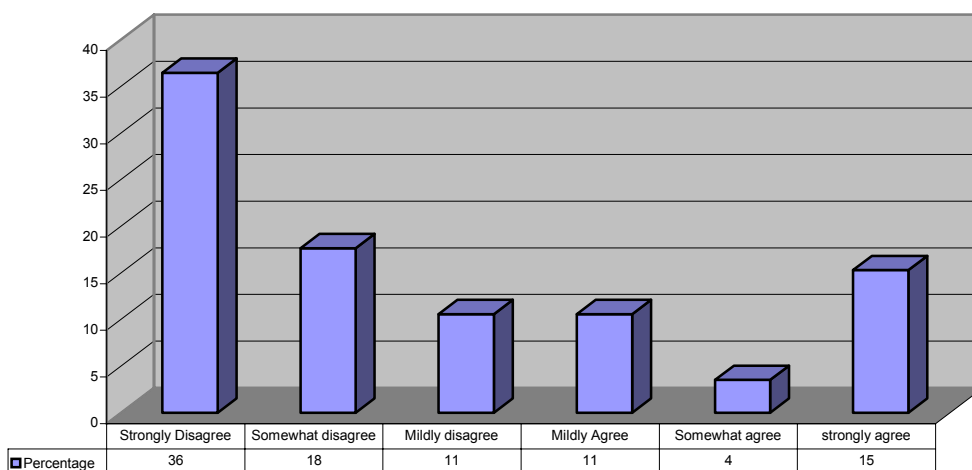


MATTERS REFERRED FOR MEDIATION

In this section we report on the type of matters referred for PDR services, the average number of sessions per matter, and the average time per session. In the sample of 85 clients who answered the survey, the nature of matters reported for mediation include contact issues (48 clients), property matters (40), followed by residency (18) and financial issues other than property (17). Two clients mentioned child abuse and four clients mentioned family violence matters. Forty-eight (48) clients attended in relation to a single matter, and these were primarily for contact (22) or property (19) matters. In other cases, clients reported attending for a combination of matters. For example, combinations included contact and residency matters (7), financial and property matters (5), or contact, financial and property matters (5).

Clients: Clients were generally positive about the suitability of their particular case for referral (see Figure 4). Fifty-four percent (46) of clients strongly or somewhat disagreed with the statement that “mediation was unsuitable for my kind of matter”, while 15% (or 13) strongly agreed. While eleven of those who strongly agreed with this statement did not reach a settlement on their matter, 12 respondents who did not reach a settlement strongly agreed with this statement. The variation in responses to this item is one indicator that respondents were not simply those who thought that the matter was either totally suitable or totally unsuitable.

Figure 4: Client responses to "Mediation is unsuitable for my type of matter"



Number of sessions and average session length: On average, clients report spending 2.1 sessions (range: 0-10 sessions) in PDR averaging 140 minutes, or 2hrs 20mins (range: 0-6 hours) for a total of 5 hours per referral. These estimates are slightly different from that reported by agencies, although the estimate of overall time spent per case is similar.

There are also some differences between those who have property matters only. Nineteen respondents attended for property matters only. If these responses are treated separately, the average number of sessions reported was 1.3 (range: 1- 4) averaging 183 minutes or 3 hours (range: 1.5 – 6 hrs) per session for a total of 3.9 hours per referral. Of these respondents, 13 had achieved a settlement (68%) and 6 had not.

Agencies: Twenty-one (21) agencies reported receiving referrals for contact matters, and 21 received referrals for residency matters. A small number of agencies report having dealt with family violence (5) and child abuse (3) issues, and six agencies reported dealing with property matters. While only 3 agencies are contracted to conciliate property matters, it is likely that agencies reported dealing with property matters as a related matter connected with the primary referral. Financial issues other than property (OTP) were reported by 15 agencies. In total, these agencies reported 682 matters referred for PDR services. Sixteen (16) of the 22 agencies responding were satisfied with the type of matters being referred to them.

Number of sessions and average session length: On average, agencies report spending 3.2 sessions (range: 1-6) averaging 100 mins, or 1 hour 40 mins (range: 1-4 hours) for a total of 5.3 hours per referral. (Agency representatives who were interviewed estimated this figure at around 6 hours.) This generally reflects the current funding agreement, however agencies reported that up to 38% of cases on average could benefit from additional sessions, although there is a wide range of opinion on this issue with estimates ranging from 2-100% of cases.

One agency reported on 235 referrals for property matters. The average number of sessions spent by this agency on these matters was 1 session averaging 240 minutes or 4 hours per session. Again, this estimate is slightly different from the client respondents with property matters reported above, but the total number of hours per referral is similar. Of these matters, 133 were settled or partially settled (56.6%) and 102 were not.

RESULTS AND DISCUSSION

In this section, we report results by providing key insights from the perspective of each of the stakeholder groups. First, we discuss the key issues raised in the interviews with FMs. Secondly, we review the results of the client survey. Thirdly, we report the findings from the interviews with, and survey of agency representatives. Finally, we report on the results of the survey of legal practitioners. For simplicity, we report findings in terms of the extent of agreement and disagreement with key items of the survey relevant to the scope of the evaluation. A more complete summary of responses to the survey items is contained in Appendix B. Tables in Appendix B list the

percentage of the sample who responded to each response category (strongly disagree to strongly agree) for the relevant items on each of the surveys.

1. Federal Magistrate responses

The relevance and appropriateness of PDR services delivered to clients:

Overall the FMs interviewed were satisfied with the referral process. They do not require any radical changes to the process but would like to receive more feedback about what actually happens with particular matters referred to agencies.

There is also some concern about whether the courts pick up all cases that could be referred to PDR. At least one FM was concerned that FMC staff need to make sure they do not overlook sending referrals and getting feedback from community organisations. More matters need to be sent to PDR in the internal Family Court process. If more matters were sent to mediation in the Family Court, people could attend mediation in their local Family Court rather than having to travel to the FMC.

The FMs are fairly inconsistent on how they decide to refer matters to PDR. Two of the FMs referred to the Act as being a motivator for them to send individuals to PDR. For example, one FM said, “The Family Law Act requires us to send matters to mediation”. Another said that the time that it would take the court to resolve the dispute is another consideration. If the court could solve the dispute quickly, then they would not refer the matter to mediation. Others made the following comments, which indicate the range of approaches taken by FMs.

“I look at the type of case. I refer all residence cases, all contract cases, maintenance cases, and property cases to PDR”

“I do not refer cases with restraining orders to mediation or types of matters that require an injunctive remedy (immediate remedy)”

“I observe the state of the dispute - how deep are the parties in conflict”

“I analyse the likelihood of resolution of the dispute. I know the likelihood of resolution by using my intuition.”

“I send all child matters to PDR”

“I refer all matters to PDR”

“When I make the decision I start with the assumption that parties should always go to PDR, then I ask whether there are any reasons why they should not go”

FMs were also asked to comment about when referral to PDR would be most effective.

Pre File: Two FMs said that pre-filing PDR would be ideal because it would not give the lawyers an opportunity to interfere. One FM was against PDR before the parties had filed suggesting parties need to articulate the problem and set the goal posts before they start PDR.

Post File: Five FMs said that PDR is most effective after the parties have filed their application and before the first court date.

During Trial: One FM mentioned the necessity of referring a case to PDR during a trial because it is sometimes necessary to have certain issues refined.

Post Order: Two FMs advocated post court order counselling. They considered it was necessary to assist parties to live with the order the court had given. It was suggested that if post court order counselling were available, it would result in less people breaching the court order. One FM estimated that approximately 50% of people would benefit from post order counselling.

Matters that should not be referred to PDR at all:

Overall the FMs think that most of the disputes can be referred, but there are differences of opinion about matters where there is a history of violence or conflict, and when there are children involved. Five out of six FMs said that all matters were suitable, and one said that most matters were suitable. All matters where there is the possibility of a negotiated settlement should be referred. PDR provides people with an option apart from costly and emotionally burdensome litigation.

“It is important for people to learn to use PDR out of courts rather than going straight to court. It is the most desirable way of achieving an outcome.”

However, FMs suggested that the following cases are most likely NOT suitable for referral:

- Cases with *proven* violence - this does not mean cases with *alleged* domestic violence
- Cases where there have been exceedingly numerous applications to the courts, long history of court counselling, or vexatious litigants
- Matters where there is entrenched and protracted conflict
- Matters that have already gone to mediation and failed.
- Child abuse matters – system not equipped to properly manage this
- Cases where it is clear that the parties cannot be together in the same room
- People with a history of conflict and ongoing disputes should not be referred to PDR. There are people who have been in court for 3-4 years
- You cannot just simplify the system and say ‘three strikes and you cannot go to PDR’. It is not that simple. Some people may need to come back to mediation to resolve a simple issue where the previous issues were complex.
- Where there are serial contraventions of court orders
- Alcohol, drugs, mental illness and behavioural issues

“Domestic violence is a difficult issue. There is such a range of matters that people perceive to be domestic violence. Sometimes where there is a domestic violence order it is clear that parties cannot mediate and in other circumstances it is unfair to prevent the parties from going to PDR because of a previous domestic violence order. For example, where there was a domestic violence order years ago, where the people have been separated for years, people should be required to move on rather than take refuge in the court system.”

“There are some cases where women can be disempowered even in mediation - for example where a partner has dominated the other. In these cases even mediation can be disastrous.”

Satisfaction with the processes and services of the PDR program:

Most FMs were satisfied with the services provided by CBOs. The CBOs put more time into the cases than the court annexed mediation services. FMs have the perception that CBOs are more committed to individual cases, and people are apparently returning to the CBOs. CBOs are more willing to involve children in family matters and are successful with property matters. They also share the perception that CBOs can bring people back for further PDR if necessary, and that the process saves time and money. CBOs appear to have a reasonable success rate.

Some FMs were concerned about the delay between referral and service delivery. There is a need to reduce this delay if possible. One FM suggested that a system for urgent referrals should be implemented. FMs would like to get matters into PDR faster in some cases. There is a perception that matters should be referred to PDR earlier rather than later.

In terms of outcomes, FMs generally think that any progress is good even if the matter is not completely resolved. Some FMs felt that more information is needed from CBOs. The referral sheets are not filled out consistently and the information is not comprehensive. Overall, their sense of whether PDR works or not is clouded by the absence of statistics about outcomes. It was not clear from these comments whether FMs are not happy with the summary information they currently receive on a monthly basis from FMC staff, or whether they require additional information.

Some FMs requested further statistics as to which matters had been resolved and about the longer-term outcomes of the process. The statistics on settlement rates do not accurately reflect whether parties reach settlement after mediation and before the matter returns to court. FMs feel as though they are in the dark in this respect. This point requires further clarification with FMs. Of course, this type of analysis would require a long-term research project and the FMC and its staff are not equipped or funded to conduct such a project.

Three FMs expected that parties settle and resolve all the issues in their dispute. One FM said that it is necessary to have settlement in order to get the economic returns from the system. The fact that the parties might 'feel better' about their dispute does not necessarily save the taxpayers' money. The other FMs said that it is good if the parties resolve or refine some of the issues and understand their dispute. PDR is necessary to empower the parties to make their own decisions, to start the parties thinking about the process, to educate parties about dispute resolution, and not to rely on the court to resolve their disputes. One FM said that it is better if parties understand each other's position. If parties settle and do not understand or respect each other's position, the agreement will not hold.

Two of the FMs raised the issue about qualifications of the agency staff to perform effective mediation. One of the FMs offered the following comments:

“I am not satisfied at the fact that the qualifications of the people in community organisations are not provided. You cannot just advertise the qualifications of the CBO. We need to know the individual qualifications of the mediators. These qualifications need to be available to the court.”

It should be noted that the tender process and the contract with agencies was conditional on the agencies certification that that staff involved in the provision of PDR services are appropriately qualified. It is not clear what benefit could be gained by providing the names of individuals and their qualifications from every agency. This information would require constant updating as the staffing arrangements of agencies change. It is the responsibility of contracted agencies to meet the terms of their contract by providing staff who are appropriately qualified. This is a quality issue in the monitoring of contracts.

The convenience of services delivered to clients in their local community:

FMs believe that, while some delays do occur, the process is generally prompt, convenient, and geographically close to the client where possible. Some people who are entrenched in the court system do not know of the existence of external CBOs. Consequently, people need more information about the CBOs.

The degree to which clients re-engage with agencies when agreements break down:

FMs are unable to comment in this area, although some expressed an interest in knowing this information as an indicator of the success of the program.

The time spent on managing and delivering PDR interventions:

FMs were not asked to comment on this issue.

The inconsistent uses of terminology in the PDR process:

FMs do not generally distinguish between mediation and counselling on the one hand and conciliation on the other, and they are not convinced of the National Alternative Dispute Resolution Advisory Council (NADRAC) definitions. Most FMs felt that, in practice, there was no difference between the three types of PDR. It appears that the

process of referral to a particular service for a particular matter is not straightforward, and that a number of approaches may need to be applied. The bottom line is that FMs are concerned that parties involved in a particular matter have a chance to clarify the issues in dispute and reach a satisfactory resolution. The following statements represent the thinking of various FMs regarding this issue.

“There is no difference between mediation and counselling. Although in theory, according to the NADRAC definitions, which have a purist view of PDR, there is a difference”

“The NADRAC definition of mediation requires that people have a desire to mediate. In the FMC I refer parties to mediation whether they want to mediate or not. I do not send parties to a pure form of mediation.”

“The definitions are artificial and blurred. Even in mediation I suspect that clients are provided with legal advice when the definition of mediation says that legal advice should not be provided.”

“Property matters are more suitable to conciliation, child matters are better for mediation and counselling is not very different from mediation.”

“I have never attended a mediation or conciliation. I don’t know how effective it is. I am told that conciliation is more directive.”

“I refer matters to mediation where people are on an even playing field and there is no power imbalance. If there is a power imbalance I refer them to counselling.”

“If people need more assistance, then I refer them to mediation. People need to have input into their own healing process and understand their children’s needs.”

“These terms do not exist in the real world. There is no pristine definition of mediation, conciliation or counselling. All I can say is that they all have the same purpose, that is, to help empower the parties. It is necessary for the parties to reach conclusions that they can both live with. They need to take ownership of their resolution.”

“Years ago there was a passive mediation model. Now there is a more active model. Mediators and conciliators are pressured by results.”

“Counselling is needed where parties need a better understanding of the other person’s point of view. Counselling helps the parties to reflect on what the other person is saying. It is necessary to have that time with a third party to draw out the concerns. Parties need to grow in respect and understanding for long term solutions.”

2. Client responses

The relevance and appropriateness of PDR service:

Clients were generally satisfied that the service was appropriate for their needs. There were many comments by clients that were supportive of the process. The sessions allowed them to effectively and constructively interact with the other party in the dispute and to effectively deal with issues that lead to a resolution of the matter. On the other hand, there are many other clients who are not satisfied with the process. For those matters that did not achieve settlement, or where conflict was protracted and entrenched, opinions were more divided. The comments below provide some indication of these sentiments.

“My ex and I come from non-Australian background therefore we did not have the same mentality as the mediator. This is not taken into account – the fact that mediation was not appropriate for us.”

“Process is severely hobbled by solicitors instructing either party to say and do nothing...being a father went against me because the court decision is always biased towards the mother.”

“Ongoing mediation should be compulsory where court proceedings involving children have been initiated, preferably before going to court.”

“Counselling should be a compulsory back up if either party refuses or hinders the process.”

Matters that should not be referred to PDR at all:

Clients were not directly asked to comment on this issue. However, a number of comments on the survey indicate that clients have reservations when the dispute is protracted, when there is a history of disputes, or when there is a case of domestic violence.

“Many problems that go to court are rooted in past disputes and are usually complicated. No amount of talking to a mediator (no matter how understanding they are) is going to get parties to agree usually.”

“A bull headed ex-husband who will not negotiate or see reason and wants his day in court.”

“As I had been subject to domestic violence, separate rooms were necessary. This wasn't accommodated for.”

Satisfaction with the processes and services of the PDR program:

Clients were asked to respond to a number of items on the survey designed to evaluate their degree of satisfaction with the PDR process and outcomes. The extent of agreement and disagreement with these statements is included in the following figures. Figure 5 reports the number of client respondents who expressed the extent of their agreement or disagreement with three items regarding satisfaction with the referral process. Clients generally agreed or strongly agreed that the procedure of court referral and arranging sessions was satisfactory, that the purpose of the session was explained to them, and that they understood the process when first referred by the court to attend the sessions. There are a number of clients who do not agree with these statements and these clients are generally those for whom a settlement was not reached for their particular matter.

Figure 5: Satisfaction with PDR procedure (clients)

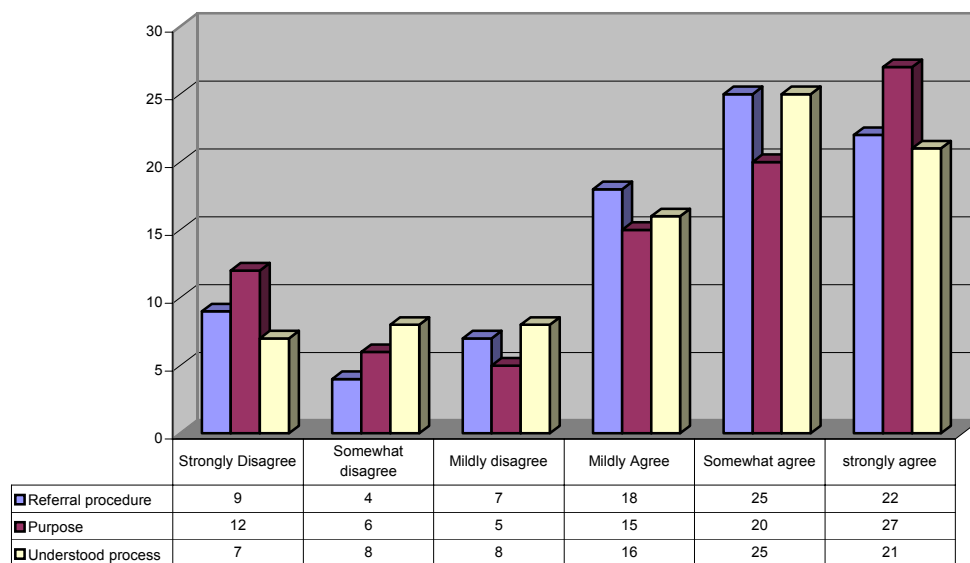
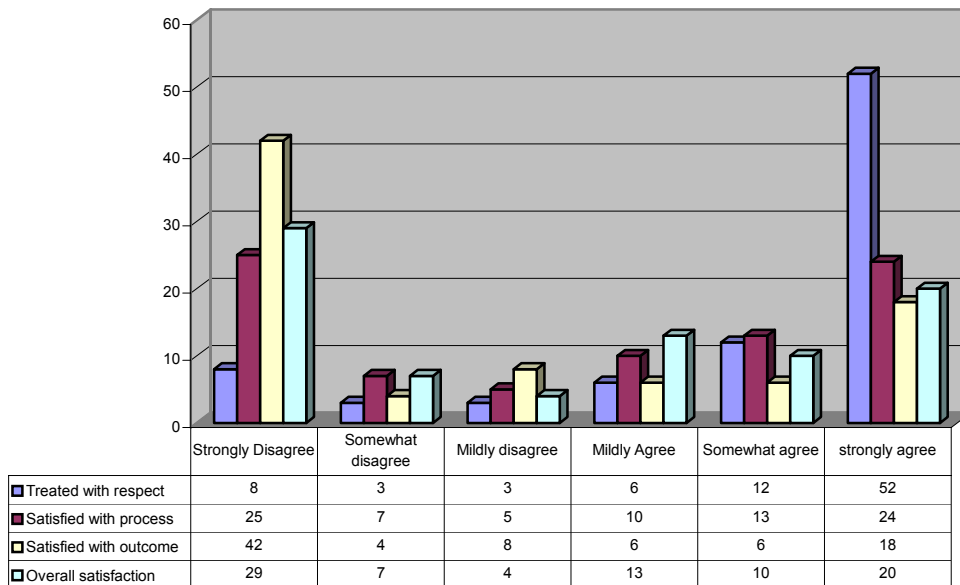


Figure 6 reports the extent of client agreement with items such as the degree to which clients were treated with respect in the process, and the degree to which they were satisfied with the process and outcomes of the PDR sessions. One thing is of interest in this pattern of results. While clients were not always satisfied with the outcomes (e.g., clients do not always achieve a settlement), they generally were satisfied with the process and believed that they were treated with respect in the process.

Figure 6: Satisfaction with process and outcome (clients)



“I particularly liked the way I was treated by staff and the mediator as I did not have legal representation. I was fully informed step by step as to the procedure and treated respectfully. I did not feel intimidated in any way and my questions were answered with honesty and accuracy.”

“I didn’t have to be in the same room as my ex yet we still came to an agreement with our lawyers involved. We didn’t have to see or speak to each other or argue any points.”

“No court room nerves.”

“The process was more informal and therefore less stressful.”

“It provided the opportunity for both parties to express their views and opinions in a safe, unbiased arena with an experienced mediator to keep responses going in the direction they were meant to.”

“It was pushed towards the end as if there was a time limit. I didn’t think that was appropriate when major decisions about my children’s lives were being made.”

“We didn’t get a chance to negotiate our figures together, we could have got a result I believe. We ran out of time.”

“Female mediator seemed one sided and more or less said I wouldn’t get weekend access. All for the mother.”

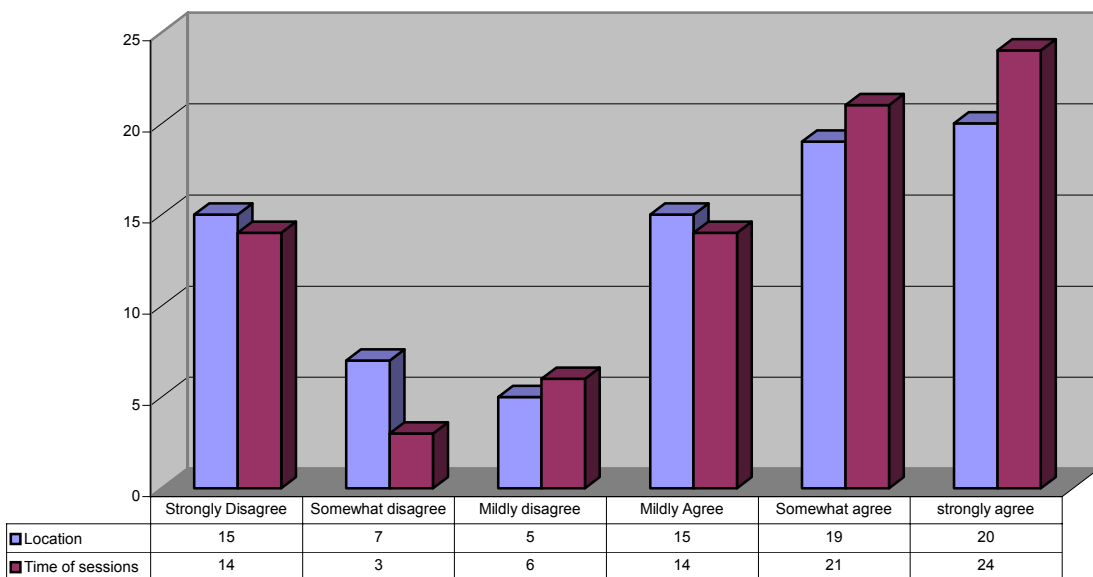
“Constantly humiliated by the mediator who sided with the mother over us (grandparents) in residency issues. The mediator symbolically patted the mother on the back every time she said something. When we explained that her claims were lies, she would brow beat us down.”

“The outcome is not final so basically it was a waste of time and effort when it’s agreed but then not enforced in court.”

The convenience of services delivered to clients in their local community:

Two items on the survey asked clients if the location and timing of the sessions were convenient for them. While some clients did not agree with these statements, the trend in the data suggests that clients were content with these arrangements. Nonetheless there were some negative comments in this regard. The spread of opinion is also reflected in the comments listed below.

Figure 7: Location and timing of sessions convenient (Clients)



“The fact that I didn’t have to travel to Dandenong again and appear in court.”

“The location favoured the father who does not have the child. He’s in Geelong and I am in Bendigo. There is a Centrecare branch here yet I had to do mediation via the phone.”

“The mediator only worked Fridays.”

“Location – I had to travel from the Sunshine Coast to Brisbane.”

“Having to travel to Melbourne and make alternative care arrangements for my son until my return.”

“I live in outer metro and the only place was the city. I do not drive much which means a 4 hour round trip on public transport.”

“Location was in the city - I couldn't find it. It was early morning. I would have liked to have it closer to home.”

“Had to check the car every two hours to avoid fines.”

The degree to which clients re-engage with agencies when agreements break down:

Only a small number of clients reported that they needed to renegotiate their agreement following settlement (approx. 10%). Of these, approximately 40% said that they returned to the agency to renegotiate the settlement. While this is a positive sign, the numbers involved are quite small and care should be taken in interpreting these figures. A long-term investigation of specific cases is required, which enables the tracking of particular matters over an extended period, before clear conclusions can be drawn.

“One issue was heard before a Federal Magistrate. All other issues were agreed upon after a meeting between the two parties after mediation and orders drawn up by my solicitor.”

The inconsistent uses of terminology in the PDR process:

Clients were not asked if they understood the difference between mediation, counselling and conciliation, nor did they make specific comments on this issue in responses to open-ended questions on the survey. What is of interest here is whether clients understood the purpose of the referral, and whether they understood the process. Fifty-four percent (54%) of respondents somewhat agreed or strongly agreed with the statement “When I was first referred by the court to attend, I understood the process” and 55% of respondents somewhat agreed or strongly agreed with the statement “The purpose of the process was explained to me before I got to the session”. This indicates that clients generally thought they were well informed about the process and its purpose before they came to the session. This does not mean that their perceptions will not change once they arrive at the agency. In fact agencies report that clients arrive with minimal knowledge of the process and what to expect from it, and they need to spend considerable time explaining the process to clients (see agency results below).

3. Client satisfaction and group differences

Predictors of client satisfaction

For the current sample, an exploratory data analysis was conducted to identify a number of items from the survey that could reliably measure client satisfaction. These items were averaged to provide an overall client satisfaction score for each respondent. The items included in this scale were:

“I was treated with respect”

“I was satisfied with the process”

“I was satisfied with the outcome”

“The mediator helped us to think about things from a practical point of view”

“Based on my experience, I think mediation would help resolve other disputes in which I might be involved”

“If a friend had a similar problem to mine, I would recommend going through this process”

“I understood the agreements reached at the end of the sessions”

“Overall the mediation process was satisfactory in my case”

A further analysis was undertaken to test whether various demographic variables would predict overall client satisfaction scores. In this case, age, sex, location (metropolitan/regional), and State of origin of the respondents were used as a set of predictors of client satisfaction. None of these variables were statistically significant in the prediction of overall client satisfaction. A further set of variables (type of matter, prior experience of mediation, and settlement success) was included as a set in the prediction. The only variable that was a strong predictor of overall client satisfaction was settlement success.

These results suggest that in the current sample, overall client satisfaction was not affected by type of matter, sex of respondent, State of residence, whether the client lived in metropolitan or a regional area, or whether the client had been to mediation previously. The only significant predictor of client satisfaction in this analysis is whether or not a settlement was achieved. These results are not surprising given that the majority of clients are in the process of dispute resolution in order to reach a settlement on a particular matter.

While this analysis suggests that successful settlement outcomes are the primary predictor of a global measure of client satisfaction, there are some differences between groups (e.g., male versus female; metropolitan versus rural) on particular survey items that are informative (as reported below). Analysis at the item level can provide further insights into the ways in which the program can be improved. For example, particular efforts should be made by both FMC and CBOs to ensure that males engaged in the PDR process are well informed about the process and treated with respect.

An analysis was conducted to determine if there were significant differences in client responses on various survey items based on demographic variables. While the differences in mean scores on these items were small, in some cases the differences were nonetheless statistically significant (i.e., not simply due to chance or random variation).

Sex differences: The items on which male respondents scored differently from female respondents included:

“I knew that attendance at the sessions was compulsory”

“I was treated with respect”

“The rules and procedures of the mediation session were clear”

“The mediator helped us to think about things from a practical point of view”

“If a friend had a similar problem to mine, I would recommend going through the process”.

Females scored higher or more positively on all of these items. It appears that females report more positively than males on particular aspects of the PDR process. However, males and females did not differ on their scores on the global measure of client satisfaction.

Metropolitan versus regional clients: There were minor differences between metropolitan and rural clients with rural clients generally more positive in their attitudes. The statistically significant differences were found on the items “I knew that attendance at the sessions was compulsory” and “The mediation process was unsuitable for my type of matter”. No significant difference was found between metropolitan and rural clients on the global measure of client satisfaction.

Property matters: Clients who reported attending conciliation for a property matter generally reported more positive scores on all items compared to those who had a mix of property and other matters or those with no property matters for mediation, although statistically significant differences were found on only a small number of items (e.g., “The purpose of the session was explained to me before I got to the session”). Once again, scores on the overall measure of client satisfaction were not significant for those with property matters and those without.

Settlement or not: While there were no significant differences on the global measure of client satisfaction, some differences were found at the item level for those who achieved a settlement at mediation and those who did not. Predictably, the general pattern of responses indicates that those who achieve a settlement have more positive opinions of the PDR process. Significant differences were found on the following items:

“I was treated with respect”

“I was satisfied with the outcome”

“The mediator helped us to think about things from a practical point of view”

“If a friend had a similar problem to mine, I would recommend going through the process”

“I understood the agreements reached at the end of the sessions”

“The mediation process was unsuitable for my type of matter”

Those clients who reported reaching a settlement in mediation scored higher on each of these items. What is of interest to this analysis is that there were no significant differences found on items such as “I was satisfied with the process” or “overall the mediation process was satisfactory in my case”. These results also suggest that, while clients are not always happy with the outcomes, they are not totally disappointed with the process.

4. Agency responses

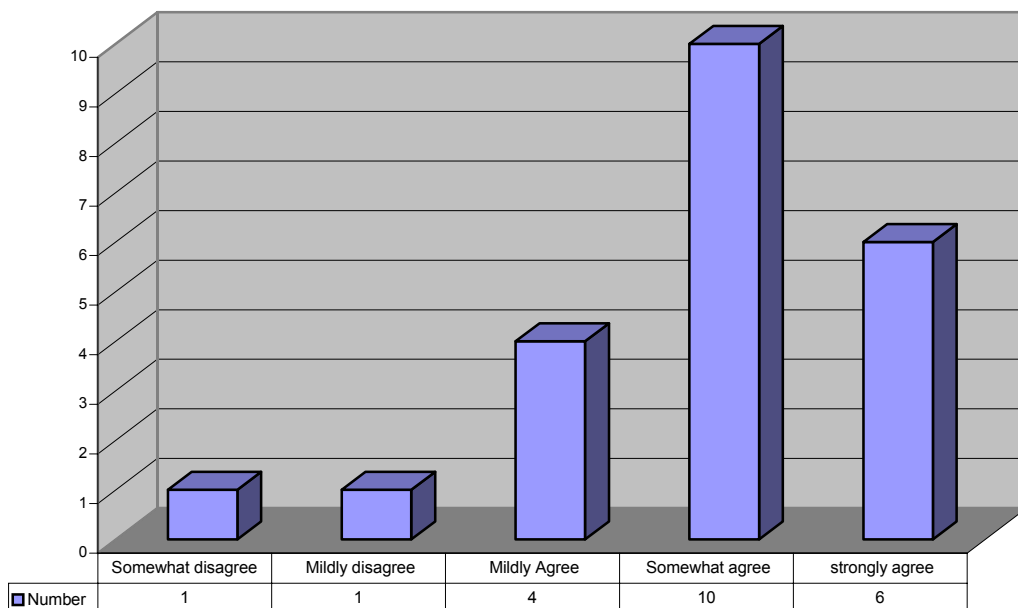
The relevance and appropriateness of PDR services delivered to clients:

Survey responses indicate that 73% of agencies (16) reported that the types of matters referred to them are relevant for the services they offer (see Figure 8). Agency

representatives who were interviewed generally agreed that most matters are suitable for referral to PDR services, but there were a number of caveats. Parties to a dispute need to be willing to attend and to negotiate a satisfactory outcome. Cases where there is a history of protracted conflict are not suitable for this type of process (see below for a discussion of matters not suitable for PDR).

In the focus groups and interviews, it became apparent that there are issues in relation to a) the types of services individual agencies are contracted to deliver, and b) the accurate application of these definitions of those types of services to particular cases. In other words, when a FM refers a matter, he or she may not necessarily specify the most appropriate service required for the effective resolution of the matter. Furthermore, the agency to which the matter was referred may or may not have a contract to deliver that service. In addition, agency representatives reported receiving inappropriate referrals at times. These were usually matters that are listed below as unsuitable for PDR services, particularly those matters where there was a history of intractable conflict and disputes. In this context, agencies suggested a review of the types of services that they are contracted to deliver. Where possible, and when agencies have appropriately qualified staff, agencies should establish a contract to deliver an integrated set of services.

Figure 8: Agency satisfaction with type of matters referred



Matters that should not be referred to PDR at all:

All agencies (except one) suggested that matters with a history of violence or child abuse, or when the conflict is entrenched and advanced, are unlikely to benefit from PDR services. Cases where there is a power imbalance between parties, or when parties have a psychiatric or intellectual impairment, are difficult to manage within the constraints of PDR. Comments that agency representatives made in this respect include the following:

“The subject matter of the dispute is irrelevant if the clients are in a high conflict situation. We do not have power like the courts to regulate people’s conduct. Therefore high conflict situations are not suitable.”

“The PDR referral forms have spaces for family violence and child abuse however, it is inappropriate to refer these matters to PDR. You cannot negotiate around family violence.”

“Child abuse allegations cannot be investigated or resolved by mediation. The same applies to family violence.”

“Matters where high levels of violence and years of polarisation are present.”

“Factors present that compromise individual party’s capacity to mediate (e.g. mental health).”

Agencies are generally equipped to handle matters where domestic violence or child abuse has been present (for example, using a ‘shuttle’ process between parties while conducting the mediation). However, these cases are not always straightforward and during the course of the mediation, agency staff may perceive the need for more extensive intervention to deal effectively with the issues that arise during mediation. While agencies may have the resources to deal with this, the interventions required often go beyond the contracted counselling services under the PDR contract. Consequently, these matters are not likely to be addressed effectively under the contracted arrangements and fee structures for PDR, unless the clients agree to return for such services outside the mediation. Referral to other agencies and services may be required and the clients would need to seek alternative sources of funding for that service.

Satisfaction with the processes and services of the PDR program:

All respondents in the interviews and focus groups were generally happy with the administrative processes, including email submission of forms and referral information. This was further echoed in the open ended comments on the survey where many of the respondents indicated that what they liked most about the PDR process were the new electronic forms. The forms were an efficient and more cost effective way of dealing with matters.

“(Improved) Electronic transfer of information between FMC and agency.”

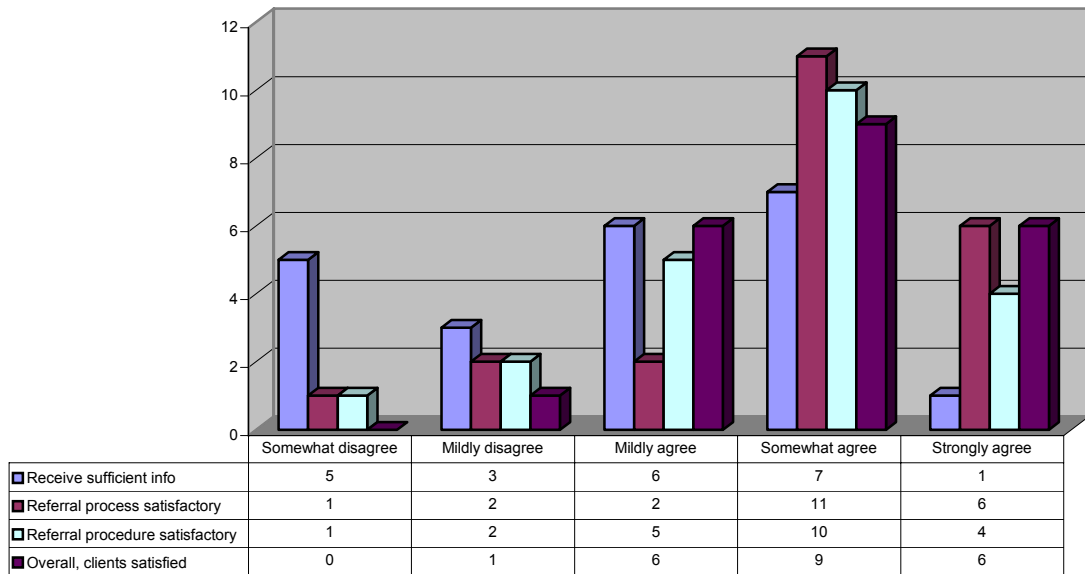
“The forms are now more detailed”

“Good process, good communication, clear and efficient.”

“There is an opportunity to assist parties before they lose even more money and self confidence in their abilities.”

Figure 9 reveals the extent of agency agreement and disagreement with a set of statements designed to capture agency opinion on the processes and services of the PDR program. Results indicate that agencies are generally very happy with the services provided to them by the PDR unit. Suggestions for improvement to the program emerging from the interviews, focus groups, and open-ended questions on the survey are a genuine attempt by agency representatives to deliver good outcomes for clients and to maximise the benefits of the program.

Figure 9: Items reporting satisfaction with PDR process (Agencies)



From the above, it is clear that agencies are generally very positive about the PDR procedures and process. The area where agencies are less positive is in the extent and type of information received about matters referred for mediation. Suggestions included the need to improve the amount of information provided to agencies in relation to particular disputes. While the referral forms and the amount of information provided have improved considerably, there are some further refinements that may be undertaken. However, these issues may well be addressed if a decision is made to more effectively track particular matters through the system.

While there are resource implications for the PDR unit in providing extra information to meet these needs, agencies suggested that it would be useful to obtain more complete information about the current dispute, interim orders that may be in place, information about previous orders, and family reports if any. By the same token, the intake interview process should also highlight matters of relevance to the current dispute.

“Inadequate/insufficient information about clients, i.e. where they are up to with court proceedings.”

“We are not given enough information about the reasoning of the Federal Magistrate. The referral forms do not provide us with this information. It is not clear to us what issues have been settled and what issues still need to be decided.”

“To get a copy of the operational orders – copy of latest orders often only contains minimal clauses on referral to PDR and next court date. We need a copy of the orders that are in place at the time of the new dispute.”

“The framework is legalistic and does not reflect how we feel about the case. It is difficult to get extensions of time when they are necessary.”

“Difficulty re clarity about some referrals – some inaccuracies (referral different to court order) and lack of clarity around counselling and mediation – from my discussions with the local magistrate and his associate, there is not a crystal clear preference for counselling/mediation in referrals. Rather they tick the box and leave it to the agency to decide on the better intervention.”

There was also a general perception amongst agency representatives that clients need to be more informed about the PDR process in order to generate appropriate expectations of the process and likely outcomes. Agency participants in focus group discussions suggested that, in many cases, considerable time was taken in initial contacts with clients to provide information about the mediation process and where it fits in to the progress of the disputes before the court, and to make client expectations of the process more explicit.

“Clients not well informed – often confusion about mediation and counselling.”

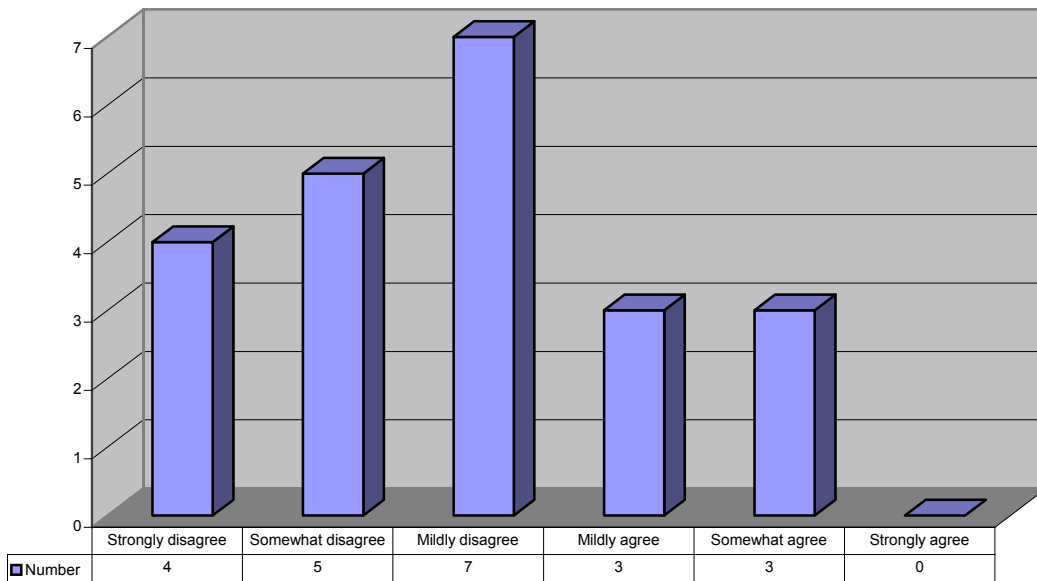
“Information sessions should be provided by the court for the clients. The court needs to explain what will happen in PDR. It is bad enough for the clients having to go through a separation without being lost in legal jargon of the courts.”

“Clients need to be more informed. They do not know why they are coming. Some clients think they have a choice whether to attend. They do not know that it is compulsory. It is either the solicitor’s role or the court’s role to inform the parties.”

This sentiment was also reflected in response to the item “Clients come from the courts adequately informed about PDR processes”. Responses to this item are included in Figure 10. Agencies consider that clients are not well informed about the process when they are referred from mediation. This opinion differs from the clients’ perception that they generally consider themselves well informed about the process (as reported

earlier). When this result was put to agency participants in focus group discussions, the explanation given is that clients often do not fully appreciate the implications and nuances involved in the process when they first arrive. Consequently, clients may have unrealistic expectations of the process and this requires extensive information exchange by the mediator before the mediation process can begin. These perceptions can only be properly tested in a more extensive, *in situ* research project.

Figure 10: Clients are adequately informed (agency response)



A number of agencies raised the importance of Child Inclusive Practices in influencing settlement outcomes. Although some agencies have sought permission to include Child Inclusive Practices for specific cases, it was felt that Child Inclusive Practices should become standard procedure. Agency representatives in the focus groups felt that this would improve the outcomes of the PDR process. By focusing on the needs of their children, agencies report that the focus of the parents moves away from themselves to consider what outcomes would be in their children’s best interests.

“Having to seek approval in order to undertake child inclusive mediation in individual cases.”

“Short turn around time before next court hearing. Inability to incorporate child inclusive practice without approval.”

“Could increase the types of processes that clients are referred to: anger management workshops, kids groups or support groups.”

“In order to adequately deal with some matters we require increased flexibility and an increase in time.”

“It would be helpful if we could have a way to make comments and recommendations to the court at the end of the referral. Some parties require further interventions or family reports.”

The convenience of services delivered to clients in their local community:

While agencies were not asked to directly comment on this issue, some agencies reported that this is an issue for some of their clients. While every attempt is made to localise services for clients, some inconveniences are inevitable (see comments from clients above on this issue). Furthermore, there is a limit to the number of agencies that can be funded to provide services and some areas, particularly regional areas, are better serviced than others. It is imperative that FMC staff ensure that a referral is made to the appropriate contracted agency in a locality closest to the client. However, this means that one or other of the parties to the dispute may still find this arrangement inconvenient.

The degree to which clients re-engage with agencies when agreements break down:

One possible indicator of program success is the degree to which clients return for PDR services if agreements require renegotiation. Agency representatives who were interviewed suggested that they were aware that some clients were returning, although the data on this is limited and is not specifically collected. In the focus groups, most agencies reported that they do not track these cases and were therefore unable to make a comment in this regard.

Survey responses indicate that only a small number of cases return for further services. Respondents to the agency survey indicated that a total of 11 matters had returned for renegotiation in those agencies, however 59% of agency respondents mildly agreed or somewhat agreed with the statement “Our clients return to us if agreements require renegotiation”. This can be interpreted in light of interview and focus group data, which reports that, while numbers of clients do return, there is no formal tracking of these clients to provide reliable information. Several agency representatives, indicated their

system would allow them to track this quite easily and that it would be beneficial to do so. They also raised the issue that people may be re-engaging with an agency but at a different location since they might have moved. One other difficulty is that clients in this situation would need to pay for these services themselves and this may be a disincentive for some.

The time spent on managing and delivering PDR interventions:

Funding allocation for the service is primarily based on three mediation sessions plus intake. As reported above, agencies spend around 5.3 hours on each case. While there is some debate about the time required to reach an effective settlement or agreement in some cases, agency staff estimated on average that approximately 38% of cases would benefit from extra time in sessions. Responses to the survey item “The number of approved sessions allocated is adequate in most cases” indicated that 59.1% of agencies mildly agreed or somewhat agreed with this statement. Only 2 agencies strongly agreed with this statement.

In some cases, return dates in order to report in time to meet deadlines for court appearances, do not always provide enough time for adequate assessment and resolution of matters. In other cases, it is clear that the referral is inappropriate and should not have been made in the first place. These cases can often be assessed early in the process – usually during intake. However, some cases would benefit from a number of extra sessions, especially those in which progress is being made towards a satisfactory settlement.

“It is important to be able to slow the process down and even send clients to separate counselling to better prepare them for their joint session. This requires time and often many sessions over an extended period.”

Agencies were concerned that the fee structures do not adequately address the administrative overheads of managing and administering the referral. Activities such as liaison between the PDR unit and the agency, arranging appointments with clients, record keeping, following up, reporting outcomes are all part of the service provision and need to be adequately represented in the fee structure.

“These clients are high maintenance and they often make phone contact between scheduled sessions or need follow up after mediation to ensure they negotiate any last minute resistance. It is difficult to account for this time.”

The inconsistent uses of terminology in the PDR process:

The majority of agency representatives interviewed said that there is a discrepancy between the FMC definitions of mediation, conciliation or counselling and their organisation’s definitions. As indicated above, some confusion occurs at the agency level when matters are referred. This is not surprising given that the FMs have different approaches and ideas about the services to which clients are being referred. Responses to the relevant survey item also reflected wide differences of opinion on this issue. While 54.5% mildly agreed or somewhat agreed with the statement that agency definitions of mediation, conciliation, and counselling are the same as the FMs, 45.5% disagreed with this statement.

After the intake assessment, the agency may consider that the client requires a different form of service than that requested on the referral form. At this point, the agency may be in the situation where an alternative intervention is indicated, but they are not contracted to provide that particular service. For example, after an intake assessment, a particular agency may consider that counselling is appropriate. However, the court has referred the client for mediation services, but the agency is only contracted to deliver conciliation services.

These are matters that need to be addressed in an ongoing way through processes of education and consensus about what services are actually required when clients are referred. It also raises the issue about the nature of the contracts that particular agencies hold with the FMC, and whether all agencies should be tendering for a range of service provision. Again, this becomes particularly important if services are to be made available to clients in their local communities where possible. The following quotes from agency interviews are an example of the ways in which agencies deal with various approaches.

“Parenting matters work better for conciliation. Conciliation is more directive than mediation. You can talk about parenting plans, best interests of the child principles and give more guidance to parents about contact hours and residency issues.”

“Counselling is better for one on one interaction. It is better to deal with conflict at an individual level usually where there is domestic violence. Counselling is also used for interviewing children.”

“The FMC defines mediation differently from the way we define it. We believe that counselling deals with emotional matters and mediation deals with conflict resolution but the FMC definition embraces both.”

“When the FMC refers matters to us for counselling we send them to conciliation where children are involved.”

“Mediation is a more appropriate process where the parties are not mandated or ordered. The effectiveness of mediation is not limited to one type of matter. Conciliation is appropriate where parties are mandated because it is more interventionist and it produces outcomes that are consistent with what the courts are trying to achieve.”

“Counselling is most appropriate for parents, post order situations or where children need to get involved in the process. In the case of mediation - we refer matters of lower conflict or less directive matters to mediation.”

“We refer matters of high conflict to conciliation. Where parties have a limited capacity to resolve their disputes and do not acknowledge concerns- need more time to educate people and how these things affect children.”

5. Legal practitioner responses

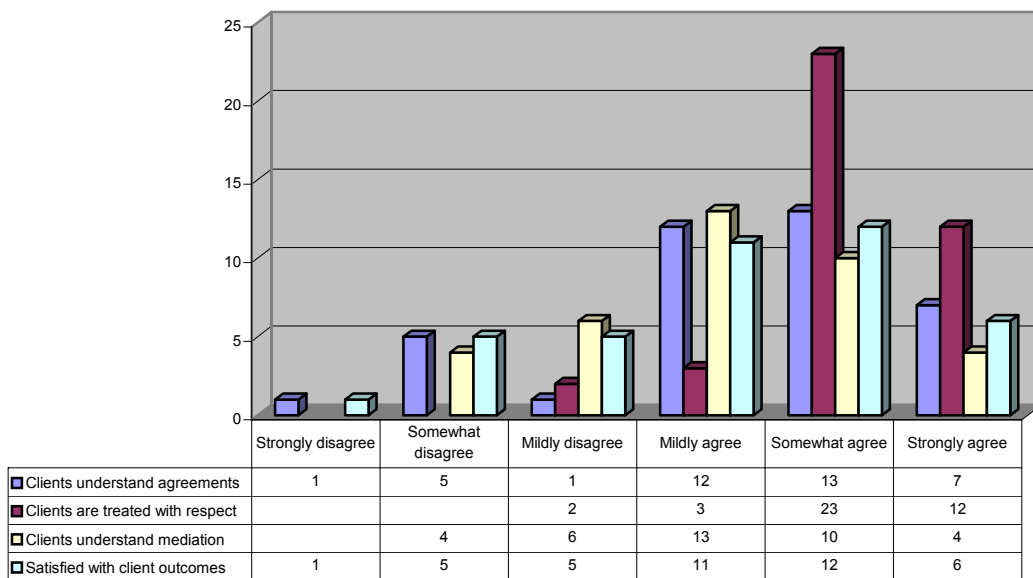
Legal practitioners who responded to the survey are likely to be supportive of the PDR process. The response rate for this group is quite low and it is not known whether this group of respondents is representative of lawyers involved in PDR processes. However, the responses of this group are reported below.

The relevance and appropriateness of PDR services delivered to clients:

A number of items on the survey were designed to capture lawyer perceptions of the PDR process and its suitability for their clients. Most respondents to the survey regularly refer their clients to mediation (72% somewhat or strongly agreed with this with this statement), think mediation helps to resolve disputes (67.5% somewhat or strongly agree), but are not strongly committed to having more of their clients referred (37.5% somewhat or strongly agree).

Figure 11 reports on responses to items regarding satisfaction with client outcomes from the PDR process. While there is strong support for the statement “To the best of my knowledge, clients are treated with respect by the agencies”, there is a spread of opinion amongst legal practitioners on the extent to which clients understand the mediation process, whether clients understand the agreements reached at the end of the sessions, and whether they are satisfied with outcomes for their clients. However, the trend is for more positive responses to these items.

Figure 11: Satisfaction with client outcomes (Legal practitioners)



“It empowers both parties to express their concerns and the solution they are seeking in an unprejudiced and formal setting. Sometimes this is the first time clients hear the other parties’ concerns.”

“We try to refer most of our matters to mediation. We have had a high success rate – particularly in relation to property matters.”

“Both parties need a willingness to mediate so it does not become an extension of the process that led to the commencement of proceedings.”

“It would be good to have a local ‘pre-action’ mediation service at a reasonable cost. The lack of referrals outside formal litigation is annoying due to people ‘taking positions’ before PDR.”

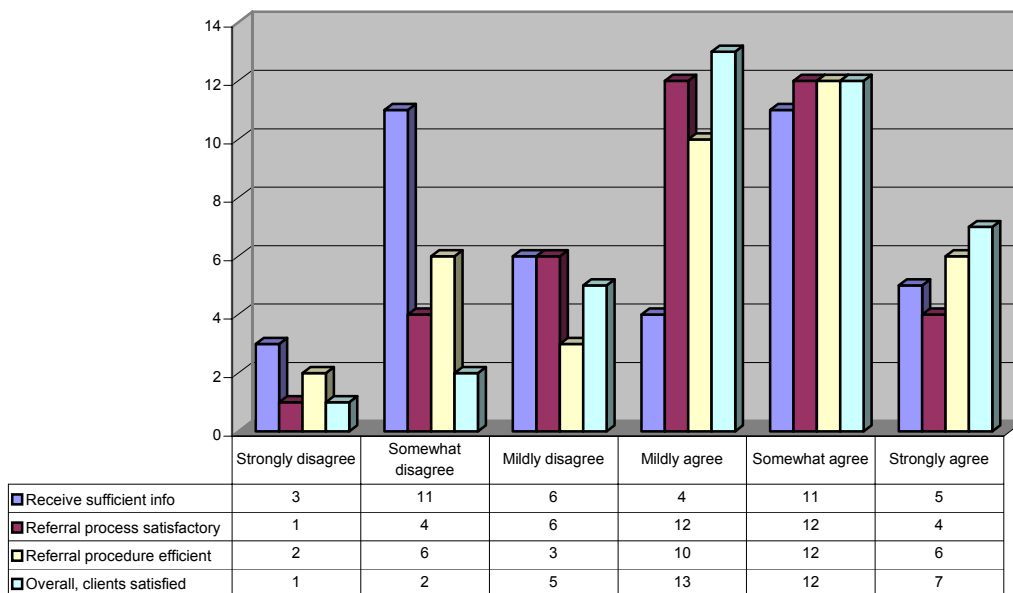
“Some matters are referred to mediation following long term relationships of control, oppression or violence. Often the relationship of the parties is characterised by the dominance of one party to the detriment of the other.”

“Mediation is amoral – in other words – the resolution of the matter (regardless of the fairness) seems to be regarded as the only concern – sometimes this assists the bully or the obstinate party.”

Satisfaction with the processes and services of the PDR program:

In Figure 12, responses to a series of items reporting legal practitioner perceptions of the PDR process and procedures are reported. Generally, lawyers who responded expressed positive opinions about PDR. Similar to the responses by agencies, lawyers also reported a degree of dissatisfaction with the adequacy of information received from the FMC regarding their clients in the PDR process.

Figure 12: Satisfaction with PDR process (Legal practitioners)



“The issues can be crystallised in an expedient manner and less confrontational environment.”

“It allows for exploring the issues in a case and better prepare for the hearing if matter does not settle.”

“We regard the mediation process as valuable and a far better option than litigation.”

“Its ability to divert appropriate matters to be dealt with in a less adversarial fashion and allow parties in a safe and structured setting, to identify their own issues and outcomes.”

“The lack of involvement by legal representatives though they are still expected to draft ‘enforceable’ terms if the matter settles.”

The convenience of services delivered to clients in their local community:

While lawyers were not specifically asked to respond to this issue in the survey, a number of respondents commented on this issue in open-ended questions that asked respondents to indicate what they liked the most and what they liked least about the PDR process. The following comments are an indication of respondent opinion regarding the convenience of services to clients.

“Having experienced local mediators helps save on client travel.”

“In Brisbane, the venue is not as convenient as attending a conference in the Commonwealth Law Courts building – parking is a problem.”

“Distance clients have to travel to obtain mediation.”

“That it occurs at Windsor, a very difficult place for clients to get to, particularly from southern areas – e.g. Gold Coast, South Brisbane suburbs.”

“The venues where mediations are held are rarely comfortable or conducive to negotiation.”

The degree to which clients re-engage with agencies when agreements break down:

Legal practitioners were not asked to directly address this issue and are generally not in a position to know if their clients return to agencies for services.

The time spent on managing and delivering PDR interventions:

While legal practitioners were not directly asked to comment on the time spent on delivering PDR services, a number of respondents expressed an opinion about the PDR process and the role of legal practitioners in helping or hindering settlement. In some cases, lawyers were of the opinion that the need for a PDR process can ‘hold up court proceedings’ or extends the period that clients are in the system. There are others who suggest that lawyers can also be part of the problem if they rely totally on the court process to achieve settlement rather than work towards a mediated settlement with their clients.

“The knowledge that time is needed between settlement and possible resolution for the parties to come to terms with the separation.”

“Ensuring that all of the information is available at the time of negotiation.”

“Increases the length of time that clients are in the system.”

“It holds up court proceedings.”

“Quite often, matters are simply not capable of being settled because of ‘who’ is representing the other party. There is a minority of solicitors who simply do not settle very much at all. They are bogged down in mindless and irrelevant detail and want to ‘fight the fight’ – ‘client clones’ I think they are called!”

Matters that should not be referred to PDR at all:

Legal practitioners generally reflected similar opinions to FMs and CBOs in respect of the types of matters that are not suited to mediation.

“Matters involving power imbalances – usually associated with cultural differences between parties.”

“Matters where one party is likely to intimidate the other.”

“I work with a high number of people involved in violent relationships and often have difficulty getting the other party (usually the male party) to attend mediation.”

The inconsistent uses of terminology in the PDR process:

Legal practitioners were not asked to comment on this issue.

CONCLUSION AND RECOMMENDATIONS

The central findings of this report are that the FMC PDR program is well regarded and works well. However, the program needs to be improved so that future growth of the program is not impeded by organisational impediments and lack of knowledge. Improvements to the process revolve around enhancing information flows and knowledge; refining organisational and inter-organisational knowledge; and organisational flexibility and structure.

- *Enhancing information flows and knowledge:* Central to the future success of PDR is information. Clarifying the information needs of various stakeholders in the PDR

process is critical, and is likely to be an ongoing process. FM's need more data and information about how matters proceed and on outcomes in PDR to help them make decisions about referring matters. CBOs need more information from the courts about disputes sent to them in order to assist them to more quickly understand the clients needs (and expedite matters). Legal practitioners need more information about the PDR process and the progress of clients through the process. Clients need more information about PDR so that they arrive better prepared to understand the nature of the processes involved and the roles of each party (including their own) in those processes.

- *Refining organisational and inter-organisational knowledge:* While it is clear that the FMC, FMs, and CBOs share a common concern for better, more effective and more efficient dispute resolution through PDR, room exists for negotiating how to better articulate the needs of each organisational sector in the PDR system. To achieve this, information flows (discussed above) need to be reviewed to provide common understandings and knowledge about critical issues and processes. Based on common understandings of the issues, refinements to the system can be made. For example, there are different understandings of what conciliation, mediation and counselling mean; a range of different views about what matters are best suited to PDR processes; a range of views about what constitutes a successful PDR process; and different levels of knowledge about additional services (e.g., anger management, child inclusive practices) that could be usefully included to resolve PDR matters. While different views on critical issues are acceptable and useful, there is also a need for some common understandings and assumptions to bring the coherence needed in order to further improve the effectiveness of the program.
- *Organisational flexibility and structure:* FMs and CBOs highlighted the need to build more organisational flexibility into the PDR system to facilitate speedier and more appropriate dealing with cases. For example, an improved system for emergency referrals; more flexibility in varying time allocations by CBOs to individual matters; and the need to change the point in the system at which decisions are made about what is most appropriate for clients were raised in this study. Furthermore, an improved tailoring of the FMC's administrative and funding arrangements to align with CBO business models (such as Child Inclusive Practice

models) need to be addressed to ensure that the FMC and CBOs properly understand the cost implications for CBOs of performing PDR work. This may require more flexibility in assessing cost structures and paying fees. The FMC should consider how to better integrate legal practitioners within the PDR program's organizational framework. Finally, our data suggests that the structure of the PDR system in providing convenient, local access to the PDR system should be reviewed to provide a better service to clients.

From the point of view of all stakeholders, the FMC PDR service is considered both valuable and effective. Nonetheless, there is, as it is with any organisation, always room for improvement. Communication Partners therefore strongly recommends that the FMC respond to these findings. The imperative for responding to these findings is largely based on the success of the existing PDR program and the assumption that this success and the considerable amounts of goodwill towards the program should ensure that the program continues to play a more and more important role in the community.

In short, further success will ensure that levels of activity in the system will grow considerably in the future. With increased levels of activity will come greater organisational complexity, the potential for higher transaction and opportunity costs (to all stakeholders), and reductions in the efficiency and effectiveness of the program. There is therefore a need for a highly refined organisational structure to support the continued success and growth of the program while coping with increased complexity, and a need to limit reductions in effectiveness and increases in transaction and opportunity costs to the FMC and the PDR system as a whole.

Recommendations

1. Communication Partners recommends that the FMC respond to the above findings by implementing a well-designed process to engage a representative sample of all stakeholders in the PDR program to facilitate discussions around our findings. A meeting or series of meetings associated with a national conference would be an ideal starting point for this process. Specifically, this process along with the data and findings from this evaluation should provide the FMC with a starting point for answering more specific questions about organisational knowledge, processes and structures that support the operation of the PDR program.

2. Communication Partners also recommends that the FMC respond by implementing a parallel process for tracking matters in the PDR system. Such a system could be a bar-code based system and/or combined with a web-based tracking system. The tracking system should be designed to provide information to assist decision making about PDR by the FMC, individual FMs, CBOs and clients. It will be important to make sure that the validity and reliability of the data provided through such a tracking system is suitable for providing excellent decision making support. It will therefore be important to carefully resolve issues such as identifying the dimensions of the PDR system that should be tracked and the best data to track each dimension.

This evaluation suggests that answers to some of these questions are not necessarily straightforward. For example, questions about definitions of different PDR processes need to be attended to, defining what constitutes ‘success’ in PDR requires thoughtful consideration, and a range of questions about what data needs to be collected for use in deciding on the suitability of particular cases for PDR prior to matters entering the PDR system also needs to be assessed. This study suggests that many CBOs are in a position to assist with the provision of data.

3. We recommend that a larger and nationally significant research project is designed by FMC and contracted CBOs in collaboration with university researchers to address fundamental gaps in knowledge about the operation and effectiveness of the PDR program. Knowledge provided by such a project would contribute to making the tracking of ADR matters more accurate, improve the overall performance of the system, and, more generally, contribute important knowledge about PDR processes and outcomes that will contribute to better practice, professional training and community education in PDR.

APPENDIX A - Surveys

Client Survey

PDR Unit letterhead

Dear (Client name)

Evaluation of the Primary Dispute Resolution Program

I have contacted you because you have been a recent client of the mediation referral process in the Federal Magistrates Court. I hope you can assist us.

An evaluation of the dispute resolution services provided for matters referred by the Federal Magistrates Court is currently being undertaken. Communication Partners from the University of Queensland have been contracted to conduct this independent evaluation.

Clients of the court, as well as agencies and lawyers involved in the process, have been invited to participate in a survey. This *confidential* survey invites you to provide some information and feedback on the service you received.

Attached is your copy of the survey. I have mailed this survey to you directly from the court. Your **completed survey** should be placed in the attached **reply paid envelope** and **returned directly to Communication Partners**.

The staff involved with the referral service will not see individual survey responses, and your name and contact details have not been provided to Communication Partners. This strategy has been adopted to ensure that your responses will remain *confidential* and *anonymous*.

If you have any questions regarding the survey, feel free to contact me. If you would like to talk to someone at Communication Partners about any aspect of the survey, contact details are provided on the survey form.

We value your feedback and hope that you will take the time (about 10 minutes) to complete the survey.

Thanks for your participation.

Susan Cibau
PDR Co-Ordinator

Telephone: (03) 8600 4468
Facsimile: (03) 8600 8206
Email: susan.cibau@FMC.gov.au

CONFIDENTIAL



**COMMUNICATION
PARTNERS**

Communication Partners
Centre for Social Research in Communication
University of Queensland Qld 4072

March 2003

Dear respondent

As indicated in the cover letter, this is your copy of a *confidential* survey that has been sent to you from the Federal Magistrates Court (FMC).

The aim of the survey is to gather feedback on your experience of mediation processes when a Federal Magistrate referred you for mediation, conciliation or counselling sessions. All responses are strictly *confidential* and will remain *anonymous*.

Section 1: The following questions help us describe the group who complete the survey.

Age _____ years

Sex Male Female

(Please tick the following as appropriate)

In which State do you live? ACT NSW NT QLD
 SA TAS VIC WA

In which location do you live? Metropolitan Regional

Have you been through mediation processes more than once? Yes No

Indicate the nature of the most recent matter/s referred for mediation in your case (please tick appropriate box or boxes):

- Contact issues Financial issues other than property Child abuse issues?
 Residency issues Other (specify)
 Property matters Family violence issues

How many mediation sessions were you involved in? _____

Approximate length of these sessions: _____ hrs

Did you achieve a settlement as a result of this process? Yes No

If yes, did you have to renegotiate this agreement? Yes No

If yes, did you return to the original agency to do that? Yes No

Section 2: The following questions ask you to indicate your level of satisfaction with different aspects of the referral and mediation process.

Please circle the number which best indicates your level of agreement with each of the following statements. *Please use the following scale to choose your answers:*

Strongly Disagree	Somewhat Disagree	Mildly Disagree	Mildly Agree	Somewhat Agree	Strongly Agree	
1	2	3	4	5	6	
1. When I was first referred by the court to attend these sessions, I understood the process	1	2	3	4	5	6
2. The procedure of court referral and arranging the sessions was clear and efficient	1	2	3	4	5	6
3. The purpose of the process was explained to me before I got to the session	1	2	3	4	5	6
4. I knew that attendance at the sessions was compulsory	1	2	3	4	5	6
5. I was treated with respect	1	2	3	4	5	6
6. I was satisfied with the process	1	2	3	4	5	6
7. I was satisfied with the outcome	1	2	3	4	5	6
8. I understood what was going on while I was in the sessions	1	2	3	4	5	6
9. The rules and procedures of the mediation sessions were clear	1	2	3	4	5	6
10. The mediator helped us to think about things from a practical point of view	1	2	3	4	5	6
11. Based on my experience, I think mediation would help resolve other disputes in which I might be involved	1	2	3	4	5	6
12. If a friend had a similar problem to mine, I would recommend going through this process	1	2	3	4	5	6
13. I understood the agreements reached at the end of the sessions	1	2	3	4	5	6
14. Overall the mediation process was satisfactory in my case	1	2	3	4	5	6
15. I thought the mediation process was unsuitable for my kind of matter	1	2	3	4	5	6
16. The location of the sessions was convenient	1	2	3	4	5	6
17. The time of the sessions was convenient	1	2	3	4	5	6

Section 3: Open-ended questions

Sometimes, survey responses do not enable a person to fully express his/her opinion. In the space provided, please respond to the following questions in your own words. If you need more space, please use the back of this sheet.

What did you like the most about the mediation process?

What did you like the least about the mediation process?

What is one thing you would like to change about the mediation process?

What was the biggest problem you had when trying to settle the matter?

What was the outcome of the matter?

Were the parking, time and other arrangements for the mediation process satisfactory?

Thank you for your participation.

If you would like to talk to anyone at Communication Partners about this survey, please contact:

Peta Ashworth
Business Manager
Communication Partners
Centre for Social Research in Communication
University of Queensland Qld 4072
t: 07 3346 9389
m: 0423 022 158

Please forward your completed survey in the envelope provided. If you have lost the envelope, please forward your completed survey to:

Peta Ashworth (380)
Communication Partners
Centre for Social Research in Communication
Reply Paid 67074
University of Queensland Qld 4072

Once again, thank you for your participation. We welcome your feedback, as it will help us give an accurate picture of the value of this service to you, and to assist us to improve the service in the future.

✂-----

Volunteers for focus group discussions

While it is not required for you to put your name on this survey, we are asking for volunteers to participate in a group discussion. We would like the opportunity to discuss the preliminary results of our survey with a group of interested volunteers before we finalise our report.

Please indicate below whether you would be interested and available to attend one of the sessions listed below. Please leave us your name and direct daytime phone number. This will indicate your willingness to participate and your agreement for us to contact you with details of the session.

Melbourne: Monday 29 March 2004

Brisbane: Wednesday 31 March 2004

Name: _____ **Daytime phone:** _____

Note: This page will be removed from the survey as surveys are received.

Agency Survey

PDR Unit letterhead

Dear (Agency representative)

Evaluation of the Primary Dispute Resolution Program

The court's external Primary Dispute Resolution program is currently being evaluated prior to calling for tenders for new contracts beyond June 2004. Communication Partners at the University of Queensland have been contracted to conduct this independent evaluation.

A number of interviews have been conducted with Federal Magistrates and with a number of Agency representatives. Contracted agencies, clients, and lawyers involved in the process are now invited to participate in a survey. This *confidential* survey invites you to provide some information and feedback on the service.

Attached is your copy of the survey. This survey has been mailed to you directly from the court. Your **completed survey** should be placed in the attached **reply paid envelope** and **returned directly to Communication Partners**.

The court will not see individual survey responses, and your name and contact details have not been provided to Communication Partners. This strategy has been adopted to ensure that your responses will remain *confidential* and *anonymous*.

If you have any questions regarding the survey, feel free to contact me. If you would like to talk to someone at Communication Partners about any aspect of the survey, contact details are provided on the survey form.

We value your feedback and hope that you will take the time (about 10 minutes) to complete the survey.

Thanks for your participation.

Susan Cibau
PDR Co-Ordinator

Telephone: (03) 8600 4468
Facsimile: (03) 8600 8206
Email: susan.cibau@FMC.gov.au

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**COMMUNICATION
PARTNERS**

Communication Partners
Centre for Social Research in Communication
University of Queensland Qld 4072

March 2003

Dear respondent

As indicated in the cover letter, this is your copy of a *confidential* survey that has been sent to all agencies providing Primary Dispute Resolution (PDR) Services under contract with the Federal Magistrates Court (FMC).

The aim of the survey is to provide feedback on the experience your organisation has had in dealing with aspects of matters referred to you by the court. It therefore should be **completed by a person who is involved in such matters**, and who has a broad understanding of your organisation's experience in those activities. All responses are strictly confidential and will remain anonymous.

Section 1: The following questions help us describe those who complete the survey.

(Please tick the following as appropriate)

State of operation

- ACT NSW NT QLD
 SA TAS VIC

In which location do you operate?

- Metropolitan Regional

Has your organisation conducted any mediation processes referred by the FMC in 2003

- Yes No

Indicate the nature of the matters referred to your organisation (please tick appropriate boxes):

- Contact issues Financial issues other than property Child abuse issues
 Residency issues Other (specify)
 Property matters Family violence issues

Total number of matters referred to your organisation in 2003 _____

How many of these matters were:

Settled _____

Partially settled _____

Not settled _____

On average, how many sessions does your agency spend on each matter? _____

Approximate length of sessions _____

Of the matters settled, how many have returned to you for renegotiation? _____

Section 2: The following questions ask you to indicate your level of satisfaction with different aspects of the Primary Dispute Resolution (PDR) process.

Please circle the number which best indicates your level of agreement with each of the following statements. *Please use the following scale to choose your answers:*

Strongly Disagree	Somewhat Disagree	Mildly Disagree	Mildly Agree	Somewhat Agree	Strongly Agree
1	2	3	4	5	6

- | | | | | | | |
|-------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|---|
| 1. We receive sufficient information from the courts about matters referred to us | 1 | 2 | 3 | 4 | 5 | 6 |
| 2. We are satisfied with the referral process | 1 | 2 | 3 | 4 | 5 | 6 |
| 3. We are satisfied with the type of matters referred | 1 | 2 | 3 | 4 | 5 | 6 |
| 4. We would like more matters to be referred to us | 1 | 2 | 3 | 4 | 5 | 6 |
| 5. The procedure of court referral and arranging client sessions is efficient | 1 | 2 | 3 | 4 | 5 | 6 |
| 6. Clients come from the courts adequately informed about PDR processes | 1 | 2 | 3 | 4 | 5 | 6 |
| 7. Too many matters are referred to us | 1 | 2 | 3 | 4 | 5 | 6 |
| 8. Our mediators to work with clients in a practical way | 1 | 2 | 3 | 4 | 5 | 6 |
| 9. All things considered, our clients are generally satisfied with the agreements reached at the end of the PDR process | 1 | 2 | 3 | 4 | 5 | 6 |
| 10. Our definition of mediation, conciliation, and counselling is the same as the Federal Magistrates | 1 | 2 | 3 | 4 | 5 | 6 |
| 11. The number of approved sessions allocated is adequate in most cases | 1 | 2 | 3 | 4 | 5 | 6 |
| 12. When more time is needed, it is a simple and timely process to have extra sessions approved | 1 | 2 | 3 | 4 | 5 | 6 |
| 13. We believe that the PDR process is not suitable for <i>all</i> matters | 1 | 2 | 3 | 4 | 5 | 6 |
| 14. bOur clients return to us if agreements require renegotiation | 1 | 2 | 3 | 4 | 5 | 6 |
| 15. Overall, the PDR process is satisfactory for our clients | 1 | 2 | 3 | 4 | 5 | 6 |

Section 3: Open-ended questions

Sometimes, survey responses as above do not enable a person to fully express his/her opinion. In the space provided, please respond to the following questions in your own words. If you need more space, please use the back of this sheet.

What did you like the most about the mediation referral process?

What did you like the least about the mediation referral process?

What is one thing you would like to change about the mediation referral process?

What is typically the biggest problem when trying to settle a matter?

Indicate the matters that your organisation regards as most appropriate to be referred for mediation.

- | | | |
|-------------------------------------------|---------------------------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> Contact issues | <input type="checkbox"/> Financial issues other than property | <input type="checkbox"/> Child abuse issues? |
| <input type="checkbox"/> Residency issues | | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Property matters | <input type="checkbox"/> Family violence issues | |

What matters would your organisation regard as inappropriate to be referred for mediation?

What proportion of matters would benefit from additional sessions? Approx. _____%

Thank you for your participation in this survey.

If you would like to talk to anyone at Communication Partners about this survey, please contact:

Peta Ashworth
Business Manager
Communication Partners
Centre for Social Research in Communication
University of Queensland Qld 4072
t: 07 3346 9389
m: 0423 022 158

Please forward your completed survey in the envelope provided. If you have lost the envelope, please forward your completed survey to:

Peta Ashworth
Communication Partners
Centre for Social Research in Communication
University of Queensland Qld 4072

Once again, thank you for your participation. We welcome your feedback as it will help us give an accurate picture of the value of this service to you and your clients.

✂-----

Volunteers for focus group discussion

While it is not required for you to put your name on this survey, we are asking for volunteers to participate in a group discussion. We would like the opportunity to discuss the preliminary results of our survey with a group of interested volunteers before we finalise our report.

Please indicate below whether you would be interested and available to attend one of the sessions listed below. Please leave us your name and direct daytime phone number. This will indicate your willingness to participate and your agreement for us to contact you with details of the session.

Melbourne: Monday 29 March 2004

Brisbane: Wednesday 31 March 2004

Name: _____ **Daytime phone:** _____

Note: This page will be removed from the survey as surveys are received.

Legal Practitioner Survey

PDR Unit letterhead

Dear (Lawyer name)

Evaluation of the Primary Dispute Resolution Program

A short evaluation of the court's external Primary Dispute Resolution program is currently being conducted prior to calling for tenders for new contracts beyond June 2004. I have contracted Communication Partners from the University of Queensland to conduct this independent evaluation.

A number of interviews have been conducted with Federal Magistrates and with a number of Agency representatives. Contracted agencies, clients, and lawyers involved in the program are now being invited to participate in a survey. This *confidential* survey invites you to provide some information and feedback on the service.

Attached is your copy of the survey. I have mailed this survey to you directly from the court. Your **completed survey** should be placed in the attached **reply paid envelope** and **returned directly to Communication Partners**.

The court will not see individual survey responses, and your name and contact details have not been provided to Communication Partners. This strategy has been adopted to ensure that your responses will remain *confidential* and *anonymous*.

If you have any questions regarding the survey, feel free to contact me. If you would like to talk to someone at Communication Partners about any aspect of the survey, contact details are provided on the survey form.

I value your feedback and hope that you will take the time (about 10 minutes) to complete the survey.

Thank you for your participation.

Susan Cibau
PDR Co-Ordinator

Telephone: (03) 8600 4468
Facsimile: (03) 8600 8206
Email: susan.cibau@FMC.gov.au

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**COMMUNICATION
PARTNERS**

Communication Partners
Centre for Social Research in Communication
University of Queensland Qld 4072

March 2003

Dear respondent

As indicated in the cover letter, this is your copy of a *confidential* survey that has been sent to lawyers involved in Primary Dispute Resolution (PDR) processes in the Federal Magistrates Court (FMC).

The aim of the survey is to gather feedback on the experience of your practice in dealing with matters referred for Primary Dispute Resolution services by the Federal Magistrates Court. It therefore should be completed by a person/s who is involved in such matters and who has a broad view of your practice's experience in those activities. All responses are strictly confidential and will remain anonymous.

Section 1: The following questions help us describe the group who complete the survey.

Please tick the following as appropriate:

State in which your practice is located

- ACT NSW NT QLD
 SA TAS VIC WA

In which location do you practice?

- Metropolitan Regional

Have any of your clients been referred by the courts for mediation to an external agency in 2003?

- Yes No

Indicate the nature of the client matter/s referred (please tick appropriate boxes):

- Contact issues Financial issues other than property Child abuse issues?
 Residency issues Other (specify)
 Property matters Family violence issues

Total number of matters in which your practice was involved _____

How many sessions were you or a member of your practice directly involved? _____

Approximate length of these sessions _____

How many of these matters concluded the process with an agreed settlement? _____

Of these concluded matters, how many have returned to you for renegotiation? _____

Section 2: The following questions ask you to indicate your level of satisfaction with different aspects of the Primary Dispute Resolution (PDR) process.

Please circle the number which best indicates your level of agreement with each of the following statements. *Please use the following scale to choose your answers:*

Strongly Disagree	Somewhat Disagree	Mildly Disagree	Mildly Agree	Somewhat Agree	Strongly Agree
1	2	3	4	5	6

1. I regularly refer clients to mediation 1 2 3 4 5 6

2. Based on my experience, I think mediation helps resolve disputes in which I have been involved 1 2 3 4 5 6

3. I receive sufficient information from the court about matters referred for mediation/conciliation 1 2 3 4 5 6

4. I am satisfied with the referral process 1 2 3 4 5 6

5. I am satisfied with the type of matters referred 1 2 3 4 5 6

6. I would like more of my clients to be referred 1 2 3 4 5 6

7. The procedure of court referral and arranging the mediation session is efficient 1 2 3 4 5 6

8. Clients leave the courts adequately informed about the PDR process 1 2 3 4 5 6

9. To the best of my knowledge, my clients understand the agreements reached at the end of the PDR process 1 2 3 4 5 6

10. I think mediation is unsuitable for many matters 1 2 3 4 5 6

11. Overall, the PDR process is satisfactory for my clients 1 2 3 4 5 6

12. To the best of my knowledge, my clients are treated with respect by the agencies 1 2 3 4 5 6

13. I am satisfied with the client outcomes from the mediation process 1 2 3 4 5 6

14. The rules and procedures of the mediation are clear to my clients 1 2 3 4 5 6

15. My clients understand what is going on in mediation 1 2 3 4 5 6

16. In my opinion, too many matters are referred to mediation 1 2 3 4 5 6

Section 3: Open-ended questions

Sometimes, survey responses do not enable a person to fully express his/her opinion. In the space provided, please respond to the following questions in your own words. If you need more space, please use the back of this sheet.

What do you like the most about the mediation referral process?

What do you like the least about the mediation referral process?

What is one thing you would like to change about the mediation referral process?

What is typically the biggest problem when trying to settle a matter?

Indicate the matters that your organisation regards as most appropriate to be referred for mediation.

- | | | |
|-------------------------------------------|---------------------------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> Contact issues | <input type="checkbox"/> Financial issues other than property | <input type="checkbox"/> Child abuse issues? |
| <input type="checkbox"/> Residency issues | | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Property matters | <input type="checkbox"/> Family violence issues | |

What matters would you regard as inappropriate to be referred for mediation?

What proportion of matters would benefit from additional sessions?

Approx. _____%

If you would like to talk to anyone at Communication Partners about this survey, please contact:

Peta Ashworth
Business Manager
Communication Partners
Centre for Social Research in Communication
University of Queensland Qld 4072
t: 07 3346 9389
m: 0423 022 158

Please forward your completed survey in the envelope provided. If you have lost the envelope, please forward your completed survey to:

Reply Paid
Communication Partners
Centre for Social Research in Communication
University of Queensland Qld 4072

Once again, thank you for your participation. We welcome your feedback, as it will help us give an accurate picture of the value of this service to you and your clients.

✂-----

Volunteers for focus group discussion

While it is not required for you to put your name on this survey, we are asking for volunteers to participate in a group discussion. We would like the opportunity to discuss the preliminary results of our survey with a group of interested volunteers before we finalise our report.

Please indicate below whether you would be interested and available to attend one of the sessions listed below. Please leave us your name and direct daytime phone number. This will indicate your willingness to participate and your agreement for us to contact you with details of the session.

Melbourne: Monday 29 March 2004

Brisbane: Wednesday 31 March 2004

Name: _____ **Daytime phone:** _____

Note: This page will be removed from the survey as surveys are received.

APPENDIX B – Percentage responses

Client Survey

Item	Percentage responses*	StD	SoD	MD	MA	SoA	StA
1. When I was first referred by the court to attend these sessions, I understood the process		8	9	9	19	29	25
2. The procedure of court referral and arranging the sessions was clear and efficient		11	5	8	21	29	26
3. The purpose of the process was explained to me before I got to the session		14	7	6	18	23	32
4. I knew that attendance at the sessions was compulsory		5	5	3	9	8	69
5. I was treated with respect		9	3	3	7	14	61
6. I was satisfied with the process		29	8	6	12	15	28
7. I was satisfied with the outcome		49	5	9	7	7	21
8. I understood what was going on while I was in the sessions		9	6	3	16	27	36
9. The rules and procedures of the mediation sessions were clear		12	3	7	12	28	36
10. The mediator helped us to think about things from a practical point of view		15	5	11	9	31	26
11. Based on my experience, I think mediation would help resolve other disputes in which I might be involved		23	11	5	12	15	31
12. If a friend had a similar problem to mine, I would recommend going through this process		21	5	3	18	11	39
13. I understood the agreements reached at the end of the sessions		14	1	11	9	20	41
14. Overall the mediation process was satisfactory in my case		34	8	5	15	12	24
15. I thought the mediation process was unsuitable for my kind of matter		36	18	11	11	4	15
16. The location of the sessions was convenient		18	8	6	18	22	23
17. The time of the sessions was convenient		16	3	7	16	25	28

*Note: Where numbers do not add up to 100, this indicates missing data.

Agency Survey

Item	Percentage responses*	StD	SoD	MD	MA	SoA	StA
1. We receive sufficient information from the courts about matters referred to us		0	23	14	27	32	4
2. We are satisfied with the referral process		0	4	9	9	50	27
3. We are satisfied with the type of matters referred		0	4	4	18	45	27
4. We would like more matters to be referred to us		0	0	0	9	41	50
5. The procedure of court referral and arranging client sessions is efficient		0	4	9	23	45	18
6. Clients come from the courts adequately informed about PDR processes		18	23	32	14	14	0
7. Too many matters are referred to us		68	27	4	0	0	0
8. Our mediators work with clients in a practical way		0	0	0	0	14	54
9. All things considered, our clients are generally satisfied with the agreements reached at the end of the PDR process		0	0	0	45	41	14
10. Our definition of mediation, conciliation, and counselling is the same as the Federal Magistrates		14	18	14	32	23	0
11. The number of approved sessions allocated is adequate in most cases		9	9	9	27	32	9
12. When more time is needed, it is a simple and timely process to have extra sessions approved		0	4	36	14	14	9
13. We believe that the PDR process is not suitable for <i>all</i> matters		4	0	4	13	23	54
14. Our clients return to us if agreements require renegotiation		4	18	4	32	27	0
15. Overall, the PDR process is satisfactory for our clients		0	0	4	27	41	27

*Note: Where numbers do not add up to 100, this indicates missing data.

Legal Practitioner Survey

Item	Percentage responses*	StD	SoD	MD	MA	SoA	StA
1. I regularly refer clients to mediation		5	7	7	7	20	52
2. Based on my experience, I think mediation helps resolve disputes in which I have been involved		2	10	10	10	40	27
3. I receive sufficient information from the court about matters referred for mediation/conciliation		7	27	15	10	27	12
4. I am satisfied with the referral process		2	10	15	30	30	10
5. I am satisfied with the type of matters referred		0	7	7	32	37	12
6. I would like more of my clients to be referred		7	12	7	27	15	22
7. The procedure of court referral and arranging the mediation session is efficient		5	15	7	25	30	15
8. Clients leave the courts adequately informed about the PDR process		10	20	25	17	20	5
9. To the best of my knowledge, my clients understand the agreements reached at the end of the PDR process		2	12	2	30	32	17
10. I think mediation is unsuitable for many matters		15	17	25	10	15	15
11. Overall, the PDR process is satisfactory for my clients		2	5	12	32	30	17
12. To the best of my knowledge, my clients are treated with respect by the agencies		0	0	5	7	57	30
13. I am satisfied with the client outcomes from the mediation process		2	12	12	27	30	15
14. The rules and procedures of the mediation are clear to my clients		0	12	17	22	32	10
15. My clients understand what is going on in mediation		0	10	15	32	25	10
16. In my opinion, too many matters are referred to mediation		37	22	20	7	5	5

*Note: Where numbers do not add up to 100, this indicates missing data.

APPENDIX C – Open-ended comments - surveys

Clients

What did you like the most about the mediation process?

Efficiency

- It was quick
- Inexpensive
- Time of sessions
- Sorted out problems that needed to be sorted out

Individual Skills of Mediators

- The mediator was impartial and strong enough to keep it fair, not have one party too critical.
- The mediator was very good and tried hard to make my ex partner to see reason.
- The understanding from the mediator of my concerns and why I felt the way I did.
- The mediator did not look down on you or force questions out of you.
- Mediator tried to understand where each of us was coming from.
- That a lady conducted this process that was clear-headed and friendly, considering the difficult circumstances I found myself in.
- People were polite.
- Experienced counsellor who evaluated problems very quickly.
- Friendly people/mediator.
- Independent lawyer as mediator and go between.
- The mediators were very skilled and tried hard to help resolve the issues.
- Mediators very professional.
- Mediators sought for a realistic agreement on issues between parties.
- Mediator helpful.
- All parties are treated with respect.

Clients having a voice.

- It let me have my say without him getting over the top of me because someone else was there.
- I could do it without my ex partner in the room intimidating me.
- Gave us the chance to voice our concerns and what outcome we would like.
- Provided a forum when every other effort at communication had failed.
- Gave a chance to talk with a reasonable and honest person to try and construct a map of my child's future.
- Opportunity to get case across.
- Getting the thing out in the open.
- Enabled me to have a say without her yelling at me.
- Being able to talk to someone who didn't know either of us helped me.
- The mediator got both parties to get their point across and encouraged us to talk all matters through.
- The idea of a mediator is excellent as my ex wife's bitterness made any sort of discussion impossible.
- A process to help couples resolve their issues.
- It helped to see both sides (with the kids).

Less Stressful

- No judge was involved.
- More informal and relaxed.
- Chance to review issues calmly.

What did you like the least about the mediation process?

- Communication.
- Scary, it was my first time.

Client information

- That I wasn't informed enough about the process
- I didn't know why I was there or what needed to be accomplished

Power imbalances

- My ex husband left both sessions so we were unable to complete anything.
- As the other party was unwilling to cooperate, the progress was frustratingly slow (the process was very professional).
- The fact that he could leave without any attempt from him or the organisers to begin the process.
- The other party constantly refused to show up and the sessions were not rescheduled resulting in the process being stone walled and collapsing.
- Being in the same room as my ex was too stressful.
- Being in the same room as my ex partner after an abusive relationship.
- Being in the same room as my ex who tried to 'get to me' emotionally because I left him.
- Being in the same room as my ex. Concentrated too much on past issues and my background.
- The feeling of being attacked.
- The mediator put me and my ex husband in the same room without my legal representative.

Individual skills of mediators

- Badly run
- Mediator too concerned by his own time constraints.
- The mediator came to the discussion with a closed point of view. I was told what I was going to get as the decision had been made before they spoke to me.
- Mediator too easily led by other party on irrelevant matters.
- Mediator seems to take charge implying that decisions should be based on what a judge would decide if the matters were heard in court.
- The mediator gave me the impression that we were wasting her time.
- The mediator did not have enough control over the process. I.e. she spoke to me one day then him the next. I would have liked a 3 way conference call.
- I don't think she was in the right frame of mind to mediate. They didn't explain my situation to her, she wouldn't listen to me.
- The mediator, waste of time. I should have just rolled over before the session.
- I believe that the mediator was not impartial and this did not help with a fair settlement.
- That the mediation program has no actual power.

Lack of resolution

- Resolution was not able to be reached (not the fault of the counsellor).
- Plenty of talk but no outcome.
- That the other party could not be pressed upon to come to an agreement or even attempt to agree.
- Centred more for the mother's side.
- Not working it out

Issues around time and stress

- There was little opportunity to discuss matters connected to the process.
- The stress and the time it took which I am sure is unavoidable.
- The waiting while the mediator was in with my ex spouse (wondering what's going on in the other room and their discussions).
- The time factor - only 3 weeks to fit it in.
- Losing time from work.
- The 'contract' of children's matters did not allow reflection time.
- Protracted mediation, stressful.

- We had already had a legal aid meeting in Maroochydore where we had got nowhere. Relationships Australia experience was very much a replay of that event.
- My ex's reluctance to talk face to face made the process difficult and time consuming.

Other

- The process seemed inflexible.
- What was set down for at court was not acted on.
- The distance.

What is one thing you would like to change about the mediation process?

Personal Support

- That participants be encouraged to attend without their lawyers.
- To have my solicitor present at all times.
- I strongly agree that any legal representation should not include relatives. In both mediation processes I felt as if I was not only going up against my husband but also my brother in-law.
- Have legal counsel available, but the individuals MUST directly communicate.
- Make sure both parties are represented by their own lawyers and not stand-ins from their firms.
- The lawyers are removed from the situation. They were greatest reason for non-resolution.
- Perhaps have someone familiar to sit with me.

Location

- Having the matter dealt with in Bendigo (or locally).
- That a crèche or some kind of child care would be available nearby if needed.
- Location of sessions should favour the full time parent.

Enforcing attendance

- On the spot fines should be given for non-attendance (or something).
- Add more legality to it.
- Out come is enforced in court (agreements).
- That participation is mandatory for a reasonable period and if one party doesn't want to negotiate, they should appoint a representative (not a relative) to act on their behalf.
- That if the other party refuses to cooperate they should not be permitted to proceed with the court case. I believe this would prevent unnecessary court cases.

Fairness

- That what is said by both parties is confidential at these meetings. All claims and statements should be recorded and have weight in court.
- Mediators acknowledge how deceiving people can be.
- I do not believe that the children should be left in the company of one of the parties for the duration of the mediation. It was my experience that the children's views were influenced by the other party even after agreement had been reached separately with the children and the counsellor.
- More consideration to the father's side of proceedings.
- Separate sessions.
- I was quite satisfied so I can't really say what I would like to change.

Issues around time

- Stop wasting so much **** time!!!
- Not so long for mediation (4.5hours). I felt tired and exhausted from the emotional and mental stress.
- More time as a whole group. I felt the mediator was going from one to the other too much.
- It should be used first instead of lawyers for contact and residency issues.
- Follow up sessions may have been useful (from someone who had to settle because they ran out of time).
- Should have more sessions.

- It should be a compulsory requirement before court hearings.

Individual skills of mediators

- Make sure the mediators are impartial and not easily led by an expert liar.
- This is supposed to be a form of resolution. More power needs to be given to the mediator to control the sessions and they need to be more confident and strong.
- For the mediators to give their opinions more and treat both parties the same.
- Stronger mediators.
- That mediator has an open mind and does not make decisions before talking to both parties.
- A need for more rigorous supervision of the mediators to ensure matters are handled with absolute fairness.
- That the mediators have some input in the court's decision.

What was the biggest problem you had when trying to settle the matter?

- Talking
- Communication

Parenting

- Influence of other party on the children. In my case the children were reluctant to express their own opinion or to abide by the agreements that had been reached.
- Getting the mother to agree to be home when the kids are dropped off and picked up.
- The father not understanding that mediation is better than going to trial.

Entrenched Conflict

- My ex partner was vindictive and only wanted money – so settling was always going to be a difficult matter where I settle and can live with what I get.
- The other party's attitude.
- Getting through to my ex partner.
- No desire on my wife's part to express a willingness to participate.
- Sessions were hindered by constantly becoming focused on past grievances.
- Ex partners no compromise.
- Non attendance.
- Ex husband lying (I made his solicitor aware of the lies but at the end of the day all I could do was make an offer of money).
- Ex husband agrees for the sake of it but nothing changes. He reverts back to himself.
- Lack of negotiation
- Greed
- Stubbornness of ex partner regarding fairness of contact
- Not agreeing on an appropriate sum that my ex should be paid
- The other party wanted face to face mediation
- The other party wouldn't only agree to negotiations unless it was what he wanted
- My ex and his utter disregard for authority
- The other person not being flexible
- The unfairness of my ex when splitting our joint assets. I agreed in the end to be rid of him as I didn't have the money or will to fight in court.
- Solicitors lack of working with the process, rather than using it like a court case.
- Trying to decide whether or not mediation could resolve the issue because it involves compromise – ex-partner not prepared to compromise.
- The other party's lawyer interfered and took a stand for the client that was detrimental. Large legal bill down the track due to non-resolution.
- The other party and his solicitor being verbally aggressive.
- Different opinions.
- Dealing with anger, hate and lies. When your partner has had the power for 31 years they can't handle the truth.

- Ex husband kept walking out and was verbally abusive.
- Other party wanted it all his way.
- Dealing with a liar, having no support from the system that we pay for. The mother having all of her legal etc help free and not having to be responsible for what she says or does in the whole process (from grandparents).
- My ex is/was unreasonable. The same problems still persist today.
- My ex was represented by his brother and this seemed unprofessional and unproductive for both parties.
- That the other party was not obliged to participate.
- My ex was not represented by her lawyer and therefore the stand-in was not familiar with her case resulting in us being unable to reach a decision on the day. This could have been avoided instead it was to no avail.

Individual skills of mediator

- The mediator was more concerned with following procedure than finding a solution.
- Ex defacto lied continuously and mediator didn't want to hear my side of things. All for the woman.
- Mediator making decisions before talking to me the first time.
- Mediator would not listen to or do what court asked.
- Convince the mediator of my argument (week on – week off arrangement for the care of the kids).
- Having somebody understand what I had already been through.

Issues around time

- A time to go back to court to get a date to go back to court.
- Feeling very rushed through the decision making.
- Old problems that couldn't be resolved in a few sessions.
- Can't agree.

What was the outcome of the matter?

Not settled/Court

- Wife refused to participate in future sessions.
- No outcome.
- Still going.
- Off to Court.
- Pay more maintenance, stick to court orders, spend quality time with kids, spend two nights per fortnight rather than one.
- There was no agreement.
- My ex wouldn't settle until 15 minutes after I left so no outcome was reached and resulted in a court case.
- Trial in progress – 2 days gone and more to come.
- Still unresolved, psychological assessment done, pending court decision in April.
- My ex and I are still engaging in discussions in regards to the children.
- No outcome has been reached yet.
- The mother made 2 residency offers after leaving the meeting and within an hour had withdrawn both offers which we had accepted. As we felt the process was unsatisfactory, the suggestion of more sessions when we both work and the mother is unemployed, was opposed. The mediator suggested that if we loved our grandson we would make the time. She told us she would advise the court of more sessions but no further meetings were ordered. Overall a waste of time and an upheaval of emotions that the mother does not have to answer for.
- No agreement could be reached.
- I have not been informed at all.
- Not settled, settled prior to family court appearance.
- Children matters settled - property matters were not. I felt totally “shafted” by the whole process – not listened to at all.

- We came to an agreement but I was under duress and it fell through and went to court.
- Trial date listed for the 14th of April.
- So-so with the kids, house still going to trial.
- My ex-partner wanted it drawn up as a court order because he didn't have to pay his solicitors any money. The agreement was stamped in Court.

Settlement

- I sold my farm and my ex-wife wanted settlement that was only \$15,000 as I have custody of 5 children so I was happy with that result. Otherwise court was going to cost up to \$20,000.
- It was settled more on my ex partners side but in the end I could live with the outcome.
- We received contact every third weekend, holidays and birthdays.
- We had an excellent outcome. My ex partner and I are communicating well.
- Satisfactory settlement.
- A result that I was pleased with was achieved and I was happy it did not go through the courts.
- We settled our property and money matters.
- Determined in court. Outcome in accordance with counsellor's recommendations.
- I got stitched up again!
- We had to settle as there were no sessions left. The outcome on paper was satisfactory for a few weeks but I believe we are worse off now. Follow up sessions may have been helpful.
- The settlement was very prejudicial and the outcome did not allow me to partially recover what I had put into the home.
- Finally got what I wanted.
- 57% to her as she hid her assets, 43% to me so I could move on and try to start a new life.
- My children and I have access and regular contact with each other. We got everything we asked for and more.
- Fair but there may need to be changes in the future.
- Financial settlement of property was reached.
- I was pleased, but she still got more than really expected.
- She got everything she wanted property wise, there were no questions about values that she placed on things, they believed everything she said.
- I paid my husband \$4,000.
- The matter was settled out of court with solicitor acting on my behalf as I was unable to attend due to illness.
- He got 60%, I got 40%. He got the house, the car and paid me a figure that was not fair. (He has full custody of one child at my choice and we share custody of the other).
- I succeeded in my property claim.
- Settled on the day.
- Settled out of court with minimum amount being paid to my ex husband which was also very satisfying.
- For the mother. Father got two out of three weekends.
- Settled out of court.
- Finally got weekend access after family law report and child reps report were done. Eleven court cases later ex defacto refuses to do Federal Magistrate's mediation and gets away with it.

Extra Comments/Suggestions

- Thankyou for wasting even more of my time for court related processes. Now if you actually did something useful like changed it – that would be helpful. But perhaps I need to make a time to come in and make a time and make a time to come back and see you next year sometime. GET THE IDEA???
- We ran out of time.
- The grass isn't always greener on the other side, you just have to learn how to water it.
- The other parent refused to be in the same room at the same time, and he was not encouraged at all to participate on any issue. He had his say first and when I went in after he left, my lawyer and I established that a number of claims he made had been invented. As a used car salesman, he is

quite practised in inventing conversation. The mediators allowed him to leave before they advised me. A total waste of time.

- The time I felt was totally wasted, given the existing documentation provided previously which, if read, would given many indications of the other parties unwillingness to talk let alone take part in a mediation.
- I travelled from the Sunshine Coast, arranged for other carers to collect my children after school, I had my lawyer there and all for nothing.
- This service I think is excellent, but in my case the other party was not emotionally equipped to come to an agreement.
- The children had to be involved which was okay at the time but has caused some problems since.
- The mediator had told me what I was going to do and accept after only 5 minutes in the room. When discussing what I had done as far as improvements to the house at my expense I was told that was irrelevant. After paying roughly 40% of purchase cost and 100% of extension costs putting the value of the house from \$170 000 to \$300 000 and only receiving \$20 000 settlement after I paid all improvements and upkeep during the 3yrs as property owner, really was a poor result in my point of view.

Agency

What did you like the most about the mediation referral process?

Electronic Forms, Efficiency and Cost effective

- The new forms sent via email.
- Very efficient through email.
- Email referral.
- Ease of receiving referrals by email.
- Efficient online referral process.
- Efficient and cost effective.
- After some initial difficulty the referral process has usually been smooth and speedy.
- Its fast, gives a timeframe.
- Clients don't have to pay.

Administrative

- Provides contact details.
- Good relationship with Family Magistrates Court services.
- Letter from FMC to client.
- Coordination between FMC and service providers is efficient from initial contact and back-end processes (including supplying information and maps) enabling PDR workers to focus on the matter at hand, helping the parents.
- Good relations with referring staff that allows us to negotiate procedures in accordance with agency and client needs.
- The administrative aspects are efficient, approachable and responsive to any questions/issues.
- When details are clearly set out.
- Phone access to FMC is easy and reliable. Staff of FMC good and responsive.
- Very helpful FMC staff.
- The use of experienced non government mediation expertise.

The legal process

- Court orders ensured clients attended.
- Gives clients a chance to proceed amicably.
- It is clear to clients that the referral is through the FMC system and that they are returning to that system. This helps clients understand where mediation fits.

What did you like the least about the mediation referral process?

Clients being informed

- Parties need more information about PDR
- Clients did not know they were coming for their appointments.
- Clients usually unsure why they are attending.
- Client not knowing where mediation sits in the decision making process.

Information to agencies

- Sometimes not sure why clients are referred to us. Sometimes there is a mix up although overall much more efficient than at first.
- When up to date documents are not provided.
- Documentation unclear.

Definitions

- The confusion between professional terminologies.

Issues around time

- Unknown amount of referrals to be received.
- Shortness of timelines when a family report is required.
- Not having the freedom to have the number of sessions that best enables child inclusive conciliation counselling.
- All cases have been over the phone and it has been difficult and time consuming to get both parties to agree to a mutual time for mediation. As much time can be spent chasing this up as in mediation.
- FMC sending out duplicate letters confirming appointments. Time delays – crossing over arrangements led to confusion for clients. This matter has been successfully resolved through negotiation for this agency.
- Sometimes a short interval between receiving referral and next court date.
- That it has in the case of conciliation, come far too late.

Entrenched Conflict

- Parties are not always co-operative when trying to arrange appointments.
- Contacting antagonistic clients.
- Clients can agree in counselling sessions then walk away and change their mind. Clients have an expectation that they will agree on matters in the sessions and the counsellor will inform the courts of these discussions.

What is one thing you would like to change about the mediation referral process?

Information to agencies

- More background information.
- More appropriate information regarding clients and their legal status.

Clients being informed

- Clients being more informed regarding whole process and of the need to co-operate.
- Clients being better informed.
- I would like a letter to go out from FMC stating time and date of mediation once this has been negotiated with the referral agency.
- Better understanding on the clients' behalf of the process.
- More information to clients about mediation and where it fits in the dispute resolution process.

Issues around time

- The process for applying for extra sessions when needed should be quicker and just require a phone call to retain client continuity.
- Unpredictable times for referrals.
- Number of referrals.
- Clients need to be referred as soon as possible before further conflict escalates.
- That it occurred as early in the procession to court as possible – e.g. by lawyers at first meetings.
- To have at least 4 – 6 weeks to complete the process.

Children

- Child inclusive practice should be an option in all cases to be initiated by the mediator with agreement of the parties in cases deemed to be appropriate by the mediator.

What is typically the biggest problem when trying to settle a matter?

Children

- Having parents not argue about why the marriage broke down and focus on the children's welfare and care needs.
- With children's issues – parents who are unable to put aside their emotions and rights to see where the children are in the conflict – stuck emotionally.

- Getting clients to remain focused on the goals of the mediation and remaining child focused.

Entrenched conflict

- Entrenched positions and or lack of capacity.
- Getting clients to cooperate when they are entrenched and invested in their conflict.
- Entrenched conflict.
- Entrenched conflict and stress associated with litigation.
- Clients not willing to engage in negotiation and consideration of options.
- Conflict between parties – unwillingness to participate in mediation may be due to lack of understanding when referred on.
- When people are in entrenched positions from which they will not move.
- High conflict between parties.
- Unresolved emotional issues between separating couples.

Lack of preparation

- Lack of preparation: insufficient info re: superannuation.
- No evaluations.

Lawyers' intervention

- Some lawyers undoing the agreements or undermining the negotiation process.
- Parties' reliance on their lawyers when they have become too identified with adversarial modes of legal behaviour.
- Clients guided too much by legal advice re: their chances in court. Can be problematical – not always. Clients at the end of a length litigious process. One client not responding to the order. When a client is represented by legal and the other is not.

What matters would your organisation regard as inappropriate to be referred for mediation?

- Can't mediate Family Violence but can be a factor in issues requiring mediation.
- Family Violence cannot be mediated.
- Where child abuse is in the middle of being investigated.
- Family violence issues which involve a large power imbalance between the parties.
- Where there is a long history of conflict and non-resolution by the parties.
- Fiery foes probably need court first and last in many cases.
- Where there are serious child abuse cases.
- Use shuttle or telephone negotiation when violence present.

Extra Comments/Suggestions

- In some regional centres, the Federal Magistrates Court operates out of the Federal Family Court so few cases have been referred. We have had more family matter referrals from State Courts with clients expecting the mediation to be paid for. If these could be channelled through Family Magistrates Court services it would be good all round.

Legal practitioners

What did you like the most about the mediation referral process?

Empowerment of Clients

- The ability of the parties to work toward a mutual resolution assisted by legal advisors and skilled mediators.
- Referral to mediators outside the commonwealth/federal court system means that the mediators may not be as informed to court outcomes as Deputy Registrars. However, the mediators seem to take a more holistic approach to the issues and are willing to hear the clients' issues. This enables the client participant to be 'heard'. This may be the only time in the court process that this occurs.
- Further independent negotiations prior to defended hearing.
- Actual physical presence with the other party.
- Allows parties to voice issues even if they can't solve them, they are focused
- I think clients feel more 'engaged' in the mediation process than the court process
- The process is easier for clients to comprehend.
- It provides a process for clients to take control of their matters.
- Clients get a chance to talk directly to the other party.
- Enables clients to air issues that are not directly legal matters.
- Clients can appreciate how easily it is conducted if the matter suits.
- Invites clients to reach their own rather than imposed agreements.

Efficiency of time and money

- It's cheaper than lawyers.
- It results in matters being resolved expeditiously and in a cost effective environment.
- Some matters settle without having to proceed further.
- It provides a chance for resolution without the emotional and financial pressures of trial.
- The experienced mediators who are prepared to spend time trying to resolve the matter (as opposed to stating the law and making directions).
- Further opportunity to resolve without high legal costs.
- It's quick.
- Efficient and well conducted particularly in financial matters.
- Avoids time associated with court proceedings.
- The number of hours and the time dedicated to particular clients.
- It's less formal and less intimidating for the clients who are usually stressed by their circumstances.

Other

- The involvement of children's counsellors advocating the interests of children.
- Realisation of the 'powerlessness' of court decisions in difficult or close matters.
- The compulsion provided impetus.
- It is compulsory for clients to attend.

What did you like the least about the mediation referral process?

Forced resolutions

- Forces parties to have contact with each other when they don't want to.
- No compulsion for clients to be frank or honest, and is open to abuse by parties who are good at 'performing'.
- On occasions there seems to be a 'let's agree at any cost' mentality particularly when there is a power imbalance between parties.
- The fact that improper outcomes are 'forced' on good people by them being encouraged to be reasonable and compromise with the other party who is vindictive and manipulative.
- Relevant legal issues can be 'glossed over' for a 'settlement at any cost'.

Individual Skills of Mediators

- Effectiveness depends on the skill of individual mediators.
- Lack of venues and personnel.
- Variety of types and personalities of particular mediators.
- Inability of the mediator to provide legal opinion to bring about settlement compared with conciliation.
- The mediators' inability to deal properly with all of the facts.
- The mediators may not have sufficient experience with outcomes to 'guide' the clients and solicitors towards achievable outcomes.
- Do not know the qualifications or experience of external providers.
- Some mediators within the family court are too quick to give up on clients and mark files judicial determination required without persevering after advising one of the parties that their stance is without merit.
- The quality of the mediation given by various organisations varies enormously.
- Feedback from clients occasionally shows perceived bias or ignorance of issues by mediation.

Communication issues

- No one knows what is going on.
- Courts do not make it clear what is happening next.
- No one communicates.
- Mediation conducted without my direct involvement.
- Lack of court direction to agency – what is to be done or worked towards.

Organisational

- It is haphazard, lack of organisation.
- Unmitigated chaos with the appointment process.
- The lack of coordination in arranging.
- The family court is grossly understaffed.

Issues around time

- Time delays.
- Is not used often enough.

What is one thing you would like to change about the mediation referral process?

Communication

- Prior consultation with practitioners as to why this mediation is warranted.
- Clean up interagency structures to have the two work together rather than discretely.
- Greater training of mediators in relation to: jurisprudence, Family Law Act and the role of lawyer as negotiator in the process.
- More reporting of outcomes.
- Involve legal representatives so clients are aware of the consequences of any agreement and to advise if some agreements are practical and/or enforceable.
- Most mediation regarding parenting should be reportable.
- A detailed written report regarding each party's genuine involvement in the process.

Individual skills of mediators

- Specific mediators who have specialised knowledge.
- Give mediators the ability to spend more time on a matter.
- Improve the quality of mediators, have less reliance on counselling.

Accessibility

- It should be mandatory at some stage of every proceeding.
- Insufficient services available in regional Queensland.

- More venues.
- Courts have access to more PDR assistance.
- Having local mediation available.

Organisation

- A person who has a name, answers their phone and does their job.
- The lack of coordination in arranging.
- More organisation.
- Make it more efficient.
- The ability to successfully submit that a matter is or is not suitable for outside mediation.

Client Information

- More literature at the courts regarding the process may be helpful.
- A brochure with a referral letter made accessible to clients.

Issues of time

- That the session be organised much earlier in the process eg: prior to court application
- To be able to have more than one session if settlement is close or further disclosure or valuations may advance the matter

Children

- More emphasis on the children's welfare in child cases with a refocus away from the parents needs.

What is typically the biggest problem when trying to settle a matter?

Litigious Nature

- Differing perceptions of parties, which can often be result of inadequate or inexperienced legal advice.
- Unrealistic expectations of parties.
- Intractable clients – usually however, with the benefit of a skilled mediator who is also a lawyer, the problem can be overcome.
- Unresolved issues, either impeding settlement (i.e. agendas) or restricting settlement (i.e. some therapeutic intervention is needed) but has not yet occurred.
- Prior to mediation – the attitude of other lawyers that it will likely settle at mediation and therefore apply no energy/process or mind to the matter – until immediately prior to (or at) mediation with a 'rush' of activity faxes and/or disclosure.
- Emotional factors.
- Lawyers?! ☺
- Some people want their day in court.
- Power/control attempts by the other side.
- Getting unreasonable people to behave reasonably – impossible!
- Litigants in person with unrealistic expectations and/or unresolved anger with the other party.
- Balancing what is 'right' with what is an expected outcome and the commercial realities – that are sometimes unfair.
- Getting the clients to move to a compromise position
- Solicitors who provide clients with unrealistic advice causing clients to become locked in to a position.
- Human nature – all outcomes are subjective to the client (compared with legal reality).
- Stubbornness of one or both parties.
- Long term resentment or hate towards the other party.
- Convincing client or other party that there may be alternatives.
- Entrenched attitudes.
- Some party's inability to get beyond resentments for past incidents.
- Failure of clients to comprehend the issues as required by law or to understand the procedures.

Organisational

- Lack of information and/or shared/agreed information.
- Delays in paperwork.
- People who are not prepared.
- Legal aid assisting some clients who have not merit (including some of my own) while the other party is aware of costs being incurred.
- Parties not taking the necessary steps for valuation and making required disclosure.
- No feedback (like a counsellors report) from the service.

Issues around time

- Time constraints.
- The proximity of the final hearing date – the closer the hearing, the greater the chance of settlement.

Extra Comments/Suggestions

- In property matters, one session is usually sufficient.
- In child matters, often time to test an agreement or reflect on it is useful.
- Based upon limited current experience, outcomes achieved in one mediation attempt.
- None of my matters were referred to the courts for external mediation, but my colleagues and I have arranged mediation external to the courts.

APPENDIX D Interview Questions for Federal Magistrates

Satisfaction with the referral process of the Federal Magistrates Court

- Are you satisfied with the referral process of the Federal Magistrates Court? Please explain.
- What changes, if any, would you make to the referral process of the Federal Magistrates Court?

Satisfaction with the services provided by Community Based Organisations

- Are you satisfied with the PDR services provided by the Community Based Organisations? Please explain.

Suitability of Matters for Primary Dispute Resolution

- In your opinion, which matters are suitable for Primary Dispute Resolution? Why?
- In your opinion, are there any matters that are not suitable for Primary Dispute Resolution? Why?
- What are some factors that you take into consideration when deciding to refer a matter for Primary Dispute Resolution?
- What are some more specific factors that you take into consideration when deciding to refer a matter to Mediation, Conciliation or Counselling?

Expectations of Primary Dispute Resolution

- What outcomes do you expect from Primary Dispute Resolution procedures?
- Have your expectations been fulfilled? Please explain.
- To what extent do you believe that clients understand the dispute resolution procedure that they have been referred to?

Explanation of Statistics

- In 2002-2003 38.3% of cases referred to counselling were not settled, 54.5% of cases referred to mediation were not settled and 39.4% of cases referred to conciliation were not settled. What are some possible explanations for these figures?

APPENDIX E Interview Questions for Agencies

Suitability of Matters for Primary Dispute Resolution

- In your opinion, which matters are suitable for Primary Dispute Resolution? Why?
- In your opinion, which matters are the most suitable for mediation, conciliation or counselling? Why?
- Is there an optimum number of hours within which the resolution of disputes by mediation, conciliation or counselling is effective?
- Are there any matters that are not suitable for Primary Dispute Resolution? Please explain.
- If so, how can these matters be recognized early so that they are not referred to PDR?

Satisfaction with the referral process of the Federal Magistrates Court

- Are you satisfied with the referral process of the Federal Magistrates Court? Please explain.
- What are some changes you think should be made to the referral process of the Federal Magistrates Court?

Satisfaction of Clients with the referral process

- To the best of your knowledge, are clients satisfied with the referral process of the Federal Magistrates Court?
- To what extent do you believe that clients understand the dispute resolution procedure that they have been referred to? How could this be improved?
- What would the impact on settlement be if more information about the primary dispute resolution process had been available to the parties?
- Are clients re engaging with your organisation when their agreements break down? Why/ Why not?

Expectations of Primary Dispute Resolution

- What outcomes do you expect from mediation, conciliation or counselling?
- Have your expectations been fulfilled? Please explain.

Expectations of Clients

- What outcomes do clients expect from mediation, conciliation or counselling?

Explanation of Statistics

- In 2002-2003 38.3% of cases referred to counselling were not settled, 54.5% of cases referred to mediation were not settled and 39.4% of cases referred to conciliation were not settled. What are some possible explanations for these figures?