

Divorce mediation in Australia – valuable lessons for family law reform in South Africa

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Abstract

It was officially recommended that the proposed South African Family Court be modelled fairly closely on, *inter alia*, the Australian Family Court. Since its inception, this court has had a social component which emphasised the importance of counselling and conciliation in divorce matters and responded to the demand for divorce and family mediation. In addition, family law legislation of the past thirty years provides strong evidence of the Australian government's commitment both to the provision of alternatives to litigation for the solution of disputes surrounding family breakdown and the strong encouragement of separating spouses to avail themselves of these alternatives before resorting to litigation. The most important of these are the Family Law Act 1975, the Family Law Reform Act 1995, the Federal Magistrates Act 1999 and the Family Law Rules 2004. The manner in which these pieces of legislation attempt to integrate alternative dispute methods, especially mediation, into the family law system is examined in this article. Further, certain problems with the present family law system in Australia relating to divorce and family mediation are set out as well as the very recent endeavours of the Australian government to address these problems.

INTRODUCTION

The Hoexter Commission, after an investigation into the structure and functioning of family courts in several foreign jurisdictions, recommended in its *Hoexter Report*¹ that the family court it envisaged for South Africa, should be modelled reasonably closely on those of Australia and New Zealand. As regards divorce mediation, these courts are considerably more advanced than most others. For over twenty-five years, both these countries' family courts have increasingly been engaged in integrating alternative dispute resolution methods, especially divorce mediation, into the formal divorce process. Judge Street pointed out, for example, in his opening address at the 25th Anniversary

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¹SA Law Commission *Commission of Inquiry into the Rationalisation of the Provincial and Local Divisions of the Supreme Court* (RP200/1997) vol II part 2 par 1.5.

Conference of the Family Court in Australia,² that this is a pioneering court. He said:³

It [the Family Court] was the first in the world not only to resolve legal matters but also to offer counselling and other options to help people to deal with the emotional trauma of divorce. The Court has continued to build on its status as a world leader through a number of innovative initiatives.

In addition to the public mediation services offered via the family courts in these two countries, family law issues are sometimes also mediated by private and community-based mediators.

South Africa, where divorce mediation is still in its infancy, can benefit by examining how such mediation, as well as other alternative dispute resolution methods are being applied in Australia and New Zealand and legal reform should be based on how these two countries integrated mediation into the divorce process. Like South Africa, both these countries are multi-cultural societies. The way in which cultural issues surrounding divorce and other family law disputes are dealt with in Australia and New Zealand is, therefore, of great significance for the reform of the family law system in South Africa.

At the outset, it needs to be said, however, that it has principally been Australia that has taken the lead over the past few years with the introduction of new legislation that strongly encourages or even compels divorcing spouses to first utilise so-called 'primary dispute resolution' methods,⁴ especially mediation, before resorting to litigation.

DIVORCE MEDIATION IN AUSTRALIA

Background

On 5 January 1976 the Matrimonial Causes Act 1959,⁵ which provided for fault-based grounds for divorce, was replaced by the new Family Law Act 1975,⁶ introducing far-reaching changes in the Australian divorce law of the time.

First, the previous grounds for divorce were replaced by a single no-fault ground, namely the irretrievable breakdown of the marriage.⁷ In terms of the Act

²The conference entitled 'Family Law – Past, Present and Future' was opened in Sydney on 26 July 2001.

³L Street *Family courts of Australia 25th anniversary conference: family law – past, present and future* 1 at: <http://www.ag.gov.au/ministers/attorney-general/articles/family.html> (accessed on 2 May 2006).

⁴In Australia the term 'alternative dispute resolution' has been replaced by the term 'primary dispute resolution'.

⁵Act 32 of 1959.

⁶Act 59 of 1975.

⁷Section 48(1).

this has to be proved by the fact that the spouses have lived separately and apart for a period of at least twelve months.⁸ In order to avoid lengthy disputes,⁹ the Family Law Act also provides that fault no longer plays a part in the financial consequences of divorce or in any decisions regarding the welfare of the children.¹⁰

Secondly, the Family Law Act also led to the establishment of the Australian Family Court on 5 January 1976¹¹ as the state courts (where criminal cases were heard), were judged unsuitable for divorce cases. The family court is a superior court¹² and has jurisdiction to hear all matrimonial and certain family law matters.^{13 14} Initially established with five judges, over fifty are currently presiding in all states¹⁵ except Western Australia.¹⁶

The essence of the new family courts was cogently summed up in the speech delivered by the then Prime Minister of Australia¹⁷ delivered during the second reading of the Family Law Act in 1974:¹⁸

The essence of the Family Courts is that they will be helping courts. Judges will be specifically chosen and carefully selected for their suitability for the work of the Court. There will be attached to the Court specialist staff, notably marriage counsellors and welfare officers, to assist the parties at any stage and even independently of any proceedings. These Courts will therefore be very different from the Courts that presently exercise Family Law jurisdiction. The Family Court will, of course, determine legal rights which it is bound to do as a Court, but it will do much more than that. Here will be a Court, the expressly stated purpose of which is to provide help, encouragement and counselling to parties with marital problems and to have regard to the human problems, not just their legal rights. Parties will not be driven to the Court by their

⁸Section 48(2).

⁹Australian law online: Australian law on divorce – brief historical background’ 2 at: [http://www.familycourt.gov.au/education/html/divorce law.html](http://www.familycourt.gov.au/education/html/divorce%20law.html) (accessed on 28 April 2006).

¹⁰See ss 68, 72 and 90.

¹¹Section 21(1).

¹²Section 21.

¹³Such as adoption and issues concerning illegitimate children.

¹⁴Section 31.

¹⁵Street n 3 above at 2.

¹⁶Western Australia has its own state family court which exercises full jurisdiction in terms of the Family Law Act.

¹⁷Mr Gough Whitlam.

¹⁸Australian law online: Family Court of Australia – a separate Family Court of Australia’ 1 at: <http://www.familycourt.gov.au/education/html/separate.html> (accessed on 28 April 2006).

despair as a last resort; they will be encouraged to come to the welfare and counselling staff of the Court whenever they have a matrimonial problem, even if they are not contemplating proceedings of any kind. This help would also be available after divorce proceedings and this would ... be of great importance where there were young children.

The newly introduced family court officially recognised and emphasised the importance of conciliation and counselling in the resolution of divorce matters and other family disputes. It also simplified procedures, reduced formalities and made services available to remote areas by means of circuit courts. Parents were further assisted by childcare facilities on the premises.¹⁹ These courts are characterised by an informal and congenial atmosphere, rendering the law more accessible to those in the midst of divorce proceedings.

Thirdly, the Family Law Act placed the interests of children involved above all other considerations in divorce and other family law disputes.²⁰

THE EMERGENCE OF ALTERNATIVE DISPUTE RESOLUTION IN AUSTRALIA

Despite the important changes brought about in Australia by the Family Law Act 1975, there were still complaints about divorce proceedings being too costly, too adversarial, and too lengthy and cumbersome.²¹ The adversarial system of litigation, applied in the family courts, often resulted in divorcing parties adopting an 'I win, you lose' attitude. References to '... the destructive nature of proceedings, the inflammation [sic] of conflict, the increase in family stress, the incitement of hostility and the polarisation of parents resulting in trauma to children ...' were unfortunately still commonplace, even after the introduction of the Family Law Act.²² To overcome the problems inherent in the court system, alternative ways were sought to solve divorce-related problems. Bagshaw²³ comments as follows in this regard:

¹⁹*Id* at 1–2.

²⁰Section 60B. See also 'Australian law online: Australian Family Law – the constitutional framework' 3 at:

<http://www.familycourt.gov.au/education/html/constitution.html> (accessed on 28 April 2006).

²¹R Field 'The use of litigation and mediation for the resolution of custody and access disputes: a survey of Queensland family law solicitors' 1996 *Australian Dispute Resolution Journal* 15; D Bagshaw 'Mediation of family law disputes in Australia' 1997 *Australian Dispute Resolution Journal* 182; G Dearlove 'Court-ordered ADR: sanctions for the recalcitrant lawyer and party' 2000 *Australasian Dispute Resolution Journal* 12.

²²Field n 21 above at 15; Bagshaw n 21 above at 183.

²³Bagshaw n 21 above at 182.

In Australia since the mid-1980s there has been a wave of enthusiasm for alternative approaches to litigation, in particular for mediation.

One of the reasons for the new interest in mediation was the trend towards privatisation and cutbacks in public expenditure in Australia

The wave of interest in mediation led to the establishment of several mediation services in Australia – initially mainly in the private sector and at community level, and later in the family court as well.²⁴ Bagshaw²⁵ explains it as follows:

In this age of economic rationalism, it is predictable that governments promote mediation and other primary dispute resolution processes as they purport to offer considerably cheaper and quicker models of dispute resolution than formal litigation.

Mediation services in the private sector

In the private sector independent organisations such as LEADR (Lawyers Engaged in Alternative Dispute Resolution) and Mediate Today, to which private professional mediators are accredited, took the lead in rendering mediation services to the public, both professionally and voluntarily.²⁶ Since the early 1990s these independent organisations have made significant contributions to the training of private mediators and the promotion and advertising of their services. From databases of accredited mediators available on the internet,²⁷ it is apparent that private mediators span a wide variety of professions and occupations and are available for private mediation throughout Australia, even in remote rural areas, although not yet fully utilised by the public. King²⁸ says, for example, that ‘... a number of appropriately qualified people are still not doing many (if any) mediations’.

Mediation services at community level

Several organisations such as Relationships Australia, Lifeworks, Centacare Australia and Family Services Australia, which had previously concentrated mainly on marriage guidance and counselling, also began providing mediation

²⁴T Sourdin ‘Legislative referral to alternative dispute resolution processes’ 2001 *Australasian Dispute Resolution Journal* 180.

²⁵Bagshaw n 21 above at 187.

²⁶D Spencer ‘Mandatory mediation and neutral evaluation: a reality in New South Wales’ 2000 *Australasian Dispute Resolution Journal* 248; Sourdin n 24 above at 189.

²⁷See ‘About LEADR’ at: <http://www.leadr.com.au/about.html> (accessed on 4 October 2006); ‘Mediate today’ <http://www.mediate.com.au/company.htm> (accessed on 4 October 2006).

²⁸D King ‘Specialists in family law resolution’ 1999 *Australasian Dispute Resolution Journal* 70.

services to the public free of charge. Faulkes and Claremont²⁹ refer to the important contribution that so-called 'community justice centres' have made to community-based mediation in Australia. Since 1989 community-based services have been mainly government funded.³⁰ To date the government has spent several millions on expanding and improving the access and availability of these services throughout Australia.³¹ Australians in general have confidence in community-based organisations and the mediation services they offer have become popular.³² The latest government initiative in this regard involves so-called 'family relationship centres', which will be established in cities and towns across Australia over the next two years. These centres will provide assistance for separating families by offering, *inter alia*, mediation services for the resolution of all separation issues.³³

Mediation services in the family court

The family court, which since its inception, has emphasised the importance of counselling and conciliation in divorce matters, began responding to a demand for mediation. In 1992 a mediation pilot project was launched in the Melbourne registry of the family court and today it provides a 'family court mediation service' at all registries. The court concluded contracts with several approved community-based organisations to render mediation services on its behalf in cases where distance or pressure of work make it impossible to render such services itself.³⁴ Section 13B of the Family Law Act makes provision for organisations that comply with certain requirements³⁵ to apply to the minister for recognition as mediation organisations.

In principle the family court mediation service is only available to parties after they have brought applications involving the interests of the children or financial issues to the family court.³⁶ In some registries of the family court

²⁹W Faulkes & R Claremont 'Community mediation: myth and reality' 1997 *Australian Dispute Resolution Journal* 179–180.

³⁰Bagshaw n 21 above at 182–183.

³¹Sourdin n 24 above at 188.

³²T Gee 'Family mediation: a matter of informed personal choice' 1998 *Australian Dispute Resolution Journal* 185.

³³'Family relationships online' 1–3 at:

http://www.familyrelationships.gov.au/Family_Relationship_Centres.html (accessed on 29 September 2006).

³⁴Sourdin n 24 above at 188.

³⁵In terms of s 13B the minister must be satisfied that '(a) the organisation is willing and able to engage in family and child mediation; and (b) the whole, or a substantial part, of the organisation's activities consist, or will consist, of family and child mediation'.

³⁶Australian Law Online: Family Court of Australia – Mediation: Pathway to agreement 3 at: <http://www.familycourt.gov.au/forms/html/mediation.html> (accessed on 28 April 2006).

mediation services for matters affecting children are available even before an application impacting on the interests of the children has been brought.³⁷

If mediation services are offered by the family court itself, disputes on matters solely relating to children only are mediated by court counsellors.³⁸ Court counsellors are described as ‘... qualified social workers and psychologists with expertise in helping separating couples make arrangements for their children’.³⁹ However, if the disputes concern financial matters, they are mediated by deputy registrars.⁴⁰ Deputy registrars are described as ‘[c]ourt-appointed lawyers who are experts in family law ..’.⁴¹ If the disputes before the court involve both the children and financial matters, a team approach is favoured⁴² with both a court counsellor and a deputy registrar taking part.

From a 1994 evaluation of the family court mediation service⁴³ it appears that Australians are satisfied with mediation services provided by the family court. Bordow and Gibson,⁴⁴ for example, report that

[c]lients were overwhelmingly convinced that mediation generates agreements that are fair, pressure free and more favourable than a litigated arrangement would have been;

and

[a]s the comprehensive mediation offered by the Family Court program affords simultaneous exploration of children and financial matters, and with the possibility of integrative bargaining, there is a better likelihood of achieving a mutually satisfactory agreement.

RECENT RELEVANT DEVELOPMENTS IN AUSTRALIA

Developments over the past few years provide strong evidence of the Australian government’s commitment both to making alternatives to litigation available for the solution of divorce disputes and the strong encouragement of divorcing spouses to avail themselves of these alternatives before resorting to litigation.

³⁷Sourdin n 24 above at 184; *Australian Law Online* n 36 above at 3.

³⁸Australian Law Online n 36 above at 1.

³⁹Australian Law Online: Family Court of Australia – Marriage, families and separation 2 at: <http://www.familycourt.gov.au/forms/html/separation.html> (accessed on 28 April 2006).

⁴⁰Australian Law Online n 36 above at 1.

⁴¹Australian Law Online n 39 above at 3.

⁴²Dept of the Attorney-General ‘Delivery of PDR services’ 21 at: <http://law.gov.au/publications/familypdrs.htm#anchor405247> (accessed on 28 April 2006).

⁴³S Bordow & J Gibson *Evaluation of the family court mediation service* (1994) 9–11.

⁴⁴Bordow & Gibson n 43 above at 9.

The Family Law Reform Act 1995⁴⁵

The Family Law Reform Act 1995, which came into operation on 11 June 1996,⁴⁶ amended the Family Law Act 1975 in two fundamental respects.

First, the Family Law Reform Act introduced the so-called ‘primary dispute resolution’ provisions into the Family Law Act. These provisions are set out in Part III of the Family Law Act,⁴⁷ which is divided into six subdivisions with the following headings: 1 Object and outline; 2 Obligations to consider the possibility of reconciliation; 3 Obligations to consider advising people about primary dispute resolution methods; 4 Counselling; 5 Mediation and arbitration; and 6 Miscellaneous.

Secondly, the Family Law Reform Act focused on the treatment of children in family court proceedings. Important provisions of the Family Law Act were amended to provide for the shifting of the emphasis from parental rights to the best interests of the child. These amendments can be found in Part VII of the Family Law Act.⁴⁸ Concepts such as guardianship, custody and access were replaced by parental responsibility, residence and contact, as the old terms were said to have denoted ‘... a notion of property in children’.⁴⁹ However, ‘... the desirability of continuing joint responsibility and co-operation in parenting even though a marriage or relationship had broken down’⁵⁰ is still recognised.

The important provisions of Part III of the Family Law Act dealing with primary dispute resolution are discussed in more detail below.

Object

Part III, section 14 contains an object clause. The section reads:

The object of this Part is:

- (a) to encourage people to use primary dispute resolution mechanisms (such as counselling, mediation, arbitration or other means of conciliation or reconciliation) to resolve matters in which a court order might otherwise be made under this Act, provided the mechanisms are appropriate in the circumstances and proper procedures are followed; and

⁴⁵Act 167 of 1995.

⁴⁶Australian law online n 20 above at 3.

⁴⁷Sections 14–19Q.

⁴⁸Sections 60A–70Q.

⁴⁹Australian law online: Family Court of Australia – change of terminology 2 at: <http://www.familycourt.gov.au/education/html/terminology.html> (accessed on 28 April 2006).

⁵⁰Australian law online n 20 above at 3.

- (b) to ensure that people have access to counselling:
 - (i) to improve relationships covered by this Act; and
 - (ii) to help them adjust to court orders under this Act.

Pearce and Geddes⁵¹ are of the opinion that object clauses of this kind are the modern equivalent of the customary preamble to a piece of legislation. The object clause is not significant as such, but if any ambiguity or obscurity is present in other provisions of the Act, or if the ordinary meaning of other provisions of the Act is absurd or unreasonable, the court can refer to the object clause, as well as to the parliamentary debates that preceded the adoption of the Act in its interpretation of the provision in question.⁵²

Duty to consider the possibility of a reconciliation

The second subdivision of Part III of the Family Law Act, which imposes a duty on judges⁵³ and legal practitioners⁵⁴ to consider the possibility of a reconciliation between the parties, is naturally desirable and praiseworthy. These provisions are a clear indication of the commitment to protect the institution of marriage rather than emphasise its dissolution. Altobelli,⁵⁵ however, regards them as meaningless in practical terms, amounting to lip service without possibility of enforcement.

Duty to consider advice regarding primary dispute resolution methods

In the third subdivision of Part III, section 14E it is explained what primary dispute resolution methods entail:

- ... procedures and services for the resolution of disputes out of court, including:
 - (a) counselling services provided by family and child counsellors; and
 - (b) mediation services provided by family and child mediators; and
 - (c) arbitration services provided by arbitrators.

Sections 14F and 14G respectively impose a duty on the court and on family law practitioners to reflect on whether they should advise divorcing parties or their clients regarding the primary dispute resolution procedures available to

⁵¹'Statutory interpretation in Australia' par 4.34 as quoted in T Altobelli 'Mediation: primary dispute resolution 1996: mandatory dispute resolution in 2000?' 1997 *Australian Journal of Family Law* 57.

⁵²*Id* at 57.

⁵³Section 14C.

⁵⁴Section 14D.

⁵⁵Altobelli n 51 above at 58.

them. Altobelli⁵⁶ states that these strange sections amount to a combination of a duty and a discretion. He says

[t]he duty to consider is mandatory, but having discharged the duty, the outcome of that appears to be advice, which may be accepted or rejected at the option of the person receiving the advice.

However, in the event of uncertainty about the meaning of these sections, and more specifically about the nature and scope of the duty, the object clause should be consulted – and this clause makes it clear that a significant application of primary dispute resolution methods is envisaged. Altobelli⁵⁷ is therefore of the opinion that the effect of sections 14F and 14G is that the court and legal practitioners should advise parties and clients on the appropriate primary dispute resolution methods in all cases, except where they would be completely inappropriate.⁵⁸ Although there are no consequences for parties or clients who do not wish to accept this advice, the provisions of sections 14F and 14G can nevertheless be seen as an attempt to change the prevailing culture of the Australian courts and legal practitioners. Sourdin⁵⁹ points out in this regard that many law societies and bar associations in Australia have already laid down professional rules of conduct that further encourage legal practitioners to advise their clients on possible alternative dispute resolution methods. She is of the opinion, however, that the wording of such rules of conduct should be stronger and more prescriptive, for legal practitioners to be held professionally liable should they not discharge this duty towards their clients.

Counselling

The fourth subdivision of Part III of the Family Law Act contains specific provisions relating to counselling that relate to both marriage guidance⁶⁰ and marriage breakdowns.⁶¹

⁵⁶*Ibid.*

⁵⁷*Id* at 60.

⁵⁸It is often held that mediation would be unsuitable in the following circumstances: a disparity of power between the parties which the mediator is unable to redress; where there are risks of child abuse or serious family violence; alcohol, drug or mental health problems; and where large estates and the formal disclosure of documents and thus complicated legal issues are involved. See M De Jong 'An acceptable, applicable and accessible family-law system for South Africa – some suggestions concerning a family court and family mediation' 2005 *TSAR* 44.

⁵⁹Sourdin n 24 above at 184.

⁶⁰Sections 16 to 16B. *Ie* counselling to improve relationships between spouses *inter se* or between spouses and children.

⁶¹Section 16C. *Ie* counselling to assist parties and children to adjust to the consequences of divorce.

Section 16C imposes a duty on courts exercising jurisdiction in terms of the Family Law Act and on legal practitioners to advise divorcing parties and clients about counselling services available. The possibility of compulsory counselling is not ruled out. In terms of section 16A a court which makes an order must refer one or both parties to a family and child guidance counsellor should the court be of the opinion that counselling would be in their or the childrens' interest. In terms of section 16B a court may, at any time before an order has been granted, recommend that parties undergo counselling and adjourn court proceedings for the duration of counselling.

Mediation and arbitration

In the fifth subdivision of Part III two primary dispute resolution methods, mediation and arbitration, are dealt with.

The provisions dealing with mediation provide first that a person who is involved in a family law dispute may request a court that exercises jurisdiction in terms of the Family Law Act to appoint a family and child mediator.⁶² Family and child mediators may be approached freely and directly, without court intervention. In terms of section 4 the definition of 'family and child mediator' includes:

- (a) a person employed or engaged by the Family Court or a Family Court of a State to provide family and child mediation services; or
- (b) a person authorised by an approved mediation organisation to offer family and child mediation on behalf of the organisation; or
- (c) a person, other than a person mentioned in paragraph (a) or (b), who offers family and child mediation.

Under the new provisions of the Family Law Act mediators from all three sectors⁶³ may therefore be involved in the mediation process. The provisions that deal with mediation also provide that a court with jurisdiction under the Family Law Act may, with the consent of the parties concerned, refer a dispute or multiple disputes in proceedings before the court to a court mediator.⁶⁴ The court may adjourn the proceedings in question while the designated officer of the court makes the necessary arrangements for mediation by a court mediator. It is clear from the wording of the Act, however, that these mediation sessions may only take place with the consent of the parties involved.

⁶²Sections 19A & 19AAA.

⁶³See pars 2.2.1–2.2.3 above.

⁶⁴Sections 19B & 19BAA. Private and community-based mediators are therefore not involved here.

Lastly, section 19BA(1) provides that a court with jurisdiction in terms of the Family Law Act should advise parties to avail themselves of the services of a family and child mediator⁶⁵ should the court be of the opinion that this course of action would be helpful. It would also be within the competence of the court to adjourn proceedings in order to facilitate attendance of mediation sessions.⁶⁶ Altobelli⁶⁷ points out that the court's power to adjourn the proceedings does not depend on whether or not the parties accept the advice of the court *vis-à-vis* the services of a mediator. In terms of section 19BA(2) the only condition for the adjournment of the proceedings is that the court has so ordered. When these innovations came into force it was at first not clear whether this section empowered the courts to compel parties to seek family and child mediators for dispute resolution. As in terms of section 16A of the Family Law Act, the courts do have the power to order compulsory counselling, Altobelli forecasted that the courts would increasingly interpret section 19BA as conferring the power on them to order parties to seek mediation.⁶⁸

In terms of Part III, subdivision 5 of the Family Law Act dealing with arbitration, the family court may, in proceedings relating to property and maintenance matters,⁶⁹ make orders to the effect that the proceedings in question or any part of them should be resolved by means of arbitration in accordance with the relevant court rules.⁷⁰ Initially such orders could be made with or without the consent of all the parties concerned⁷¹ but it is clear that arbitration is now only an option if all concerned parties agree.⁷² If an order that proceedings should be referred to arbitration is granted, the courts have the power to adjourn proceedings and make such additional orders as may be necessary to ensure the proper course of the arbitration.⁷³ The outcome of such arbitration, and also of a private arbitration regarding property or maintenance matters, may be registered in a court which exercises jurisdiction in terms of the Family Law Act, and then has the same legal force as a court order.⁷⁴ Awards

⁶⁵In terms of s 4 it includes a court mediator, a community-based mediator and a private mediator.

⁶⁶Section 19BA(2).

⁶⁷Altobelli n 51 above at 62.

⁶⁸*Id* at 62–64.

⁶⁹As set out in part VIII of the Family Law Act.

⁷⁰Section 19D(1).

⁷¹Section 19D(2) as it read before it was amended by the Family Law Amendment Act 2000 (Act 143 of 2000).

⁷²See the Family Law Amendment Act 2000 (Act 143 of 2000).

⁷³Section 19D(3).

⁷⁴Sections 19D(5) and 19E(2).

made in arbitration proceedings are, however, subject to review by the court at the request of any of the parties concerned.⁷⁵

Miscellaneous matters

In the last subdivision of Part III of the Family Law Act miscellaneous matters are broached.

Section 19N provides that all admissions and communications made to a court mediator, a family and child counsellor, a community-based mediator or a private mediator are inadmissible in any court of law. This section therefore creates a statutory privilege in respect of communications made in the course of counselling or mediation. The privilege is absolute and cannot be waived even if the parties concerned and the mediator or counsellor are prepared to give evidence.⁷⁶ This underpins a principal characteristic of mediation, namely confidentiality.⁷⁷

This section further provides that the regulations of the Family Law Act may prescribe requirements for the services provided by family and child mediators. These regulations, known as the Family Law Regulations, contain clear guidelines on the qualifications required to serve as family and child mediators and procedures to consider before mediation can be commenced. With regard to the qualifications of family and child mediators, regulation 60(1) provides that a family and child mediator should have one of the following tertiary qualifications:

... either a degree, diploma or other qualification by a university, college of advanced education or other tertiary institution of an equivalent standard, of either:

- (a) three full-time years of law; or
- (b) two or three full-time years of a social science; or
- (c) one full-time year of mediation or dispute resolution.

In terms of regulation 60(2) the prescribed academic qualifications must be supplemented by the following specific training in mediation:

⁷⁵Sections 19F and 19FA.

⁷⁶*Marriage of Marshall* (1983) 9 Fam LR 43; *Re Wakely and Hanns; Director of Court Counselling (Intervener)* (1993) 17 Fam LR 215; *Relationships Australia v Pasternak* (1996) 20 Fam LR 604; *Centacare Central Queensland and Downing v G and K; Attorney-General of the Commonwealth (Intervener)* (1998) 23 Fam LR 476.

⁷⁷M De Jong 'Judicial stamp of approval for divorce and family mediation in South Africa' 2005 *THRHR* 96.

... at least five days' mediation training, including at least one training course lasting a minimum of three days and supervised mediation of at least 10 hours in the 12 months immediately following completion of that training.

In addition, regulation 61 makes provision for annual further training in family and child mediation of at least twelve hours. Although there are still certain deficiencies in these provisions,⁷⁸ it is nevertheless apparent that in Australia high standards for mediation services are a serious consideration.

Other aspects contained in the regulations to the Family Law Act deal with the factors mediators should take into consideration and how they would advise parties before proceedings commence.⁷⁹ In terms of regulation 62 it is expected of mediators

... to assess for appropriateness for mediation, considering family violence, the safety of the parties, the equality of bargaining power, the risk of child abuse, the emotional, psychological and physical health of the parties and any other matter the mediator considers relevant to the proposed mediation.

Regulation 63 further provides that parties should be informed in advance of the mediation process itself, the number of sessions required, the role of the mediator, the benefits of mediation and fees, if any.

A last matter dealt with in this subdivision of Part III of the Family Law Act is the advertisement of counselling, mediation and arbitration services. In terms of section 19Q family and child counsellors, child mediators, approved mediation organisations and arbitrators may advertise their services at any registry of the family court.

The Federal Magistrates Act 1999⁸⁰

The Federal Magistrates Act 1999, which came into operation on 23 December 1999,⁸¹ established a new lower court, known as the Federal Magistrates Court or Federal Magistrates Service.⁸² It was instituted to hear a variety of less

⁷⁸See par 2.4.3 below.

⁷⁹Dept of the Attorney-General n 42 above at 19; Gee n 32 above at 183.

⁸⁰Act 193 of 1999.

⁸¹P Nygh 'The Federal Magistrates Court' 2000 *Australian Journal of Family Law* 65.

⁸²Section 8.

complex federal disputes, formerly heard before the family court or other federal courts⁸³ and operates country-wide.⁸⁴

In terms of section 10 of the Federal Magistrates Act, the Federal Magistrates Service has such jurisdiction as imposed on it by legislation. In this regard, Sourdin⁸⁵ points out that

[t]he commencing jurisdiction of the Federal Magistrates Service includes family law and child support, administrative law, bankruptcy law and consumer protection law.

However, a year after this court opened its doors the department of the Attorney-General reported that most of its work deals with family law matters such as divorce, residence of children, maintenance and property disputes.⁸⁶ The court's jurisdiction to hear these family law issues is derived from section 39(1A) of the Family Law Act 1975 which provides that

[a] matrimonial cause (other than proceedings of a kind referred to in subparagraph (a)(ii)[⁸⁷] or paragraph (b)[⁸⁸] of the definition of *matrimonial cause* in subsection 4(1)) may be instituted under this Act in the Federal Magistrates Court.

Part IV of the Federal Magistrates Act is entitled 'Primary dispute resolution'. In this part a duty is imposed on the Federal Magistrates Service⁸⁹ and on legal practitioners⁹⁰ acting in proceedings in the Federal Magistrates Service to advise people to use primary dispute resolution processes. In terms of section 21 this primary dispute resolution processes include counselling, mediation, arbitration, neutral evaluation, case appraisal and conciliation.

The Federal Magistrates Service may further adjourn proceedings before it to enable parties first to attend primary dispute resolution processes.⁹¹ It is clear that the Federal Magistrates Service also strongly encourages the use of primary

⁸³Dept of the Attorney-General *Family Law Reforms* 1at: <http://www.ag.gov.au/aghome/agnews/2001newsag/familylawfact.htm> (accessed on 28 April 2006).

⁸⁴*Ibid.*

⁸⁵Sourdin n 24 above at 184.

⁸⁶Dept of the Attorney-General n 83 above at 1.

⁸⁷*Ie* applications for the annulment of marriages.

⁸⁸*Ie* applications for declarations about the validity of marriages or dissolutions.

⁸⁹Sections 22, 23 and 25.

⁹⁰Section 24.

⁹¹Section 23(2).

dispute resolution methods in divorce and other related matters. It is also apparent from a document which the Federal Magistrates Service published on the internet⁹² that this court mainly uses community-based organisations to make primary dispute resolution methods, and more specifically mediation, available to the public.

The Federal Magistrates Act also makes provision for the Federal Magistrates Service to apply more informal and simpler processes and procedures. In this regard section 42 provides that

[i]n proceedings before it, the Federal Magistrates Court must proceed without undue formality and must endeavour to ensure that the proceedings are not protracted.

Because the Federal Magistrates Service concentrates on uncomplicated cases, the procedures in this court are informal and simplified, thus finalising divorce and related matters quickly and cost-effectively.⁹³ It is therefore not unexpected that Judge Street mentioned in his opening address at the 25th Anniversary Conference of the Family Court in Australia⁹⁴ that

[t]he community has embraced this court quickly. In its first year of operation, more than 4 500 family law matters other than divorces ... had been filed with the Service. In addition, the Service is now dealing with the vast majority of divorce applications with more than 23 500 couples filing for divorce with the Service in its first 12 months.

It appears therefore that the Federal Magistrates Service has actually developed into a family court at lower-court level.

The Family Law Rules 2004

The Family Law Rules 2004, made by family court judges in terms of section 123 of the Family Law Act 1975, came into operation on 29 March 2004.⁹⁵

⁹²Federal Magistrates Service *Submission to FLPAG 7*
<http://www.fms.gov.au/pubs/html/pathways.html> (accessed on 9 October 2006).

⁹³Dept of the Attorney-General *Future Challenges for the Family Court 2* at:
<http://www.ag.gov.au/ministers/attorney-general/articles/familycourtspeech.html>
(accessed on 28 April 2006) indicates how costs could be reduced in the following respects: solicitors' expenses would be reduced; barristers are less likely to be briefed; shorter waiting periods would reduce legal costs and costs incurred by litigants through lost time and wages would be cut back; and access to magistrates in regional areas would reduce litigants' travel and associated expenses.

⁹⁴Street n 3 above at 2.

⁹⁵T Altobelli 'Comments on the Family Law Rules 2004' 2004 *Australian Journal of Family Law* 92.

According to Altobelli⁹⁶ these rules heralded ‘... some of the most significant changes to the practice of family law since the Family Law Act 1975’. The main purpose of these rules is to ensure that each case is resolved in a just, timely and cost-effective manner.⁹⁷

Rule 1.05 introduces important pre-action procedures that require parties in both financial⁹⁸ and parenting⁹⁹ cases to make a genuine effort to resolve the dispute before starting a case by:

- (a) participating in primary dispute resolution, such as negotiation, conciliation, mediation, arbitration and counselling;
- (b) exchanging a notice of intention to claim and exploring options for settlement by correspondence; and
- (c) complying, as far as practicable, with the duty of disclosure.

According to Field¹⁰⁰ this development falls short of mandating mediation but places an onus on the parties to at least negotiate prior to filing suit. Altobelli,¹⁰¹ however, warns that lawyers will need to consider carefully the inherent limitations of negotiation as compared to conciliation, mediation and counselling. He says:

Negotiations can often make things worse. The other processes involve a skilled neutral and independent facilitator who is an expert in the process. It is the neutrality and independence of the facilitation that leads to conflicting parties being able to listen to and understand what the other parties’ issues, needs and interests are. The neutral independent can readily test and challenge unrealistic positions. These things are rarely achieved in negotiation.

Altobelli¹⁰² also points out that these pre-action procedures seek to regulate behaviour *before* proceedings are commenced. Thus, they may result in more settlements prior to the commencement of a claim. Even in the absence of a

⁹⁶*Ibid.*

⁹⁷Rule 1.04.

⁹⁸See part 1(1) of Schedule 1 to the rules.

⁹⁹See part 2(1) of Schedule 1 to the rules.

¹⁰⁰R Field ‘Using the feminist critique of mediation to explore “the good, the bad and the ugly” implications for women of the introduction of mandatory family dispute resolution in Australia’ 2006 *Australian Journal of Family Law* 46 n 2.

¹⁰¹Altobelli n 95 above at 103–104.

¹⁰²*Id* at 99.

settlement, the issues will have been clearly identified and narrowed, and the needs and interests of the parties will have been articulated.¹⁰³

Rule 1.06, entitled 'Promoting the main purpose', further provides that the court must apply these rules to promote the main purpose, and actively manage each case by, *inter alia*, encouraging and helping parties to consider and use a primary dispute resolution method rather than resolving the case by trial.

It is clear that alternative dispute resolution, particularly mediation, conciliation and counselling, will continue to play an even more important role in family law dispute resolution in Australia.

PROBLEMS WITH THE PRESENT SYSTEM IN AUSTRALIA

Uncoordinated and fragmented family law system

From the above, it would seem that there is an over-supply of family dispute resolution services in Australia. Social workers, community workers, professional mediators, arbitrators, legal practitioners, court mediators and other officers of the Federal Magistrates Service and the family court boost the numbers. The problem, however, is that many of these practitioners are operating in isolation rather than being part of a system. Consequently they do not liaise effectively with other components and there is no question of proper cooperation between the various parts of the Australian family law system.¹⁰⁴ In this respect, Judge Street¹⁰⁵ refers to '... cracks through which participants can fall, particularly the vulnerable and most particularly, children'. These gaps in the family law system have the effect that those involved in family disputes do not always know which of the numerous services to approach initially for help. It has been remarked, quite correctly, that

[t]here are clearly 'gaps' in both service provision and information available on the maze of pathways which can be taken,¹⁰⁶

and that

for many people the system is more like a maze than a coordinated and supportive network of services.¹⁰⁷

¹⁰³*Id* at 108.

¹⁰⁴Street n 3 above at 6.

¹⁰⁵*Ibid.*

¹⁰⁶Federal Magistrates Service n 92 above at 4.

¹⁰⁷J Dewar 'Out of the maze: pathways to the future for families experiencing separation' 2001 *Australian Journal of Family Law* 176.

Because of confusion and inadequate information about dispute resolution services, especially among citizens from non-English-speaking backgrounds,¹⁰⁸ there is too much unnecessary divorce litigation and too little alternative dispute resolution¹⁰⁹ with too many divorce disputes still being resolved in the costly and adversarial environment of the family court and the Federal Magistrates Service.¹¹⁰

Too little focus on the interests of children

Another problem is insufficient focus on the best interests of children.¹¹¹ This also applies to primary dispute resolution procedures which generally do not involve children. Evers¹¹² points out that today's children indeed have the skills, awareness and understanding to negotiate. Mediation, an informal and simple process that takes place in an unthreatening atmosphere,¹¹³ might just be the appropriate forum and framework in which children can voice their opinions and wishes.

If children are to be involved in the mediation process an even bigger responsibility will rest on the shoulders of the mediator to ensure that the process and the decisions fall within the acceptable norms and standards of the applicable law relating to children. This responsibility naturally presupposes a thorough knowledge of the law applicable to children – which brings us to the problem of the training of mediators.

Problems surrounding the training of mediators

Mediators require more than a thorough knowledge of the law applicable to children. They also require proper training in other legal fields such as family law, law of contract, tax law, property law, company law, trust law, law of succession and insurance law. Mediators must be familiar with certain important aspects of cultural sociology in order to remain impartial.¹¹⁴ In addition, mediators require broad training in the social and behavioural sciences as well as specific training in mediation and other alternative dispute resolution

¹⁰⁸M Dimopoulos *Issues of fairness and justice in alternative dispute resolution* 7 <http://www.ag.gov.au/aghome/advisory/nadrac/submissions/anesbwa.htm> (accessed on 28 April 2006).

¹⁰⁹Street n 3 above at 6.

¹¹⁰*Ibid.*

¹¹¹*Id* at 7.

¹¹²M Evers 'Children of the 21st century: are they skilled in the art of negotiation?' 2005 *Australasian Dispute Resolution Journal* 123.

¹¹³De Jong n 58 above at 97.

¹¹⁴PF Wan 'Mediating family property disputes in New Zealand' 1999 *Alternative Dispute Resolution Journal* 77.

methods. Although regulation 60 of the Family Law Regulations contains clear prescriptions in this regard,¹¹⁵ it is very difficult to ensure that these prescriptions are complied with in practice, especially as regards private mediators and mediators in community-based organisations.¹¹⁶ Furthermore, there is as yet no statutory uniform body in Australia to which all mediators could be accredited and which could regulate mediation practices on a national basis.¹¹⁷

Another problem is that there is still no standardised or uniform training for mediators.¹¹⁸ Training is offered in a variety of programmes by organisations such as LEADR and Mediate Today¹¹⁹ as part of under- and postgraduate courses at various Australian universities.¹²⁰ This state of affairs raises concerns about standard and quality.¹²¹ Furthermore, these programmes are frequently Western-oriented and not always adequately focussed on trans-cultural¹²² or specialist training in gender issues.¹²³

Inadequate protection against family violence

Another problem with the current system in Australia is that the family law system does not afford family members adequate protection against family violence.¹²⁴ There are legitimate concerns about

... the lack of understanding of violence issues among professionals, the limited appreciation of the effect on children of witnessing domestic violence, inappropriate mediation processes and unsafe contact orders.¹²⁵

The Australian Law Reform Commission acknowledged that a history of domestic violence may make participation for women in alternative dispute resolution processes, such as mediation, inappropriate.¹²⁶

¹¹⁵See par 2.3.1 (vi) above.

¹¹⁶Bagshaw n 21 above at 186.

¹¹⁷Field n 100 above at 70.

¹¹⁸*Ibid.*

¹¹⁹See par 2.2.1 above.

¹²⁰D King n 28 above at 70, 72.

¹²¹*Id* at 69–70.

¹²²FM Doyle 'Developing models of family mediation to promote multiculturalism' 2001 *Australasian Dispute Resolution Journal* 44.

¹²³Field n 100 above at 69–70 and 78.

¹²⁴Dewar n 107 above at 176.

¹²⁵*Ibid.*

¹²⁶Australian Law Reform Commission *Equality Before the Law: Women's Access to the Legal System Report no 67* AGPS Canberra (1994).

Cultural issues

Since most of the training programmes currently offered, concentrate solely on Western perspectives, many of the divorce and family mediation models in Australia may not be suited to indigenous and Asian communities.¹²⁷ Dimopoulos¹²⁸ remarks in this regard that

... PDR [primary dispute resolution] services have generally been disproportionately underutilised by members of NESB [non English speaking background] communities. While the reasons for this are complex, some that appear to be apparent include:

- (a) Lack of support networks, particularly for refugee women and women entering under the family reunion program.
- (b) Lack of certainty about residential status for some.
- (c) Limited number of bilingual/bicultural family mediators available...
- (d) Reluctance of some NESB communities to seek assistance 'outside' their particular communities.
- (e) Lack of awareness of the services available. Mediation services may not have provided enough information and education about the service and may not have 'targeted' specific groups appropriately.

SEARCH FOR POSSIBLE SOLUTIONS TO THE CURRENT PROBLEMS IN AUSTRALIA

Since the Australian government was well aware of the problems in the family law system, a special task force, known as the 'Family Law Pathways Advisory Group' was convened in May 2000 with the specific task of conducting an in-depth investigation into the improvement of the system and making recommendations to the government.¹²⁹ The advisory group, made up of members of the community, government representatives, mediators, counsellors, arbitrators, family law practitioners and academics, consulted throughout the country and in July 2001 submitted their final report to the government.¹³⁰ In my opinion, the most important aspect of the report is the finding that all participants were in favour of a less adversarial system of resolution, with litigation either as a last resort or to manage violence.¹³¹

¹²⁷Dimopoulos n 108 above at 2, 9.

¹²⁸*Ibid.*

¹²⁹Dept of the Attorney-General n 83 above at 2.

¹³⁰*FLPAG Report – overview and recommendations* 1 at:

<http://www.ag.gov.au/agd/WWW/rwpattach.nsf/viewattachment~FLPReportAandR.pdf>
(accessed on 1 September 2006).

¹³¹*Id* at 4.

The advisory group proposed that any changes in the present system should include the following:¹³²

- increase the focus on children;
- opportunities and pathway choices for family decision making;
- improve the consistency and availability of information;
- improve coordination nationally and regionally;
- promote safety;
- support fairness in the process; and
- meet family needs as they change.

In a system of this nature the provision of family dispute resolution services should be as flexible and cost-effective as possible with as little impact on self-determination as possible. All parties should be treated with respect and without gender or cultural bias.¹³³ Doyle makes the following two very important points, however:

‘... the law must recognise diversity while maintaining a unitary legal system;¹³⁴

and

[a]ll Australians must accept the basic structures and principles of society and have a paramount commitment to Australia... If programs are to be developed to allow cultural groups the flexibility to resolve family disputes in a manner compatible with their own cultural and religious expectations, they must meet standards of fairness and reasonableness.¹³⁵

Cultural and religious diversity can therefore not be accorded unrestricted recognition and certain basic rules of fairness and reasonableness must always be observed.

The advisory group further stated that a well-designed and coordinated family law system must perform the following five functions:¹³⁶

First, there must be proper education and training at the community and professional level. The public should become more acquainted with the family law system so that their expectations regarding their rights and responsibilities will be accurate and they will have an understanding of how the interests of

¹³²*Id* at 6.

¹³³*Id* at 2.

¹³⁴Doyle n 122 above at 44.

¹³⁵*Id* at 51.

¹³⁶*FLPAG Report* n 130 above at 6–7.

their children can best be promoted and respected. As people in non-English speaking communities are at a disadvantage when it comes to access to the family law system, special attention will have to be paid to this sector of the Australian population. With regard to professional training, it is clear that all service providers have to understand that they are gatekeepers to the larger system. In addition, special attention will have to be paid to cross-cultural training and gender issues.

Second timeous, accurate and useful information must be supplied to people who are entering the family law system for the first time.

Third, a system-wide assessment procedure should be developed and used at all the various possible access points in the system, to determine which service would be best suited to which family law dispute.

Fourth, a wide variety of service or intervention options should be available for those entering the family law system to enable them to make informed choices.

Fifth, continued post-divorce support for families should be available.

In reaction to these recommendations, the following initiatives have been taken over the past five years:

In 2001 'Family Relationships Online' was launched.¹³⁷ This website and free national telephone hotline provides information and advice about family relationship issues. It allows families to find out about services funded by the government that can assist them in building better relationships during marriage or after divorce. It also provides information on the government's reforms to the family law system to help families focus on the needs of their children.

To address the strong need for a simplified point of entry into the family law system, the Family Court of Australia and the Federal Magistrates Service embarked on a new project in 2004 with the aim of establishing a combined family law courts registry.¹³⁸ Although the courts will maintain their separate identities, they will provide users with an uncomplicated service at the combined registry.

¹³⁷<http://www.familyrelationships.gov.au/> (accessed on 1 September 2006).

¹³⁸Family Court of Australia 'Developments and events' 2005 *Australian Journal of Family Law* 176–177.

Of significance is the Family Law Amendment (Shared Parental Responsibility) Bill that was passed early in 2006. According to the Attorney-General this Bill, promoting a culture of cooperation rather than litigation, constitutes the most significant family law reform in thirty years.¹³⁹ The Bill will effectively introduce mandatory mediation in parenting disputes before a matter may be taken to court¹⁴⁰ and will prevent the family court or the Federal Magistrates Service from hearing an application relating to children unless a certificate from a family dispute resolution practitioner has been filed.¹⁴¹ This certificate must either state that the attendees had made a genuine effort to resolve the issues at hand or that attendance had not been appropriate. The Bill makes it clear that a certificate will not be required in circumstances where a history or threat of family violence or child abuse has been established.¹⁴²

To cope with the increased demand on dispute resolution services that will result from the amendments, the provisions will be phased in.¹⁴³ It is expected that the new requirement will apply to new parenting cases from mid 2007, and to all parenting cases from mid 2008. Parents may choose between dispute resolution services provided by the new Family Relationship Centres,¹⁴⁴ or any other accredited service or practitioner.¹⁴⁵ In addition to the Family Relationship Centres, the Australian government is currently expanding other community-based mediation services to increase access to appropriate services.¹⁴⁶

It is argued that parenting arrangements and agreements that are worked out jointly by separating couples in mediation are more likely to be successful than court-imposed orders, because they can be tailored to take account of, and respond to, the individual circumstances of both parents and the children.¹⁴⁷ They also avoid the emotional and financial impact of legal battles because they are negotiated in an informal and simple process and in an unthreatening atmosphere.¹⁴⁸ Furthermore, these agreements are reached in a flexible and creative process which takes into account religious, cultural and linguistic

¹³⁹Dept of the Attorney-General *Family Law Amendment Bill passes through Senate* 1 at: <http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/> (accessed on 17 October 2006).

¹⁴⁰Section 60I of the Bill. The Bill can be accessed via a link at: <http://www.ag.gov.au> (accessed on 17 October 2006).

¹⁴¹Section 60I(7).

¹⁴²Section 60I(9).

¹⁴³Field n 100 above at 48; Dept of the Attorney-General (n 142) 1.

¹⁴⁴See n 35 above.

¹⁴⁵Dept of the Attorney-General n 143 above at 2.

¹⁴⁶*Ibid.*

¹⁴⁷Field n 100 above at 50.

¹⁴⁸De Jong n 77 above at 97–98.

differences.¹⁴⁹ People find it easier to relate to the mediation process, especially where the services are offered by community centres.

Because of the ever increasing role that alternative dispute resolution, and especially mediation, will play in the resolution of family law issues in Australia, the Attorney-General's department made funds available to the National Mediation Conference (Pty) Ltd for the development of a proposal for a national system of mediator accreditation.¹⁵⁰ In May 2006 the proposed, so-called 'National Mediator Accreditation System' was considered for approval by the National Mediation Conference.¹⁵¹ The main objectives of the proposed system are

[t]he creation of a practical and credible system for the uniform recognition, certification or accreditation of mediators in Australia in order to improve mediator knowledge, skills and ethical standards, to promote quality of mediation practice, to serve and protect the needs of consumers of mediation services and provide accountability where they are not met, to enable mediators to gain external recognition of their skills, and to broaden the credibility and public acceptance of mediation.¹⁵²

CONCLUDING REMARKS ON THE POSITION IN AUSTRALIA

It is apparent from the above examination of the relevant aspects of the family law system in Australia that mediation and, to a lesser extent, other alternative dispute resolution methods have for some time played a very important role in the resolution of disputes relating to divorce. It further appears that community-based mediation services in particular have proved to be very popular with the Australians.

It is also clear, however, that there are still problems with the application of divorce and family mediation in Australia. In general, the main problem is that too little mediation and too much unnecessary litigation is still taking place. It is therefore not strange that the Australian government is slowly but surely starting to mandate mediation in all family law issues. Another problem is that mediation services in Australia are still not properly and comprehensively

¹⁴⁹*Ibid.*

¹⁵⁰National Mediation Conference 'National accreditation standards for mediators' 1at: <http://www.mediationconference.com.au/html/Accreditation.html> (accessed on 18 October 2006).

¹⁵¹Field n 100 above at 70.

¹⁵²The National Mediator Accreditation System draft proposal can be viewed at: <http://www.cdesh.com.au/nmc2006> (accessed on 18 October 2006).

regulated on a national level. To counter this problem, one can only hope that some positive and constructive developments will soon result from the recent endeavours of the National Mediation Conference to establish a national system of mediator accreditation.¹⁵³

¹⁵³See par 2.5 above.