OP-ED PIECE ON FAMILY COURT REFORM, BY DEBORAH HART

A long time coming. Five years after the Family Court underwent its last raft of changes — which in turn was a significant overhaul since its establishment in 1981 — an independent panel has found that much still remains to be done if the country's busiest court is not to remain one of the most problematic.

The sensitivity of the government's response to the Rosslyn Noonan-led committee's recommendations will be one of its big "well-being" tests.

The new report turns on the admirable goal of motivating people to engage with effective services, and early, rather than the Family Court in anything but the most extreme cases.

Among the proposals are a number of highly useful reforms - free family mediation and counselling, free and early legal advice, more and better information and wraparound, cohesive services that cater for all, including, at long last, Maori.

Unfortunately, another proposal includes doing away with the cost-effective, demonstrably successful practice of mandatory mediation – the process where parties sit down with an experienced, independent person who helps them to negotiate their own solutions.

That's as surprising as it is regrettable.

Mandatory mediation ought to be at the heart of any new package, as much so as it already is in numerous other areas — in tenancy cases, for example, or human rights and employment cases for that matter.

Currently, there are no fewer than 73 specific pieces of legislation (soon to be 74 after the introduction of the government's mandatory farm debt mediation) in which parties looking to gain access to a court or tribunal are directed towards mediation.

Indeed, the new report says the evidence is "compelling" that such professional mediation in general is in the best interests of children and young people to make arrangements about their care and other decisions about their lives with the least conflict.

The compilers acknowledge that solving family disputes is usually best done away from the "inherently adversarial" setting of a court. They propose, however, that this be done on a voluntary basis.

Independent research shows us that voluntary mediation tends not to work well, as scholars from the University of New South Wales discovered in 2012. It just happens to be the case that when people most need to talk, even in a safe setting with the help of a skilled third party, they just don't. Unless they are compelled to do so.

Mandatory mediation would free up more of the Family Court's time to concentrate on those cases that are genuinely insoluble in this context — in cases involving extreme violence, for example or where there is urgency or where the parties have tried mediation, but they just couldn't get agreement.

Absent this, after all, we can only expect to see many *more* cases in the court system, more families at war, more kids caught in the fallout.

What's more, many of those families, who will have waited an average of 10 months to get into court, will receive a judge's order to go to mediation. Why? Because the new proposals require judges to send cases to mediation if it hasn't been tried and should have been.

Being required to mediate of course doesn't mean being required to agree. That's an important point. So is the fact that using it doesn't mean a settlement will magically be reached. However, as the new report found, a whopping 84 percent of cases that went into family mediation settled in part or in whole. And the majority never went to court at all.

Which is good news for everyone, presumably, and without it the situation would also presumably be rather dire for everyone, too.

Not least the children. While kids whose parents manage a civilised separation will usually fare just fine in life, we also know that sustained courtroom conflict can often cause offspring to experience all kinds of subsequent problems, including low self-esteem, depression, withdrawal and high anxiety which in turn carry their own hefty social (and financial) price.

Of course, there will always be litigation. That's the whole point of a court. There will always be some parents who need a judge to make a final decision, and for hopefully just a few there may simply be no other practical way.

We know all this. Just as we also know, or ought to know, that the agreements families make together, their own decisions, are less likely to cause family friction.

And we also should know mediation usually offers our best opportunity for parents and children, for family. It allows

families to recognise, and usually agree on, the best options for them – which is precisely why it should be required, too.

For our progressive government, the reasonable obligation now is to focus on family well-being and require most families to simply talk.

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