

Property in FDR: The case for making space

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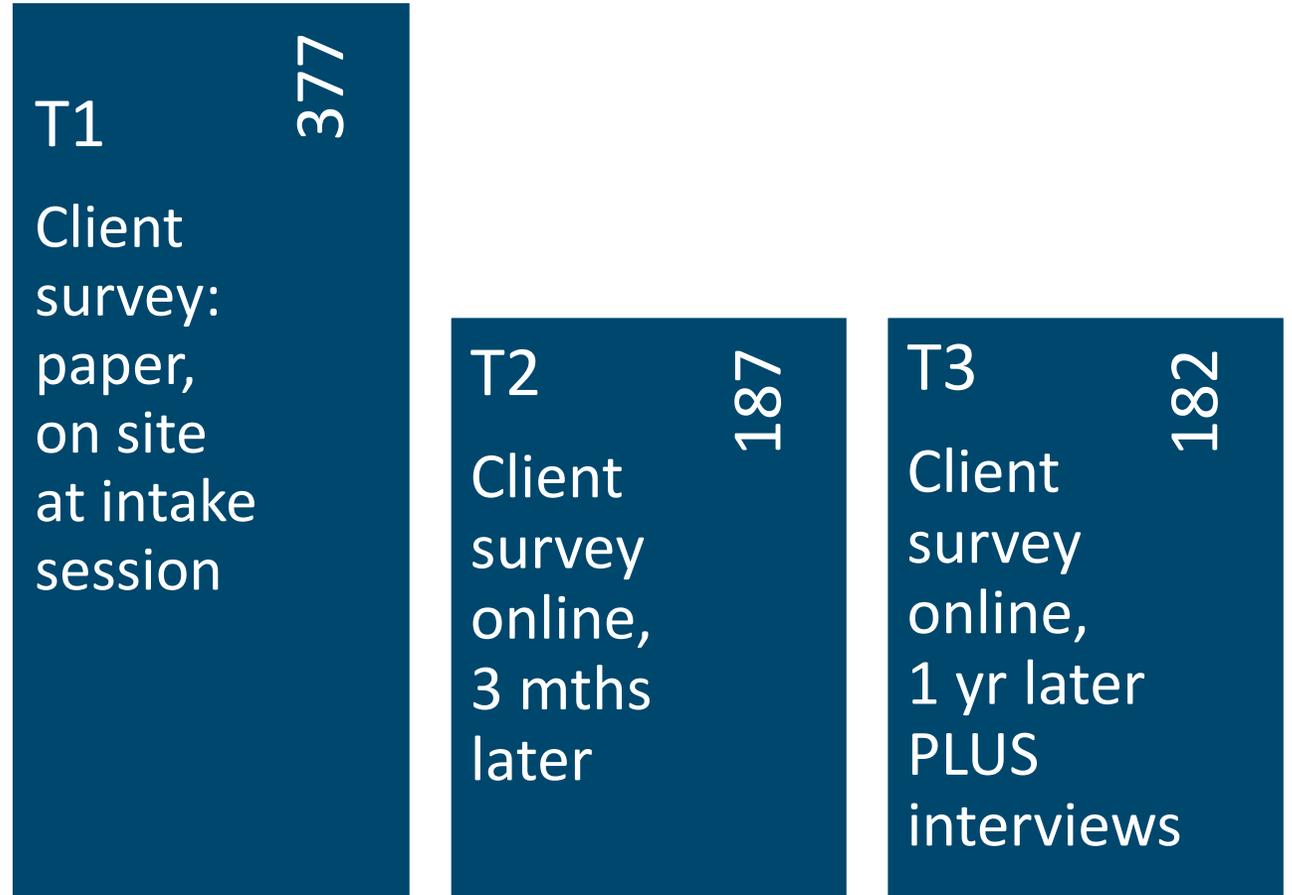
In Australia...

- Use of FDR for property is low (Fehlberg & Millward 2013; Kaspiew & Qu 2016)
- But mediation clients more likely to consider their settlement 'fair' (Qu et al. 2014)
- Strong need for affordable assistance to resolve financial matters, especially property disputes, & especially low value disputes (Fehlberg et al. 2010, Productivity Commission 2014)

- RA centres - mediation in property matters since 1984
- 2,000-3,500 FDR cases involving property each year; 600 property only
- Practitioners who are trained in property mediation
- “Facilitative” “Problem-solving” approach
- Legal advice outside sessions

- Focus shifted to parenting with 2006 reforms
- % property cases down as parenting FDR expanded
- Property explicitly excluded from brief of FRCs
- Until now!

“What are you hoping to achieve through FDR?”
“Property settlement” = 377 (22%)



- Of 377 'property' clients, 77% also hoped for a parenting agreement
- About a quarter (24%) of those citing parenting matters also hoped to resolve property matters; OR nearly half (49%) of those with any shared property
- Considerable overlap despite the separation imposed by regulations

	Property clients	Parenting clients
No shared property	—	34%
Debt only	8%	15%
Under \$200K	17%	15%
\$200-\$499K	28%	14%
\$500-\$999K	28%	13%
\$1M or more	19%	9%

By Time 3:

- 69% had progressed to joint FDR (82% of whom had started by T2)

Of those who had attended joint FDR:

- Mean no. sessions = 2.05 (up from 1.83 at T2)
- 56% had discussed property/ finances by T2
- 65% had discussed property/ finances by T3

Why not more?

Of those who discussed property/finances by T3:

- 37% discussed property/finances without parenting
- 63% discussed parenting too

Of those who cited property/finance issues at T1 & did joint FDR by T3:

- 71% had reached agreement on some or all of their disputed matters by T3

Of those who confirmed discussing property/finances by T3:

- 53% had reached agreement on property matters

Of those who discussed only property/finances (no parenting) by T3:

- 65% had reached agreement on property matters



- What was useful about process?
- Difficulties encountered?
- What assisted reaching agreement?
- Interaction with other services?
- Total spending on dispute resolution, all methods
- Adherence to settlements
- Any aspects of the FDR process that worked against agreement or compliance?
- How has mediation/ settlement / no settlement affected family relationships, adjustment to separation?
- Next steps if no agreement reached
- If no property FDR, why not?

- **What was useful about process?**
- Difficulties encountered?
- What assisted reaching agreement?
- Interaction with other services?
- Total spending on dispute resolution, all methods
- Adherence to settlements
- Any aspects of the FDR process that worked against agreement or compliance?
- How has mediation/ settlement / no settlement affected family relationships, adjustment to separation?
- Next steps if no agreement reached
- **If no property FDR, why not?**

- “Having a third party there who is unbiased and impartial really helps to sort out the issues.”
- “the way he [mediator] put everything in black & white, he put everything up on the board... we could see where we differed and that is how we both started looking at the other’s point of view”
- “Addressing one issue at a time, and being able to get through the process that way, made it less overwhelming and made it easier to make a decision about one thing at a time”
- “It saved us a lot of money rather than going to court. We managed to do it in a much more calm manner.”

Effect on relationship with ex:

- “I think that was one of the best things we both did – to decide to do mediation, together. I think it makes you think about your ex-partner, it makes you think about their wellbeing, it makes you think about their financial wellbeing.”

Effect on parental co-operation:

- “Indirectly it has made [parental co-operation] better because of the simple fact that there is no contention with the property ... it is now done so we can just move on and focus purely on the children.”

Interviewees (19) who initially cited property matters but did not discuss — why not?
Three main reasons (*multiple classifications possible*):

[1] Attended FRC; property FDR not available (3 participants)

“We went to the FRC and I think they said the property settlements are different, you do them at a different location. [Did you go to the different location?] No.

- [2] Property lower priority (5 participants)/ Ran out of time (3) — same thing?
- “Because we did the parenting plan first... it’s too much to discuss all at once.”
 - “the parenting arrangements were our immediate concern... because we did not come to a decision about parenting, we did not go any further”
 - “I just wanted to make sure that everything was ok with the children, and that side of things, and I didn’t push the property side of things.”
 - “We ran out of time on the property matters. *[Was an additional session offered?]* It was offered [but] my ex wouldn’t agree to it.”

(3) Ex unwilling or made it difficult (10 participants)

- “Attempted to [discuss property] but was met with outright refusal so I couldn’t.”
- “Not property division, I was going to, I was hoping to.... He wasn’t really willing. He didn’t want to get into that.”
- “We didn’t get as far as property because she wasn’t willing to discuss that.”

- Attended FRC; property FDR not available
- Property a lower priority than parenting / Ran out of time
- Ex unwilling or made it difficult

- Attended FRC; property FDR not available - YES
- Property a lower priority than parenting / Ran out of time - YES
- Ex unwilling or made it difficult - NO

- Many clients need both parenting and property FDR, despite the separation enforced by FRCs
- Property issues often seem to come second – but no less important
- Both settlement rates and satisfaction rates are higher where there is space for property matters to be tackled in their own right