

ADVERTISING FEATURE

ALTERNATIVE DISPUTE RESOLUTION

The heavy cost of going to court

Going to court is expensive, time-consuming and often stressful. When a relationship breaks down, and particularly when children are involved, litigation can fan the flames of dispute and make an already toxic situation worse.

A family law barrister, Marc Testart says he has witnessed the carnage court proceedings can wreak on the lives of clients and their families.

It made him want to focus his experience and abilities on achieving “win-win” outcomes through alternative dispute resolution (ADR), a primary motivation for establishing Testart Family Lawyers more than five years ago.

“Alternative dispute resolution is essentially anything that minimises or avoids litigation,” says Testart.

Undertaking ADR is usually faster, less expensive and less stressful than going to court and allows the parties involved to make their own decisions rather than having a judge decide.

“It may even help communication between the former partners and others involved,” Testart says.

“To the best of our ability, we urge people to put their anger aside and be receptive to reaching a compromise, as going through the court process can take a massive toll.

“Litigation is by nature adversarial; it pits people against each other and so it has the potential to bring out the very worst in everyone.”

By contrast, Testart says, dispute resolution can be as simple as sitting around

‘Litigation has the potential to bring out the very worst in everyone.’

Marc Testart

a table discussing or negotiating mutually acceptable outcomes. Or it can be a formal mediation involving an experienced barrister or even a retired judge.

“In my experience, going through the court process literally ages people,” Testart says. “The cumulative cost, time and animosity generated can be brutal.

“And there is a high chance that people will walk away even angrier and more disillusioned than before because control has been effectively taken out of their hands.

“The emotional and financial impact of that can resonate for years. Everyone, especially children of the relationship, loses.

“With the Family Court bursting at the seams, more and more clients are looking for other options.”

The Family Court and lower-level Federal Court have a backlog of cases with delays of up to three years to resolve parenting and property disputes. Testart says in a majority of cases it is possible to avoid going to court – but not always.

“We are able to help most of our clients resolve their differences without having to issue court proceedings,” he says.



Marc Testart says dispute resolution is usually faster and less expensive than litigation.

“However, sometimes it simply isn’t possible to reach an agreement. In these circumstances, it is necessary for a judge to make a decision.”

When going through a separation, Testart recommends a person choose a family lawyer they can trust. “Interview at least two or three and make your decision based on their initial advice to you,” he says.

“Many lawyers offer a free initial consultation. If they do not suggest

alternatives to court, find a lawyer who will.

“Be clear and organised about your situation and explain to them what you are trying to achieve. A good lawyer will be able to tell you whether or not your expectations are realistic. This is half the battle.

“If you can be clear, organised and realistic, you have the greatest chance of a successful resolution of your matter without having to go to court. Ultimately this will be the best outcome for you and your children.”

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