

I agree with most of the submissions of LS NSW except one which is that which relates to immunity for mediators.

There is no policy or other reason for mediators having any sort of statutory immunity.

Mediators are exercising professional skills. As such they should be accountable.

Mediators are not making "decisions" for parties who might otherwise be disgruntled and then sue. Mediators assist people make their own decisions. They facilitate conversations to see if a solution is possible. If not the parties can and should pursue their rights.

The biggest "risk" identified in mediation (mostly identified by lawyers) is that mediators exercise unnecessary control or "coerce" parties into an agreement. I see no reason why a mediator who engages in coercion should not be liable for their conduct, even if that conduct occurs "in good faith".

Mediators have available to them very inexpensive professional negligence liability.

Protecting mediators from suit is likely to protect the incompetent. That will lead to the same result as has occurred at the Bar, that is that many of the most incompetent continue to practice, notwithstanding that their practice leads to great loss and suffering.

If a mediator is doing their job, the most a client can lose is the cost of the mediation. If a settlement was possible but not achieved through negligence that is the extent of the loss.

If a mediator is coercing a client (which should not occur) that is incompetence and professional negligence and clients should be able to sue. And mediators should not be able to practice free of that fear.

Thanks for considering this short (and perhaps pithy) submission.

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