

MEDIATION NEWS

A JOINT PROJECT OF MEDIATION ASSOCIATION INC. (VADR), SOUTH AUSTRALIAN DISPUTE RESOLUTION ASSOCIATION (SADRA), AUSTRALIAN DISPUTE RESOLUTION ASSOCIATION INC. (ADRA)

From the Presidents

ADRA

The messages from the Presidents in the August issue of this Newsletter reported that there is a common interest between our three associations in exploring the desirability of a national mediation/dispute resolution organisation, and in examining the forms which such an organisation could take.

I am pleased to see that there is a renewed interest in the "formation of an umbrella organisation" in other quarters too, eg the Institute of Arbitrators, and also by many who have attended the meetings of the Melbourne and Sydney ADR groups convened by the international institute for Negotiation and Conflict Management (INCM) in the second half of 1997.

I appeal to all individuals and organisations interested in the idea of national association to participate in co-operative and united discussions of the many issues which the idea of national dispute resolution associated raises.

With several organisations holding networking meetings to discuss macro issues, we have to be careful that we are not vying with one another, and unwillingly diluting the energies of those that attend. The recent trend has many disadvantages, including:

1. Duplication of ideas and resources.
2. Burnout
3. It perpetuates the fragmentation of the interest of those involved in conflict management and dispute resolution.
4. It creates an atmosphere of competitiveness.

This is a call to all interested persons and organisations to support ADRA'S "A Peak Body Project". This is the name that we have given to the process of discussing the idea of a national association in the coming year. Participation at our facilitation meetings is open to those within the ADRA membership, and also other individuals or organisations who are a member of VADRA or SADRA. We recognise there will be a category of interest group that one would not necessarily expect to be a member of ADRA, VADRA or SADRA, for example the Australian LAW Reform Commission and the Family Court of Australia whom we want to

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SADRA

SADRA's Annual General Meeting for 1997 will be combined with our fourth Continuing Education (CE) Forum on November 13, 1997. The CE Forums have been well attended and have provided an important venue for members to explore various topics in depth. The Forum in August focused on the issue of domestic violence. Suzanne Pinkus talked to her Honours Thesis - *Balancing Power between Men and Women in Divorce Mediation: Rhetoric or Reality?* - which provides a thoughtful analysis of the literature and relevant research on the topic. The next CE Forum will address *Safety Issues in Mediation* with a presentation from the staff of the Family Mediation Service, Relationships Australia (SA).

Domestic violence is currently high on the national agenda both in Australia and New Zealand. I just returned from a formal visit to NZ as a member of the *Family Law Council* where we exchange information and views on a wide range of topics with the NZ Family Court Judges, and other court personnel, and with social workers, lawyers and other professionals working in the family law in community. The *NZ Domestic Violence Act 1995* was the focus of much discussion. Some lawyers described the Act as "draconian", however most judges support the Act and expressed the view that the new laws are changing community attitudes to domestic violence. A broad definition of violence is used in the Act and the onus is on the perpetrator to prove non-violent behaviour within five days of an allegation. Perpetrators are required to attend accredited courses, to help them to understand and control their violence, over a six week period. Perpetrators are also required to leave the family home and access by perpetrators to their children must be supervised. The Act covers violence between family and non-family members, including dating-violence and elder-abuse by carers. Needless to say the judges' workload has been stretched since the introduction of the Act as many victims of violence have found it easier to report abuse, including psychological

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VADR

MAV is now entering a new era with a new name, the Victorian Association of Dispute Resolution, VADR. This name was approved at our AGM on 25th September after much deliberation. In surveying who we in MAV and are what our message is we have been aware that not all our members are mediators, but all are interested in mediation and other forms of dispute resolution. Consequently we changed the name of the association to more accurately reflect our membership. A small article which outlines the reasoning for the change is included in this issue.

The mission statement we have agreed on to reflect our purpose is: The Association seeks to advance a conflict-resolving community through providing professional development and a network of support for the members, and promoting non-adversarial methods of resolving disputes in the wider community.

At the AGM we also celebrated the publishing of the Directory of MAV (now VADR) members which has been worked on through the year. The directory was available for these members present and will be sent to all members soon. The Directory is the result of much hard work and thought from our secretary, Tim Offor, and Eileen Dethridge who coordinated the sub-committee working on it. Tim has organised the data base for the Directory with such care that it can be updated easily and regularly, and can provide the Committee with data to assist it in serving the membership more effectively. The Directory includes individual members' details as well as listing agencies, businesses, and training courses. We expect to update the Directory in the first half of 1998.

The Directory has been seen as one step in the Committee 'promoting mediation and other forms of ADR', a listed purpose of MAV. Further distribution of the Directory such as to local government and some agencies will be considered further by the new Committee. Extra copies for members and copies for non-members are available from the Secretary for \$6.00 including postage.

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ADRA President's LETTER
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participate. As we try to extend invitations to as many people and groups within this category as we can.

For those who query why ADRA (or SADRA or VADRA) should have a better claim to convene such facilitation meetings I argue that the following factors give ADRA a credible basis to do so:

1. A not-for-profit-basis
2. An established history
3. We are "non-sectarian", ie we are not founded or maintained by any particular specialist group
4. An established managerial structure imposes accountability
5. A constitutional structure for the determination of resolutions for an proposed reform
6. There are modest resources available to pursue a broad ranging facilitation which is compatible with the objectives under the Constitution
7. The Constitution provides that the existing Association can evolve or metamorphosise by democratic processes.

In the last Mediation News I said "For ADRA the facilitation will not be conducted for the purpose of membership exercising a decision at the final stage of the facilitation processes.

In the last Mediation News I said "For ADRA the facilitations will not be conducted for the purpose of the membership exercising a decision at the final stage of the facilitation processes. The project will be about mapping the issue, identifying people's concerns, generating options for the form of a peak body and noting the range of evaluative responses."

Whilst it is not the *raison d'être* of the Peak Body facilitation for the membership to make a decision about ADRA's future or the preferred form of any peak body, I must clarify the first part of the above quote, and acknowledge that members will be free to initiate reform in accordance with the processes prescribed by our Constitution.

The latter possibility is not incompatible with running a consultative type facilitation, but I am willing to listen to any views to the contrary, whether from within or outside ADRA Membership.

I confirm that ADRA will send information to and hopefully exchange progress reports with fellow not for profit associations in the other states and territories in the coming year as some or all of them undertake their own discussions on the idea of a peak body.

In closing, I thank outgoing Board of Management for its hard work and good team work, and hope that the incoming Board works as well together and achieves as much.

SADRA President's LETTER
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abuse. There was a suggestion that some people have made false allegations but there was general consensus among the judges that the Act has made a substantial contribution to re-educating the public about imbalances of power in intimate and domestic relationships in the community.

The Family Court Judges in NZ spend a good deal of their time mediating disputes and have special rooms set up for this purpose within the courts. They enjoy this aspect of their work and have a high success rate. At times they may move from the role of mediator to a judging role in the same case but, where possible, if mediation does not work they withdraw from the case.

There are currently very few family mediators in New Zealand, although some of the community-based counsellors who handle the work of the court combine mediation with counselling. The courts employ Counselling Co-ordinators to coordinate and monitor the delivery of non-legal services for the courts by various professionals in the community. This arrangement appears to work well in the various regions and provides for flexibility in catering for the various needs of the consumers at a local level. I plan to provide further information gleaned from our visit in an article in the next newsletter.

Dale Bagshaw
SADRA CHAIRPERSON

VADR President's LETTER
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Interest in forming a national peak body of similar state associations such as ADRA, SADRA, and VADR, and those in other states is evident in contacts being made around the country. In VADR we are beginning discussions on the formation of such a national body, encouraged by the discussions at the ADRA Conference in Sydney earlier this year. It is expected that the Fourth National Mediation Conference in Melbourne in April next year will be an opportunity for further consideration of the purpose and practicalities involved.

In Victoria we continue to be contact with a range of other dispute resolution organisations such as LEADR, the Institute of Arbitrators and the new International Institute for Negotiation and Conflict Management.

A coalition of mediation related organisations in Victoria is organising the Fourth National Mediation Conference in Melbourne in April 1998. This promises to provide stimulation to the mediation community as well as an opportunity to publicise the benefits and availability of service of mediation and other forms of dispute resolution.

I would like to express my appreciation for the good work done by the 1996/7 MAV Committee and its four sub-committees: Activities, Newsletter, Mediation in Schools, and Training, Accreditation and Standards. The latter oversaw the development of the directory, and hopes to use its information to guide it in part in ascertaining members' views in the ongoing discussions on standards and accreditation. We also now have a new sub-committee on Workplace Mediation. The issues of professional development is always on the Committee's agenda and we aware that we need to put more emphasis on the needs of our country members as well as of those in the city.

I look forward to another productive year for our association with its new committee and under its new name, VADR.

Diana Pittock, President

ADRA

Student Essay Competition

Earlier this year as part of its 10th Anniversary celebrations ADRA ran a Student Essay Competition open to all students studying a dispute resolution course at a college, university or other approved course provider.

The topic was "Institutionalisation of Mediation. Fashion, Fad or Future?"

From a strong list of entrants the winning three have been chosen (See Competition Results Notice page 5).

Following in 2nd place winner Chris Fydler's essay.

Michael Howard's essay will appear in the next edition of Mediation News.

VADR, The New Face of MAV

The Mediation of Victoria existed for more than a decade.

In that time, we have seen the credibility and acceptability of adopting various strategies for dealing with conflict and with specific disputes. Our membership reflects these different approaches. Among us are not only mediators but also negotiators, conciliators, arbitrators and facilitators, drawn from a wide spectrum of professions, such as the law, social and behavioural sciences, education and community based organisations.

It seems appropriate, that the name of our association should reflect this diversity.

The committee of 1996-7 has considered the matter carefully, giving particular attention to the following issues:

1. The nature of our organisation. We are an association.
2. The understanding among our member and the committees they represent of the terms ' conflict management ', ' conflict resolution ', ' dispute management ' and ' dispute resolution.'
3. Our links with other entities in Australia which are engaged the same activity as we are.

At the AGM members accepted that the name of our association be changed to :

VADR- The Victorian Association for Dispute Resolution.

We believe that :

1. The name reflects our purpose of being an association of both practitioners and individuals interested in finding ways of resolving disputes.
2. The name reflects the understanding in the community about the strategic use of mediation, facilitation, conciliation etc in *resolving disputes*. We are not as concerned, for example, with offering counselling the personal management of conflict, although some of our members might be also engaged in that activity.
3. The name is in line with those of other like associations, eg SADRA and ADRA with whom we already collaborate in producing the newsletter. Should a national body eventually, we are better prepared for a more formal alliance.
4. The name will prevent confusion with the Municipal Association Victoria.
5. The proposed name has euphony. It would be pronounced VDRA but does not refer to 'alternative' dispute resolution which the committee believes is no longer applicable as the approaches offered by our members now considered ' mainstream'.

a training manual and assessment module have been developed. Mediators can also complete a National Vocational Qualification in mediation which is competency based and available through the National Open College Network. Whilst this training is not compulsory at present, it is being encouraged, as there is a need to guarantee the quality of mediators for the funding bodies.

I spoke with a meeting of Bristol Mediation Service mediators on the differences and similarities between community mediators in Australia and the UK. In Bristol they mostly mediate in neighbourhood disputes, in this very depressed area of England with massive unemployment and very poor quality public housing. They gave me an outline of how they operate.

Intake occurs at a central office, which is always run on a shoe string, often with voluntary staff. Two mediators are assigned to a particular case and they contact both parties in person, visiting them in their homes. The initial visit is intended to allow each party to discuss the issues and may last an hour or more, but time limits may be imposed for subsequent visits. This form of shuttle mediation may involve visits over a period of two to three months and usually results in the matter being effectively conciliated by the transmission of offers from one party to another. Up to ninety percent of matters are concluded in this way. If not resolved by the visits, both parties attend a mediation session with the same mediators, where the process is severely truncated as much ventilation has already occurred. The sessions usually last from one to one and a half hours, resulting in agreements in ninety per cent of cases.

Participants in mediation are followed-up a few months after the final session and they are either interviewed in person or sent an evaluation sheet. The results of such evaluations, including comments from the users of the service, are invaluable aids when applying for funding.

This band of dedicated and enthusiastic mediators are keen to develop their skills and meet at each others homes for support, on-going training and to discuss cases. The coordinator or a mediator may run a discussion group or organise role play practice. A regular newsletter keeps mediators informed of the bigger picture as well as local matters. Each service also offers on-going training in a central place every month on specific topics such as handling aggression, but, these are not mandatory events. Mediators are required to attend training every three

Mediation-UK Style

In January this year (1997) I was privileged to be welcomed into the homes and projects of a number of enthusiastic mediators in England and to share experiences with them. There were strong similarities between mediation in the UK and Australia, particularly with regard to dedication, commitment and a recognition of the need for training and accreditation. However, there were some interesting differences, especially in the areas of funding, remuneration and types of mediation programs.

I met with Carey Haslem, the Chairperson of Mediation UK and some of their paid staff including the Director, Tony Billingham, who all follow with interest the development of community mediation in Australia. Carey referred to their large network of volunteer mediators as "woolly jumper mediators" in order to distinguish them from the highly paid lawyers who also offer

mediation services. I also met with mediators involved in local community mediation services in London and Bristol. Mediation UK is comprised of a network of projects, organisations and individuals interested in mediation and conflict resolution. They are a registered charity supported by grants, donations, membership fees and publications. Their head office, based in Bristol, now supports 75 services throughout the UK. Their three main areas of activity involve neighbour disputes, victim-offender mediation and conflict resolution work in schools.

Each service has its local committee of mediators who are responsible for fund raising, coordinating mediator activities and organising mediation sessions. They receive valuable support from the parent body, especially in the areas of training and accreditation.

The mediators and local coordinators are not paid but willingly volunteer as a community service. Many of them work in the helping professions, especially the Probation Service, whilst others are recruited from various backgrounds, with Quakers being well represented. A strong emphasis is placed upon training and

Mediation —UK style ...continued >

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months and a progress review is held once a year. At this review the mediator is given the opportunity for self-assessment as well as being asked what their training needs are.

The mediators that I met in Bristol had discovered mediation through their interest in social justice issues, such as youth homelessness and opportunities in their local area. Some worked in social welfare and others were involved in politics as a means of social change. Many of them had instituted change in their own lives by opting for a simple lifestyle, living in shared households, using permaculture principles on small allotments of land and developing a system whereby they exchange goods and services. I was almost tempted to see them as urban hippies!

In London I met Dr Martin Wright, who wrote Justice for Victims and Offenders-A Restorative Response to Crime. He spoke about his involvement as the volunteer coordinator at Lambeth Mediation, where his special interest is in victim-offender mediations. He explained that, like most mediator panels, theirs is comprised of a small active core of people from the local community many of whom were educated in "the university of life". Martin emphasised the importance of mentors being available and described how they telephone new mediators to offer support as well as being at monthly meetings. The Mediation UK Victim Offender Network has over 100 members who are mostly employed in the victim offender field or a related area. They are watching with interest the Australian developments in this important area of dispute resolution.

Retired Magistrate Yvonne Craig is a mediator with Camden Mediation Service and her major focus is on the Elder Mediation Project which she pioneered and coordinates from her comfortable Bloomsbury flat. Yvonne has assisted in designing workshops for community mediation services which mainly focus on conflicts between young and old people, but, their intention is to demonstrate that these disputes can be constructively transformed into intergenerational solidarity and shared problem-solving.

Yvonne firmly believes that everyone should be trained in mediation, especially school children, nurses and police officers, so that conflict can be handled as it arises rather than waiting for appointments or suffering from the consequences of its escalation. The ground breaking work carried out by Yvonne and other committed volunteer visitors/mediators has made the Elder Mediation Project a highly re-

spected area of Mediation UK's work.

Mediation UK also has a keen interest in peer mediation in schools. They report an increase in the number of schools working on conflict resolution, with many members of Mediation UK being involved in training in schools, especially in the areas of anti bullying and self esteem.

Community and family mediation in the UK has received some attention recently, following the release of Lord Woolf's Report, which reviewed the rules and procedures of the civil courts in England and Wales. He recognised the need for alternative dispute resolution and the part that mediation services play in defusing disputes, with the resultant savings to the court system. A scheme is to be piloted whereby couples intending to divorce are offered mediation and funding may well be diverted from Legal Aid for this service.

Vicky Leach the coordinator of South Camberwell's Eye to Eye Mediation which specialises in family mediation, spoke at length with me about the implications of the Woolf Report. Family mediators must be qualified and there is a strong emphasis on supervision, monitoring and on-going training. Aspiring mediators must have had five years direct work with children and families and must be able to recognise the stages in the separation process, as well as knowing about the dynamics of families. Panels often consist of social workers, health workers, probation officers, barristers and solicitors.

Whilst the mediation work is performed on a voluntary basis, family mediators are paid to attend regular staff meetings and monthly supervision sessions. Individual cases are discussed at these supervision sessions, as well as matters such as strategies, transference and child protection. Vicky had two criticisms of family mediators-that they are usually white and middle class and that they do not acknowledge the extent of domestic violence and the need for child protection.

Whilst Labour Party policies clearly spell out the need for better alternative dispute resolution including mediation, mediators in the UK wait with baited breath for the Labour Party to carry out its promises made at the 1995 Labour Party Conference "... to maximise access to justice and to ensure that the justice system works for all and commands public confidence."

Mediators in the UK are confident that, given adequate government funding, whilst being freed from the stress of lobbying charitable organisations, they can continue to provide a comprehensive delivery of mediation services

Maureen Carter
Mediator-Facilitator-Trainer
24th July 1997

Community Consultation and Discussion

Organised by ADRA and Sydney C.J.C.

On Wednesday, 24 September, 1997, Mary Walker, a Sydney Barrister, and Mediator, presented a lunchtime discussion on her work as a community mediator and facilitators in areas where communities are involved in dispute with Local Councils, the Mining Industry, Nuclear Industry and Aboriginal communities. Participants asked Mary a variety of questions.

"In a multi party dispute, what preparation do you take and how do you design the process for that participation dispute?"

"How do you manage political and moral issues?"

"How do you manage a large group?"

In her response to the above questions, Mary stated that *every Mediation and every Process Design* was DIFFERENT. However there were General Features common to all Mediations:

1. **Information Gathering.** How far out should the net be thrown in preparing for a Mediation
2. **What procedure should be followed?** This is usually negotiated.
3. What are the **Objective, Goals and Outcomes?**
4. **Who are the Stakeholders?** The community, Mining Companies, Councils etc.
5. **Is it valid to aim for consensus?**
6. What Media protocols have to be considered?
7. In the mediator/facilitator involved with attitudinal change?
8. Finally, the dispute and its outcomes have to do monitored and evaluated.

Mary' then proceeded to incorporate the above questions and issues in her description/discussions of Mediations /Community Consultations in which she has been involved.

Example 1 - the Use of Pesticides in Community.

This had been a vexed issue for seventeen years. The parties included growers, sprayers, a Government Department, people from the local community and non residents who wished to be involved, for reasons that were potentially unproductive. *Mary decided to restrict the Mediation to people who resided in the area.*

Community Consultation and Discussion
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Her preparation involved in initial interview/briefing, studying press releases, the historical background, the file from the government department and **TALKING TO LOCAL PEOPLE.**

Of the 56 people who attended the mediation, only 11 were seated at the mediation table. Mary's strategy for managing a crowd is to find out who the Real people are by asking those present to introduce themselves and say what they perceived their role to be. In Mary's opinion, large public meetings are not intrinsically useful in conflict resolution. What was the outcome of this mediation which involved survival issues? All those present decided to be part of an agreement and to have another session on medium and long term matters relating to pesticides.

Example 2-Copper Smelter and Pollution in Port Kembla. 1993.

Established in 1908, the copper smelter had boosted employment for local residents who were predomi-

nantly ethnic and had lived in the area for generations. As the copper smelter was located in close proximity to residential housing there was property damage from the sulphuric acid emitted. Vexed questions were being asked: what exactly was coming out of the smoke stack? What was the extent of damage to health and property? Who was responsible? Public meetings were held to elect people to represent the community at Mediation. The new Senior Management Team of Southern Copper Ltd And the E.P.A. were also involved. Mary aimed at building trust so the participants would work together in groups and come up with OPTIONS for dealing with industrial fallout. It was also necessary to go back to the community to agree with the outcomes. In 1994, about 300 claims went through and millions of dollars were spent on upgrading to meet the rigid conditions set by the E.P.A.

Example 3-Alleged Aboriginal Sacred Site at The Pinnacles. outside Broken Hill.

Because of confidentiality issues re - "the dreaming", Mary was not able to tell us much about this particular dis-

pute. However, the groups involved were diverse mining interests, the tourist industry, artists and three tribes of aboriginals. The big question was: should the Pinnacles be designated a sacred site?

The Nuclear Industry and Waste - Changes in Legislation.

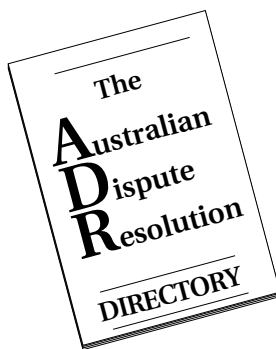
There have been many changes in legislation. Who is responsible for dealing with waste? There is the community's right to know the facts versus secret business for the nation. There are commercial 'in confidence' issues. If anything goes wrong, there are emergency services-Police, Ambulance, Fire Brigade-but who coordinates the services and who is responsible? As time was running short, Mary did not elaborate on these matters.

How Does Mary See Her Function as a Mediator?

Her function is to EMPOWER THE PARTIES so they MOVE ON INTO THE FUTURE. This outcome depends on ATTITUDINAL CHANGES BY THE PARTIES.

*Nefley Takacs.
 Mediator. 29th Sept 1997*

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ADRA

Congratulates the Winners of ADRA's 10th Anniversary Student Essay Competition

- 1st place - Gina Kacso**
- 2nd place - Chris Fydler**
- 3rd place - Michael Howard**

Gina's essay will be published in the latest edition of the Australian Dispute Resolution Journal.

Chris and Michael will have their essays published in Mediation News

Thanks to all those who contributed, in particular the strong showing from Bond University.

We appreciate the enthusiasm and effort that went into your essays and look forward to conducting this competition again in 1998.

ADRA's Student Essay —2nd place winner

“The Institutionalisation of Mediation - Fashion, Fad or Future”

Chirs Fydler

The purpose of this essay is to discuss the institutionalisation of mediation in Australia, and establish why this current focus on mediation as an alternative to litigation, is not simply a fad or fashion, but that this institutionalisation will continue into the future.

Introduction

The growing need for a cheaper, faster, and more mutually satisfying alternative to litigation, has led to the development and popularity of alternative dispute resolution (ADR) methods over the twenty years. As the demand for those alternatives has strengthened, society has witnessed the institutionalisation of such ADR tools as mediation. Institutionalisation can be observed in universities, legislation, establishment of tribunals, and in the courts' management of cases. The positive micro and macro aspects of mediation as an alternative to litigation (discussed below) ensure that this institutionalisation is not simply a fad, but something that will have a posi-

tive future in Australia's legal system.

Before discussing these benefits of mediation, an explanation of what mediation is, and what institutionalisation of mediation actually is, will be required. It is from these definitions that an example of the institutionalisation of mediation can be provided, and why there will be a continuing trend increasing the use and understanding of mediation.

What is the institutionalisation of Mediation' in Australia?

Mediation is one of many methods falling under the umbrella of alternative dispute resolution (ADR) methods. Other strands of ADR include but not exclusive, arbitration, and con-

flict management. However it is mediation which will be highlighted in this essay. Mediation is the process by which the participants, together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives and reach a consensual that financial burdens on people, the results are likely to be accepted by the parties and more likely to endure.

The institutionalisation of mediation into the legal system denotes that the legal society accepts and adopts the concepts of mediation as a tool which will aid it in administration of justice. Further, the legal system must incorporate mediation into its administra-

4th National Mediation Conference 1998

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tion of justice, through court decisions, education, legislation, and promotion of its availability and positive qualities. To be institutionalised the legal society must be seen to foster the growth of mediation, and encourage academic development into an area which it sees as an alternative to litigation.

Will the Institutionalisation of Mediation continue into the Future?

There is a need for the institutionalisation of mediation in Australia due to inappropriate costs, time consumption and results of disputes settled by litigation. As the Honourable AM Gleeson AC, states in his introduction in *The Supreme Court of NSW Annual Review* for the year ended 31 December 1994.

"The community's expectations of the justice system have changed substantially in recent years. The demand for individualised justice, responsive to the merits of particular cases, which is reflected both in legislation and in recent developments in common law, places less importance on predictability and certainty, and more importance on discretionary solutions tailored to the circumstances of the case."

Mediation is one method of alleviating some of the concerns addressed by the Honourable AM Gleeson AC, and the Australian legal system's institutionalisation of this method of resolving disputes, both prior and post 1994, demonstrate this.

The institutionalisation of mediation in Australian can be witnessed in many facets of the Australian legal system. Universities, States and Commonwealth legislation, Court decisions, and the establishment of tribunals all provide evidence indicating the institutionalisation of mediation. Universities such as Bond are providing students and professionals with knowledge and practical experience, in what is rapidly becoming the science of ADR. These institutions are also providing the breeding ground for a vast amount of literature, and the development of theory in this area of the law. Federal and State governments have implemented legislation that encourages, and in some cases requires, mediation to resolve a dispute as an alternative to litigation. Examples of these are:-

- s19BA of the Family Law Act (Cth) whereby the Family Court can adjourn proceedings and order parties to attend mediation.
- Since September 1991 the Commonwealth Administrative

Appeals Tribunal (AAT) has offered mediation as voluntary process of dispute resolution. Similar powers are given to the National Native Title Tribunal. Participation in mediation conferences in the tribunal are voluntary and are not mandated.

- In addition to the mediation of community disputes by Community Justice Centres and by private ADR agencies, mediation has been gradually introduced in the form of court-annexed programmes on a Federal and State level. In NSW under the *Courts Legislation (Mediation and Evaluation) Amendment Act 1994* (NSW), the Court has the power, if both parties agree, to refer the matter to mediation. A similar provision is found in the Commonwealth equivalent relating to the Federal Court.
- *Farm Debt Mediation Act* (NSW) which makes it mandatory for banks to offer mediation under s 8(1), for failed transactions before foreclosing on farmers. The Act provides that mediation sessions are to be conducted with as little formality and technicality, and as expeditiously as possible.

Further evidence of the future of the institutionalisation of mediation can be discovered by observing the way in which the government utilises mediation in resolving current issues.

Institutionalising Mediation to Deal with Current Problems

An example of the government using mediation to resolve problems can be seen in its Native Title legislation. Native Title is an issue which will support the future of an institutionalised mediation. After the Mabo case in 1992, the government realised that it would be unreasonable for Native Title claimants to litigate in the expensive and time consuming way that Eddie Mabo and the Mer Islanders did. Justice French, President of the National Native Title Tribunal, has said:

"All the money in Australia would be insufficient to pay the bill if all native title claims were litigating in the courts."

The government therefore set up a range of functions to determine but principally the National Native Title Tribunal to mediate native title claims.

Although not a large area of the law at present, it is an area of growth and further support for the fact that institutionalisation of mediation will remain in the future. This is because it indicates the way in which the government is using alternatives to litigation in resolving problematic current issues.

These examples provided above, are a few of many examples of the expanding institutionalisation of mediation. They provide evidence that mediation will continue to be institutionalised in the future, because they are providing an attractive alternative to parties when settling disputes. The reasons for mediation as an alternative will now be discussed to further the argument that this institutionalisation will continue into the future. The benefits of mediation can be discussed in both a micro and macro level.

Benefits of Mediation at a "user" level

The continued institutionalisation of mediation is assured because of the benefits it can provide parties, in some circumstances, when compared to litigation it is argued' that the adjudicative bias of the legal profession actually harms dispute resolution. Mediation provides a substantially better alternative to resolve the dispute in some circumstances. Take the situation in which the parties wish to maintain their relationship, for example, in a dispute with a continuing commercial lease, it may be imperative to both parties that a workable relationship is maintained. A litigious approach, with its "win/loss" verdict, often leads to the destruction of relationships. Further, the confidential nature of the mediation allows a landlord to come to an agreement with an individual tenant without the terms of that agreement being disclosed to other tenants. The mediation approach can lead to each party being mutually satisfied with a result they have determined and the relationship stands a much greater chance of survival.

Another advantage is that mediation is a highly flexible dispute resolution process. The structure, settings and procedure can be negotiated and adapted. Of benefit to the parties mediating is the fact that public interest concerns, which would otherwise be considered in the courts, need not be discussed. Thus mediation is restricted

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Mediation and The Chinese Community

Khan Be - bio-sketch

Khan Be has been a sessional mediator at the Family Mediation Centre at Noble Park since 1988 and has both nursing and social work qualifications. Before becoming Co-ordinator of the Chinese Mediation Pilot Program in June 1996, he had worked as a productive worker in the Child Protection Unit in Victoria 71/2 years

“Getting to yes: Accessibility to Primary Dispute Resolution for people of Non English Speaking Backgrounds”

Introduction

In a multi cultural society like Australia one of the most asked questions in mediation is whether western mediation models of mediation is relevant to people of NESB.

The article explores some of the issues related to the mediation of cross cultural settings in the establishment of the Chinese mediation pilot program which has potential as a model of service delivery to other specific ethnic and cultural groups. The program mainly targets ethnic Chinese who may, due to cultural or language barriers, have difficulty in or refuse to accessing mainstream mediation services. Chinese Mediation is available not only in the three offices of the Family Mediation Centre in Noble Park, Narre Warren and Ringwood in the South east and North east areas but other community venues in Footscray, Preston and Richmond in order to out reach other Chinese speaking groups in the western, northern and inner city areas of Melbourne. The increased number of ethnic Chinese was reflected in the 1991 Census figures (see Bureau of Immigration Research 1993). Ethnic Chinese quickly become one of the major immigrant groups in Australia with ethnic Chinese from Malaysia in the 1970's from war torn IndoChina in the 1980's and from Hong Kong, Taiwan and the People's Republic of China from 1989 to 1993. The Chinese mediators (one permanent and three sessionals) who all have social science qualifications are bilingual and bicultural and able to mediate in the three most commonly used Chinese dialects: Mandarin, Cantonese and Teochiew. Services are delivered in a co-mediation model with gender balanced. The Program which offers both family law and parent-adolescent mediation, started in June 1996 with advertisements targeting:

- mainstream and ethno specific social welfare agencies
- Family Courts
- Legal Aid and Community Legal Centres
- Chinese newspapers, radio and local papers
- Chinese self help and church groups

Pamphlets in both English and Chinese languages are available which explain the services and posters in Chinese were also distributed. The basic steps of mediation (introduction, statements,

key issues, negotiation, private session (optional), agreements remains unchanged. However certain stages of the mediation process such as personal intake interview or use of private sessions are modified in order to meet the needs and demands of the Chinese clients.

Mediation: Alternative to Litigation

There has been a long history of mediation in Chinese society based on the teaching of Confucius (551-479 BC). Confucianism views the family as the pillar of society with strong emphasis on social harmony placing the interest of society above the individual and resolving conflicts through consensus. A Chinese proverb says “It is better to die of starvation than to be a thief; it is better to be vexed to death than to bring a law suit”. So the advantage of mediation is equally applicable to Chinese or Asian Australians seeking an alternative to traditional divorce litigation. In the formal court process, cultural differences are often not recognised anymore than the emotional overlays of divorce. Mediation would be preferred by most Chinese because litigation could lead to disruption of social harmony and to “lose face” or the shameless concern for one's own interest. Unlike litigation, mediation also has the ability to be flexible and sensitive to the needs of individuals and families and its role could become an educative and or empowering one.

Issues for Cross-Cultural Mediation

Culture has an impact on the attitudes of dispute resolution. Hence, it is important to understand the cultural norms and characteristics when dealing with conflicts. However culture per se should not be an important consideration in the mediation process in the sense that we specifically design a model to accommodate one culture over another. After all, both Family Law and Parent-Adolescent Mediation operate within the “shadow of the Family Law and Children's Law in Australia. Nevertheless, culture is one important component which mediators should be aware of, along with all other personality and procedural influences which are part of the dynamics of mediation process. A successful mediation often depends on the mediators ability to assist both parties to find a mutually agreeable and a satisfactory solution. Because the parties rely on the mediators for information and guidance in the process, being able to speak the same lan-

guage and establishing a trusting relationship are essential. The use of interpreters are often rejected by NEBS people in both counselling and mediation settings for the following reasons:

- Concern for privacy and confidentiality in small community
- Quality, waiting time and continuous availability in subsequent sessions
- Slowing down of the process and loss of cultural indicators or meaning.

Chinese Cultural Influence in the Practice of Mediation

The term ‘Chinese’ is used here to refer to the Chinese as a race, rather than to the Chinese in any national or geographical context. As Bond (1990) observes, fundamental Chinese values remain with the Chinese in China, Singapore, Hong Kong and Taiwan. Thus, the observations referred to in this article could apply to the Chinese in the People's Republic of China and all the overseas Chinese. Traditionally, Chinese often use one of the respected elders in the extended family to help resolve family conflicts in order to “avoid washing one's dirty linen in public” or to save face”. However if such an elder is not available, Chinese would often feel more at ease and comfortable if they can deal with people with whom they can relate to, and not simply to talk with. Trusting someone who is culturally sensitive or who they consider an “insider” will therefore facilitate the conflict resolution process. This issue of trust often explains why most participants would sometimes require long personal interview prior to mediation where they mainly start by seeking general information relating to their circumstances and will not readily disclose their personal situation. As a trusting relationship was being developed, they will later disclose slowly the exact nature and the full extent of their conflicts. The traditional Chinese persona is reserved and unexpressive, with restraint and inhibition of strong feelings. Therefore, mediators may find that delving into the emotional state or contents of the parties in mediation could be counter productive or may get little result or responses. Verbal or non-verbal behaviour is another area which was pointed out by Dodd, (1982) how people communicate in different ways in the high context or low context culture. In high context cultures, individual and social interactions are pre disposed to know what is meant and what is expected in typical communication pat-

terns. High context cultures "provide information to equip members with procedures and practices in a number of situations" (Dodd, 1982). On the other hand, low context culture do not provide these assumptions and the expectations are explained as part of the communication process. Here, "information is abundant, procedures are explicitly explained, and expectations are discussed frequently". (Dodd, 1982).

Homogenous cultures are generally high context cultures because its members all share the same norms and values. Asian countries such as China or Japan, are high context cultures where as the US and Australia are considered low context cultures. Cross cultural communication could run into trouble if one party acts out of a high context approach and makes certain assumptions, while the other party functions from a low context approach and expects an elaborate explanation. In this context, nonverbal communication could be at times a better indicator of the truth. Mediators ought not to be relying solely on verbal messages or ought not to be very surprised or vexed at the speed of lack of detailed explanation of why the agreement was reached in a Chinese mediation. High tolerance or acceptance of ambiguity may be required as long as the reality testing and liveability of the agreement is explored.

According to the Confucian tradition, the Five Cardinal relations of sovereign and

subject, father and son, elder brother and younger brother, husband and wife, and friend and friend provide not only relationship of supreme importance, but also hierarchical significance. This means that if people behave in the right way, at the right place and at the right time, social harmony would be achieved.

Chinese people in mediation or counselling setting often expect communication flowing downwards, from the mediator or counsellor whom they deem authority figures with expert knowledge (Sue, 1983). This deference to authority figure combined with emotional restraint, could make Chinese clients appear uninterested. Therefore, an active approach with clear directions of the mediation process is better suited for Chinese clients.

In marriage relations, Chinese males are considered the dominate spouse and wife submissive. In this context, the male mediator and the use of more private sessions in mediation will play an important role in addressing the issues of power imbalance. Conflicts and differences have to be delved in such a way that both parties will not "lose face".

Finally, mediators must be aware of their own biases and should be very careful not to stereotype on the basis of ethnicity, race, age, gender or socio-economic status and need to take a holistic approach in mediation such as taking into account of the effects of the migration process and each individual's de-

gree of acculturation. And no less important is understanding the subtle difference in the subculture of the main stream culture.

Thus, "to implement diversity the mediator must assist in the creation of a reality out of the domain of the participants language, issues, view of social justice, gender and ethical perspectives" (Haynes 1996)

SUMMARY

If divorce mediation in Australia is in its infancy, this Chinese mediation pilot program is still in gestation. This article discussed very briefly the contours of cross cultural mediation, issues of mediators' biases and cultures influences, assessed or considered some of the possible modifications in the mediation process in order to make the service more accessible to the Chinese community in Australia:

- Using bilingual and bi-culture mediator
 - Having longer or more intake interviews for information dissemination and trust or relationship building.
 - Having a more active and directive process.
 - More frequent use of private sessions is required.
 - Possible use of shuttle mediation to address severe power imbalance in domestic violence situations and in situations where the women subsume an inferior or very submissive roles in a hierarchical or patriarchal social system.
- At the embryonic stage the author has not enough data or research finding to confirm the validity of the above mentioned modifications of the mediation process, but this program represents a small step closer to the goal of facilitating accessibility of primary dispute resolutions for people of non-English speaking backgrounds.

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Challenges in Establishing a Mediation Service

Ian Grummitt

Ian Grummitt, Registrar with the Domestic Building Tribunal in Victoria, was asked to summarise the top ten challenges faced when the mediation service within the Tribunal. Following is his response which we thought would make very useful checklist for anyone else considering such a move.

STEPS/CHALLENGES IN ESTABLISHMENT

1. Selection -

- advertising for mediators;
- assessing and appointing applicants with experience in building, mediating or preferably both;
- appointing an appropriate number of mediator and from locations spread throughout the state.

2. Remuneration -

- Obtaining approval for an appropriate level of remuneration;
- determining appropriate travelling allowances;
- advising senior management of the impact of the perceived low remuneration rate;

- determining whether they should be minimum rates for attendance and cancellation rates and, if so, how much.

3. Training -

- arranging meetings of mediators;
- arranging appropriate mediation training for mediators requiring training or a refresher;
- dissemination of information to mediators and subsequently discussing the evolving practices and procedures of the DBT.

4. Process -

- Whether to require/recommend a standard process to be followed;
- create a committee of mediators to provide feedback to the Tribunal.

5. Allocation -

- evaluating suitability of a particular mediator, ascertaining availability of mediator, listing mediations in a block or a one off, providing each panel members with a sufficient number of mediations;
- deciding an appropriate location for the mediation — eg city mediation room, office of mediator, on site, country court/hall/office;
- liaising with mediators regarding cases allocated to them eg adjournment requests, document filed etc.;
- venue and party availability for morning, afternoon or evening mediation. >



Research Grant Made Available



The Australian Commercial Dispute Centre (ACDC) is an independent non-profit organisation established in 1986 to reduce Civil Litigation through the use of dispute resolution processes.

Its functions are to educate the business and broader community about dispute resolution, advocate a greater use of commercial dispute resolution, provide training and accreditation of mediators, provide consultancy services in the resolution of individual matters and the establishment of dispute resolution systems.

ACDC is offering a total of \$10,000 for grants in 1997 to encourage and maintain independent and innovative research and ideas in pursuit of ACDC's objectives.

Research Topics

- What is the extent of understanding and use of mediation in the commercial sector?
- How effective is mediation in resolving commercial disputes?
- What is the extent to which mediation is meeting the needs of stakeholders?
- Regulation of the commercial dispute resolution industry - is it necessary or desirable?

Applications are considered on the following criteria:

- the project must address at least one of the nominated Research topics;
- applicants are individuals or organisations with no alternative source of funding for their project
- the project is an innovative idea and likely to lead to practical improvements in the acceptance or the use of commercial dispute resolution; and
- the project is aimed at a better understanding of the use of commercial dispute resolution

Selection of the successful applicant(s) is at the sole discretion of the Board of Directors of ACDC.

For more detailed information contact:

*Michelle McAuslan
Chief Executive Officer
Australian Commercial Dispute Centre
Level 6, 50 Park Street
Sydney NSW 2000
Ph: (02) 9267 1000
Fax: (02) 9267 3125
email: acdcltd@msn.com*

6. Standard forms/procedures -

- deciding what standard forms are required and preparing them eg. claim forms, report of mediation, confidentiality agreement;
- interpreting legislation regarding issues such as confidentiality of mediation and immunity of the mediator;
- discussing whether the mediator should provide an opinion if the mediator is comfortable to, if asked to, or not at all;
- appropriate procedures to adopt after the Tribunal refers a case to a mediator, or the Registrar appoints a mediator;
- level of intake procedure by Registry/mediator;
- formulating adjournment policies;
- the format of and content of the agreed issues in dispute;
- dealing with new issues being brought up that are not in the application;
- whether to disclose mediator name/details to parties;
- availability of mediator panel for parties to request a mediator;
- The Tribunal has introduced a Small Claim Procedure for smaller matters that includes a limited time for mediations. This enables the hearing to proceed immediately after an unresolved mediation.

7. Attendance at mediation -

- ability/willingness of parties to attend;
- explanation of process to reluctant participants,

8. Enquires -

- Registrar being available for enquires by mediators;
- training of new Registry staff to deal with most enquires by parties and mediators.

9. Education -

- knowledge of process by the public;
- education of the public using methods such as a pamphlet on mediation and making and receiving telephone calls. A video on mediation may be considered in the future.

10. Evaluation

- the method and appropriate time to evaluate the effectiveness of mediation at the Tribunal requires consideration. Consideration ought be given any evaluation to issues such as the resolution rate at mediation, full statistical analysis, matters that resolve after mediation as a result of the mediation, the participation of the parties, degree of client satisfaction, necessity for confidentiality, the agreed issues in dispute that may reduce the length of a subsequent hearing, the cost of the mediation process.

“The Institutionalisation of Mediation — Fashion, Fad or Future”
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simply to the interests of the parties concerned.

The benefits of mediation are not limited solely to the parties involved. The benefits of institutionalising mediation can also be observed as a macro level.

The Bigger Picture

Looking at a macro perspective, and determining the government's inclination with respect to mediation, also provide support for the suggestion that the institutionalisation of mediation will not simply be a fashion or a fad. The price of providing justice to our current system is costing the government a disproportionate amount of money. As the Australian government is under increasing pressure to reduce budget deficits and cut public spending, the government is encouraging the institutionalisation of mediation because it is a cheaper form of justice for it to provide. The current situation of parties wish to resolve a dispute in, for

example, the Supreme Court, is that the parties pay little or no money for the use of the court facilities, including the judge's time and the staffing of the court room itself. These are all federally or state funded positions. By encouraging mediation out of court, the government will reduce the amount it will require to provide justice and better satisfy the community needs.

Further, the government is interested in improving the speed of the administration of justice. By removing certain disputes from the courts, they are allowing other cases to be heard that require an adjudicative approach, like for example legislative interpretation disputes.

The intention of the government to encourage the growth of mediation can be witnessed in the May 10 *Justice Statement*, 1995. The government's justice strategy is geared towards the resolution if disputes before there is a need to

pursue the formal avenue of litigation.

“The government will encourage the shift from litigation to other means of resolving disputes by expanding and improving counselling and mediation services available to the community.”

Government initiatives include, \$4.3 million over four years in additional resources to the Family Court to increase its capacity to resolve dispute through mediation rather than litigation. They will commit \$16.8 million over the next four years to increase the number of community - based mediators specialising in family mediation. Further they undertake they to provide community education to raise the public's awareness about the availability of family mediation services. Thus it is likely at a macro level there has been, and will continue to be a push towards the increase in the use of mediation, and such a more certain future for the institutionalisation of mediation.

All that Glitters is not Gold

Even though there are positive aspects of mediation over litigation in some circumstances, which indicate a positive future for the institutionalisation of mediation, it should be noted that mediation is not a panacea for all legal problems. In fact in many cases, litigation is definitely the best option. For example if parties have honestly different interpretations of a statutory or judicial rule.

It has further been suggested, that in fact it may not be cheaper for the parties to engage in mediation. The cost of employing legal representation in the process of, and the preparation of mediation is at least equal to that of litigation. Although this may be the case in a small percentage of cases, the other non-financial advantages discussed above, would still demonstrate a desire for mediation.

What this essay is suggesting that there is a need for an alternative to litigation in today's legal system, and attributes of mediation can satisfy certain elements of the societal requirements. It is not being advocated as the, “be all and end all”, of dispute resolution, but simply a better alternative to the adjudicative process of litigation in some cases.

The question still remains that if mediation is only a solution to some

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"The Institutionlisation of Mediation
< continued from page 11

problems, and in fact may save parties cost, in the institutionalisation simply a fad or fashion?

Is it just a fad or fashion?

A fad or fashion is defined as a craze or the lasted thing, and connotes generally something that is incredibly popular but short lived. In the 1980's ADR attracted its share of advocates who foreshadowed the *rapid development* and institutionalisation of mediation to the stage where it would become a whole new profession providing jobs and reputations. More than ten years down the track neither has occurred. This may lead the casual observer to believe that this institutionalisation of mediation is simply a fad, or fashionable at the moment and will in fact fade as time progresses. However this is an unlikely scenario due to the benefits, as both a micro and macro level, that mediation can offer the legal system. The slowness in institutionalising mediation is probably indicative of the conservative nature of the legal system, in which it is attempting to be recognised. As Jude Wallace observed. Although there are not enough opportunities as yet to develop a mediation practice, the process of institutionalisation of mediation at both a government and private level however slow, are inexorable.

Conclusion

The institutionalisation of mediation is not simply a fashion or a fad which will fade as time passes. The examples of current institutionalisation, and the methods implemented by the government to resolve current issues confront it, add strength to the argument that instutionisation of mediation will continue into the future. The positive aspects of mediation in comparison to litigation in many situations, ensure that it will be cemented into a profession that is becoming increasing flexible in its administration of justice. The macro and micro benefits of media-

tion also will ensure that it will have a future in the institutions which teach and administer the law. For these reasons, the institutionalisation of mediation will not simply be a fad or fashion, but will be an integral part of the future of the Australian legal system.

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both by those embroiled in neighbour disputes and those with responsibility for handling them, and to seek to quantify these where possible. However, the main aim was to investigate the cost effectiveness of mediation compared with conventional methods of dealing with neighbour disputes.

The biggest challenge we faced was how to devise a method of comparing these approaches since they differ fundamentally in terms of their aims, methods, the context in which they operate and also their outcomes. In responding to this challenge we have sought to combine some of the quantitative techniques associated with conventional costs benefits analysis where appropriate, with a more qualitative approach that is sensitive to their limitations.

The report is based on the finding of two national surveys focusing on community mediation service and local authority health and environmental health departments, together with the more detailed case studies involving both sets of agencies.

Measuring the impact of neighbour disputes

Neighbour disputes feature regularly in the media, and are often used to portray the quirker side of human nature. However, there is also a darker side, since the effects on those involved can often devastating. During the six year period up to December 1994 there were seventeen documented fatalities associated with neighbourhood noise complaints, and a newspaper content analysis conducted as part of the present study produced four reports of fatalities resulting from disputes between neighbours during the first eight months if 1996 alone. At a more mundane level, neighbour disputes can blight the lives of those involved for years on end, and the report features a number of case histories illustrating the problem.

How neighbour disputes are dealt with

Most neighbour disputes are either ignored or dealt with informally by those affected. Only a minority are reported to the various agencies whose assistance is likely to be sought: principally local authority housing and environmental health departments and also the police. They in turn trend to deal informally with great majority of complaints they receive, and only invoke their extensive legal powers in exceptional circumstances. This is partly because of the expense associated with their use and partly because of limitation interest in the nature of the remedies themselves, both of which we address in the report.

An alternative approach that has been developed over the last few years >

Neighbour Disputes

Comparing the cost effectiveness of Mediation and Conventional Approaches

Neighbour disputes are commonplace. The behaviour complained of may range from merely inconsiderate or antisocial conduct to harassment, violent assault and other forms of criminal activity such as drug-dealing. The present study suggests that the number of neighbour nuisance complaints reported each year to local authority housing and environmental health service departments could be upwards of 250,000, about two thirds of which are likely to be noise-related. However, it is known that the great majority of neighbour nuisance complaints are not reported to any of the agencies concerned with the exception of noise complaints very little is known about the types of complaints involved, the way they are dealt with or their resource implications.

The Research

One of the aims of the present study was to identify the range of costs incurred

Book Review Book Review Book Review Book Review

Mediation Principles, Process Practice

by I. Boule Butterworths, Sydney, 1996, 330pp, \$45.00

By RHONDA PAYGET
Solicitor and Mediator

Professor Boule is well known to mediators as Professor of Law and Founding Director of the Dispute Resolution Centre of Bond University in Queensland. He has a wealth of experience as a mediator, mediation trainer and conflict management consultant. He would also appear to be a person who likes a challenge as he has chosen to cover principles, process and practice of mediation on one book!

Professor Boule has approached his task in a logical and comprehensive manner. This is illustrated by his presentation of the much discussed issue of definition. Arguing that definitions are important for practical reasons, Boule chooses to define mediation by its core elements and normative objectives and then provides an inventory of the variable features of mediation. The result is four paradigm models of mediation settlement, facilitative therapeutic and evacuative. The use of these models throughout the book is a useful analysis, particularly in his review of mediation in practice later in the book. Clearly, industry, courts and governments have not placed the "ferment of activity" in mediation practice in such a framework resulting in activity which may be "confessed and contradictory". Neverthe-

less, it is interesting attempting to fit the framework after the fact, and supports the importance of theory to property ground consistent and coherent practical application

The author sets up his discussion of process by examining the process/content debate. He concludes that the distinction is "not watertight". The awareness of the mediator's potential influence on content through seemingly process-type interventions by, for example, developing the agenda, style of questioning or choosing to intervene or not intervene with a particular negotiating style, highlights the importance of a mediator's conscious evaluation throughout the process. The on sections communication skills and techniques, particularly reframing, non verbal communication and questioning, are vital reading. These skills and techniques which are so crucial to mediation process are too often neglected by the prevalent settlement-oriented model.

At ADRA's conference in May 1997, Professor Boule presented a workshop on *The Mediation as Negotiator* seeking to discuss the manner of mediator's involvement as facilitators of the parties negotiations. As the author says ... "the writing on negotiation gener-

ally makes little direct reference to mediation". Yet the influence of negotiation theory (positional bargaining and beyond) on mediation is evident. A brief analysis of the negotiation approaches in mediation identifies this discussion as one needing more attention, particularly given the predominance of the settlement model, in which positional bargaining is most visible.

A necessary outcome of an ambitious book is the need to cut short discussions on a number of issues which are perhaps deserving of more attention. For example, privatised justice, power and public interest concerns are mentioned only briefly. The need to priorities issues for discussion has, to an extent overcome by extensive footnotes and a bibliography. Finally, if I may add a personal bias, I find it always refreshing to see references to Australian cases and articles in a world if mediation literature dominated by American publications. This book makes a valuable addition in any mediation's library

1. Mediation, Principles, Process, Practice by L Boule Butterworths Sydney, 1996.

2. Ibid

3. Ibid

4. Ibid

...continued Neighbourhood Disputes

involved the use of mediation, which seeks to deal more constructively with the problem by enabling people to negotiate a mutually acceptable outcomes which the help of a neutral third party. The report examines the role of community mediation service in relation to neighbour disputes, and compares the approach used with conventional ways of dealing with the problem.

Resource implications and environmental services

An important aim of the research has been identify, and quantify where possible, the full range of costs that might be incurred by two of the main agencies whose responsibilities encompass neighbour disputes. Prior to the resource costs to the agencies themselves.

The report's findings suggest that the amount of time that is devoted to tasks specifically relating to handling of neighbour disputes is much smaller

than is commonly supposed, and that this reflects the relatively limited input that is made in the majority of cases. However, in a minority of cases involving informal intervention on the part of housing officers, and whenever more formal measures are invoked (including various forms of legal actions and the rehousing of tenants) the costs involved are normally considerable and appear to offer genuine scope for significant savings to be made by using mediation in appropriate cases. The report's findings also call into question the effectiveness of both the formal and informal approaches conventionally adopted for neighbour disputes, and suggest that mediation may offer a more constructive solution where parties are willing to give it a try.

Policy implications

Mediation can be an effective and cheaper way of dealing with neighbour disputes, and is a response which can help prevent disputes from es-

calating into more serious problem.

The case for making greater use of mediation in the context of neighbour disputes is not funded on financial considerations so much as its claim to offer a potentially more constructive way of resolving a category of disputes that has not proved amenable to conventional forms of dispute resolution. Nevertheless, the report suggests that, provided it is properly targeted, mediation appears to offer scope for significant savings to be made in respect of some of the more intractable neighbour disputes that housing and environmental health departments are called upon to deal with.

The report proposes a strategy for increasing the number that could successfully be resolved by means of mediation, and identifies a number of suggestion for further research

The authors are members of the Centre of Criminological is Legal Research, Sheffield University

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3 Day Course and optional evaluation day

Cost \$1295 (3 days), \$1690 (3 days & evaluation day)

Workplace Grievance Mediation Course

2 Day Course and optional evaluation day

Cost \$900 (2 days) \$1250 (2 days & evaluation day)

Building and Development Application Mediation (BA/DA)

2 Day Course and optional evaluation day

Cost \$900 (2 days), \$1250 (2 days & evaluation day)

Complaints Handling course- 1 Day course

Cost \$275

Barwon Parent & Youth Mediation Service

Geelong, Victoria

Contact:

Fred Stern

Ph: (03) 5223 2966

Fax: (03) 5229 0102

Professional Mediation Training - 3 Day Course

Parent/Adolescent, workplace and peer mediation.

Cost: \$160

Council of Adult Education, Community Programs Department

256 Flinders Street

Melbourne, Victoria 3000

Contact: Diana Pittock

Ph: (03) 9592 1907

Mediation - An Introduction - 12 Hour Course

Introductory course for people in management roles and human services field.

Family Mediation Centre

Noble Park, Victoria

Contact

Marie Garric

Ph: (03) 9547 6466

Parent/Adolescent Mediation - Levels 1 & 2; 3 day courses

Family Law Mediation - Levels 1 & 2; 3

day courses will be held in 1998

International Conflict Resolution Centre University of Melbourne

Carlton Campus

Contact: Margaret Clark

Ph: (03) 9344 7035

Fax: (03) 9347 6618

Mediation in Schools - 30 Hour Course

19-22 January 1998

For primary and secondary school teachers, and counsellors. Includes peer-mediation training

Contact: Pat Marshall

Ph: (0359) 685 414

Mediation Short Course - 40 Hour, 13 Week Course

Practical and theoretical training for professionals, lawyers, managers, teachers, social workers and community workers.

Contact: Diana Pittock

ph: (03) 9592 1907

Mediation Training

Level 1 and Level 2 both 3 day courses. Training in the theory and skills of mediation useful in a broad range of setting but particular emphasis given to parent/adolescent and family law dispute.

Cost: \$450 each

Effective Grievance Management Training

22nd, 23rd & 24th October

Understanding the nature of work place grievance and their effects on organisations and individuals

Learn how to design effective approaches to the management of grievance.

La Trobe University

School of Law & Legal Studies

Bundoora, Vic 3083

Contact: Tom Fisher, Course Convenor

Ph: (03) 9479 2755 (Administration)

(03) 9479 2423 (Direct Line)

Fax: (03) 9479 1607

e-mail: T.Fisher@latrobe.edu.au

Family Law for Mediators

36 hours (block teaching out of normal working hours)

Cost: approximately \$1,000

First Semester 1998

This subject forms part of the Graduate diploma in Family Law mediation but is open to practising mediators and others needing a grounding in relevant issues of family law

Graduate Certificate in Conflict Resolution

1 Year part-time

Cost: \$3,000

Graduate Certificate in Conciliation and Ombuds Studies (pending approval)

1 Year part-time

Cost: \$3,000

LEADR

National Dispute Centre

Level 4, 233 Macquarie Street, Sydney NSW 2000

Ph: (02) 9233 2255

Fax: (02) 9232 3024

Mediation Workshops - 4 Day Course

Teaches mediation skills and philosophy

Workshop - Issues and Techniques in Family Mediation and Interpersonal disputes

Details to be advised

Mediate Today

Contact Lorraine Djurican

Ph: (02) 9223 2255

Fax: (02) 9223 6058

Relationships Australia - NSW

5 Sera Street

Lane Cove NSW 2066

Contact:

Linda Fisher/Valetta Turner

Ph: (02) 9418 8800

Fax: (02)9418 8726

Training Program in Mediation - 84 hours

Cost: \$1,950

Advanced Mediation Training Program

Cost \$560

Mediator Supervision Training Program 3 days

Training course for experienced mediators desiring to become supervisors

Cost \$450

Ongoing Mediation Training

Cost: \$35

Dealing with Financial Issues in Mediation

Workplace Disputes

On-Going Mediation Training

Cost: \$70

Parent-Adolescent Mediation

Family Law Act Revisited

Coaching and Role-play Practice in Family and Child Mediation

Cost: \$150/3.5 hour session

Supervised Mediation - minimum 3 hours

Experienced personnel to co-mediate with newly trained mediators

Cost \$75

Formal Supervision for Mediators

Cost: \$100 - 2 hour group session

Cost: \$100 - 1 hour individual session

Alternative Dispute Resolution Branch - Department of Justice, Qld

GPO Box 149

Brisbane Qld 4001

Contact: Peter Johnstone

Phone: (07) 3239 6277

Fax: (07) 3239 6284

Mediation Skills Course:

5 Days (Introductory Course developed for people wishing to gain basic understanding of mediation process and essential skills)

Cost: \$1195 (catering included)

Dates: Brisbane, Aug 4 - 8, 1997

Townsville, Sept 8 - 12, 1997

Brisbane, Nov 10 - 14, 1997

Relationships Australia Qld

PO Box 595

Spring Hill Qld 4004

Contact: Mieke Brandon

Ph: (07) 3839 9144

Fax: (07) 3832 4864

Courses & Training

Advanced Family Mediation – 28 hour course

Cost \$700

Relationships Australia - Victoria

Venue: 46 Princes Street

Kew Victoria

Contact: Ena Shaw

(03) 9364 9033

Intermediate Mediation course – 3 Day Course

Including cultural issues and intake procedures

Cost: \$695

Introductory Mediation course – 2 day Course

Including the separation process and the effects of separation on children

Cost: \$595

Unifam

PO Box 3156

Parramatta 2124

Contact: Jo-Anne Collier

Ph: (02) 9891 1628

Theoretical workshop – 4 Day Course

Includes negotiation, breaking impasses, value conflict etc

Cost: \$225 (Early Bird discount \$190)

Practice and Supervision of Skills

Cost: \$420 (Early Bird discount \$380)

Advanced Family Mediation Skills Workshop

Cost: \$420 (Early Bird discount \$380)

Separation Mediation Assessment

Cost: \$80

Comparison of Dispute Resolution Procedures

Cost: \$80

Domestic Violence and Mediation

Cost: \$80

Co-Mediation & the Spectrum of Mediation Interventions

Graduate Certificate in Commercial Dispute Resolution

1 Year part-time course by distance education.

University of Technology Faculty of Law

Post Graduate studies

Level 3, 645 Harris Street, Ultimo 2007

Contact: Marilyn Scott - Course Coordinator

Ph: (02) 281 2699

Fax: (02) 281 2127

Graduate Certificate in Dispute Resolution

1 Year part-time

Cost: \$3200

Master of Dispute Resolution

2.5 Years part-time

Cost: \$7200

Macquarie University

Macquarie Graduate School of

Management

NSW 2109

Contact: Anne-Marie Hodson - Marketing

Coordinator

Ph: (02) 9850 9027

Fax: (02) 9850 9022

Postgraduate Certificate in Conflict Management

Postgraduate Diploma in Conflict Management

School of Law

Contact: Frank Astill

Ph: (02) 9850 7076

Dispute Management and Resolution

4th Year unit in LLB program.

Available to internal and external students - 13 weeks.

Possible as a single non-award unit.

Environmental Litigation and Mediation

Post-graduate unit available to graduates in law and environment-related areas, as part of a

Masters degree or Diploma course.

Internal/external - 1 semester.

La Trobe University

School of Law & Legal Studies

Bundoora, Vic 3083

Contact:

Tom Fisher, Course Convenor

Ph: (03) 9479 2284 (General Office)

(03) 9479 2423 (Direct Line)

Fax: (03) 9479 1607

e-mail: T.Fisher@latrobe.edu.au

Graduate Diploma in Conflict Resolution

1 Year full-time, 2 years part-time

Cost: \$6,000

Graduate Diploma in Family Law Mediation

2 Years part-time

Cost: \$6,000

University of South Australia

The following three courses are in a nested arrangement, give credit for prior study in the area, and offer a wide choice of subjects.

Graduate Certificate in Mediation (Family) – established since 1993

One year part-time – three five-day blocks

Graduate Diploma in Conflict Management – new in 1998

One year full-time or 2 years part-time

Master of Conflict Management by coursework – new in 1998

1 ½ years full-time, 3 years part-time:

Optional research component

Inquiries about these courses can be directed to the Faculty of Humanities and Social Sciences, University of South Australia, Magill Campus – telephone: (08) 8302 4424, fax: (08) 8302 4395 or email: humanities@magill.unisa.edu.au

Mediation Training Manuals

Oz Problem Solver - Written and

Compiled by Fed Stern

For Secondary Schools - end of year 9 and up

Australian based manual for teaching students basic mediation skills. Can be used with peer mediation programs.

Cost of manual: \$20

Barwon Youth Accommodation

Service

Ph: (03) 5223 2966

Fax: (03) 5229 0102

Alternative Dispute Resolution Branch – Department of Justice, Qld

GPO Box 149

Brisbane Qld 4001

Contact: Peter Johnstone (Training

Coordinator)

Phone: (07) 3239 6277

Fax: (07) 3239 6284

Mediation skills Training Manual

As used in conjunction with ADR Branch Mediation Training. Contains

information regarding conflict and conflict management, the philosophy of mediation and a step by step

introduction to the skills required of

mediators and the 12 Step process used by the ADRB

Cost: \$20

Group Facilitation Training Manual

As used in conjunction with the ADR Branch's Facilitation Course. The

manual contains information regarding processes that can be used by third

parties to assist groups achieve their

goals. Includes information regarding

the role of facilitators, the facilitation

process and group dynamics.

Cost \$20

Mediation Skills Training Video

The simulated mediation contained on this video displays (with the assistance

of graphics and voiceovers) the

essential skills required of mediators.

Includes written material regarding the

twelve step process used by the ADR

Branch.

Cost: \$20

Family Law Mediation Symposium Video

A video presentation of recent Family Law Symposium conducted by the ADR

Branch. Speakers from the Family

Court of Australia, Relationships

Australia (Qld) and the ADR Branch

provide valuable information regarding

recent changes to Family Law in the

context of Family Mediations.

Cost: \$45 (Two Video Set)

University Certificates, Diplomas & Degrees

Southern Cross University

Lismore and Coffs Harbour Campuses and External Study

Contact:

Marilyn Ryan

Ph: (066) 203 133

Bachelor of Social Science with Counselling and Mediation Studies Major

3 Years full time, 6 Years part time.

Bachelor of Legal Studies

Dispute Resolution Major

Contact: Anne Maree Sharkey

Ph: (066) 203 107

University of Western Sydney

Macarthur, Sydney

Contact: Linda Fisher

Ph: (02) 9418 8800

Graduate Certificate of Mediation

1 Year part time

Graduate Diploma in Mediation Practice

2 Years part time

Charles Sturt University

PO Box 588

Wagga Wagga NSW 2678

Contact: Course Coordination

Ph: (069) 33 2513

Fax: (069) 33 2790

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