

Literacy, numeracy and alternative dispute resolution: Support document

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This document was produced by the authors based on their research for the report *Literacy, numeracy and alternative dispute resolution*, and is an added resource for further information. The report is available on NCVER's website:
<<http://www.ncver.edu.au>>

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Appendix A

Published statistics on mediation/alternative dispute resolution* in Australian courts and tribunals over the period 2002 to 2003

Court	Specific details	Alternative dispute resolution in 2002–2003
<i>Federal</i>		
Administrative Appeals Tribunal	General and Veterans' Affairs	50
	Taxation Division	1
Federal Court of Australia		270
Federal Magistrates Service	Family Court Mediation Section	Total ADR: 2755
	General federal law	<i>Total: 115</i> Trade practices: 55 Human rights: 39 Bankruptcy: 18 Administrative law: 3
National Native Title Tribunal		324 active claimant applications, including 23 new ones during 2002–03. 68% of mediations concluded within 6-month period in 2002–03.
	Northern Territory	22 current
	Future act mediations	60 lodged; 11 were resolved.
	Assistance to applicants through mediation	2500
	Number of mediation and status reports	<i>Total: 567</i> NSW: 54 NT: 25 QLD: 142 SA: 12 VIC: 10 WA: 324
<i>Queensland</i>		
Supreme Court	Consent Orders to alternative dispute resolution by the parties	<i>Total: 265</i> After notice of intention to refer: 19 Without notice: 246
	Notice of intention to refer to appraisal or mediation	Notice: 41 Objections: 13 Matters reviewed after objection: 3
	Case appraisal orders	Orders referring to case appraisal: <i>Total: 10</i> Consent: 7 No consent: 3

Court	Specific details	Alternative dispute resolution in 2002–2003
	Case appraisal outcomes	Case appraisal certificates: 9 Case appraisal election to proceed to trial: 1 Outcome of election to proceed to trial: • worse: 0 • better: 0 Settled after election but before judgment: 0 Remitted to District Court: 0
	Mediation orders	Orders referring to mediation: <i>Total: 305</i> Consent: 258 No consent: 47
	Mediation outcomes	Certified as settled: 314 Certified as not settled: 150
<i>New South Wales</i>		
Administrative Decisions Tribunal	Community services division	<i>Total disposals: 3</i> • settled at mediation: 0 • settled after mediation: 2 • proceeded to hearing: 1
	Equal Opportunity Division	<i>Total disposals: 53</i> • settled at mediation: 27 • settled after mediation: 20 • proceeded to hearing: 6
Land and Environment Court		5 mediations in 2002
<i>Victoria</i>		
Victorian Civil and Administrative Tribunal	Some individual statistics for individual lists such as civil claims list, credit list, domestic building list etc. See annual report for more info.	Overall success rate 64% No. of cases listed 2493: • 71% proceeded to mediation • 29% adjourned or cancelled Cases finalised prior to mediation (column 1) Cases finalised at mediation (column 2) Mediation success rate (%) (column 3) Anti-discrimination list 18 111 70 Domestic building list 44 231 58 Planning and environment list 56 304 63 Retail tenancies list 27 80 66
County Court of Victoria		• Medical division: • settled at mediation: 44 (16.92%) • less than 20% settled at mediation
Supreme Court of Victoria		2 building cases list: 2 settled at or following mediation
<i>South Australia</i>		
Courts Administration Authority		No. of mediations: 187 (100%): • resolved at mediation: 59% • adjourned to mediation: 46 (25%)
Magistrates' Court		Mediations (Metropolitan Courts): 88 (3% of total cases) Mediations (Country Courts): 1 (1% of total cases) Pre-lodgement & pro bono mediations: 102 (72% settled)

Court	Specific details	Alternative dispute resolution in 2002–2003
<i>Australian Capital Territory</i>		
	Magistrates' Court, SC	No statistics
<i>Tasmania</i>		
	Tasmanian Supreme Court	Mediation conferences: 405 (62% settled) Mediation conferences settled: 252 This consists of approximately: <ul style="list-style-type: none"> • personal injuries MVA** 102 • personal injuries MVA settled 65 • personal injuries industrial 125 • personal injuries industrial settled 75 • other: 160 • other settled: 98
<i>Western Australia</i>		
	Department of Justice	Protective mediation with 1830 victims (973 adult, 179 juvenile offenders). Reparative mediation cases: 132
<i>Northern Territory</i>		
	The Lands and Mining Tribunal	Mediation success rate: 60% Appeals settled at mediation: 14

* Counselling, conciliation not included.

** MVA = motor vehicle accident.

Appendix B

Bodies involved in alternative dispute resolution
in Australia

Group	Roles and/or functions		
	<i>Formulation of policy</i>	<i>Offers professional development</i>	<i>Offers accreditation &/or maintains lists of mediators/ADR practitioners</i>
Government council			
NADRAC National Alternative Dispute Resolution Advisory Council < http://www.nadrac.gov.au >	Advises federal Attorney General on policy re ADR standards, accreditation etc.		
Courts			
New South Wales Supreme Court			Yes See Supreme Court Practice Note #125 at < http://www.lawlink.nsw.gov.au/practice_notes >. 11. A person may be appointed by the Court as a mediator if the person: (a) consents to being appointed; and (b) agrees to comply with the provisions of Part 7B of the Supreme Court Act and the provisions of this Practice Note (number 125) 12. The Chief Justice may certify registrars of the Court as qualified mediators.
Queensland Supreme Court			Yes, see list of the Registrar of the Supreme Court. The Registrar of the Supreme Court keeps a register of approved mediators and case appraisers, which outlines their areas of expertise and their fees. This information is available free of charge and on request.
Victorian Supreme Court			Yes: Refers enquirers to LEADR, IAMA, Victorian Bar, Law Institute.
Supreme Court of Tasmania			Yes: Mediators are Registrar of the Supreme Court and the Court Legal Officer. < http://www.courts.tas.gov.au/supreme/mediation/mediators.htm >. At any stage in a proceeding a judge, with or without the consent of any party, may order that the proceeding or any part of it be referred for mediation. (2) If a matter is referred to mediation, the mediator is to be – (a) the Principal Registrar; or (b) a suitable person appointed by the Principal Registrar.
Western Australian Supreme Court			Yes, provides a list of approved mediators.
South Australian Supreme Court			Yes See Practice Direction #55 The President of the Law Society of South Australia, the President of the Bar Association of South Australia and the President of the Institute of Arbitrators and Mediators Australia will establish, and review at least annually, a panel of suitable persons to whom the Courts may refer mediations ('the Panel!'), < http://www.courts.sa.gov.au/ >.

Group	Roles and/or functions		
	Formulation of policy	Offers professional development	Offers accreditation &/or maintains lists of mediators/ADR practitioners
South Australian Magistrates Court			Yes Mediation will be conducted by senior court staff who have received formal mediation training and are accredited mediators, or refer to Law Society List of Mediators at < http://www.courts.sa.gov.au/ >.
Land and Environment Court, NSW			Yes. See list of approved mediators at < http://www.lawlink.nsw.gov.au/lec/lec.nsf/pages/mediators >.
Australian Capital Territory courts (general)			Refer to <i>ACT Mediation Act 1997</i> . ♦ The Minister may declare standards of competency required for the registration of a person under section 5. ♦ The Minister may declare an entity to be an <i>approved</i> agency for this Act. Approved agencies: For the purposes of the definition of 'approved agency' in subsection (3) (1) of the Act, the following bodies or organisations are declared to be approved agencies for the purposes of the Act: (a) <i>LEADR Inc.</i> ; (b) <i>Mediation Works</i> ; (c) <i>Relationships Australia—Canberra and Region Inc.</i> ; (d) <i>The Institute of Australian Mediators and Arbitrators</i> ; (e) <i>Conflict Resolution Service Inc.</i> ; (f) <i>Training for Health and Community Services Inc.</i> Competency standards: For the purposes of section 4 of the Act, the prescribed instrument is the document titled <i>ACT competency standards for mediators</i> published by the ACT Community Services and Health Industry Training Advisory Board Inc.
Victorian courts (general)			Yes: Lists of approved solicitor/mediators are kept for the Supreme and County Courts and for the Magistrates' Court. A master list of all approved solicitors is available on request. < http://www.liv.asn.au/services/services-Mediatio.html >.
South Australian courts (general)			Yes. The President of the Law Society of South Australia, the President of the Bar Association of South Australia and the President of the Institute of Australian Mediators and Arbitrators will establish, and review at least annually, a panel of suitable persons to whom the Courts may refer mediations ('the Panel'). http://www.courts.sa.gov.au/lawyers/practice_directions/civil_pd/civil_pd_55.htm
Victorian County Court			Accepts mediators from the Victorian Bar, Law Institute of Victoria, IAMA & LEADR. < http://www.countycourt.vic.gov.au/mediation.htm >.
Family Court of Australia			< http://www.familycourt.gov.au/guide/html/mediation.html > All registries of the Family Court offer court ordered mediation. Professional mediators working within community organisations or in private practice can help clients.
Northern Territory Lands & Mining Tribunal			Yes, see panel of mediators at < http://www.nt.gov.au/justice/graphpages/courts/panelmediat.shtml >.

Group	Roles and/or functions		
	Formulation of policy	Offers professional development	Offers accreditation &/or maintains lists of mediators/ADR practitioners
Bar associations			
The New South Wales Bar Association		Yes	Yes. Lists of arbitrators, evaluators and mediators have been adopted by the Bar Council of the NSW Bar Association for recommendation as suitably qualified and experienced barristers for appointment by the New South Wales Supreme Court, District Court and Local Court, < http://www.nswbar.asn.au/Professional/ADR/adr051001.htm >.
Bar Association of Queensland			Yes. Selection of arbitrator, expert or mediator: The Bar will provide a panel to all interested parties to let them make their selection from any professional field, unless it is required to make the appointment.
The Victorian Bar			Yes. The Victorian Bar, as part of its Dispute Resolution Scheme, accredits mediators who are professionally trained in the special skills required of a mediator. Provides list and profile of accredited mediators, < http://www.vicbar.com.au/2_8_1.html >.
Western Australian Bar Association Inc.			Yes. Lists members online who work in arbitration and mediation, < http://www.wabar.asn.au/results.asp >.
Tasmanian Bar Association			Not specified on website.
Law Societies			
Law Society of New South Wales			Yes. Offers specialist accreditation in mediation. See Law Society's Mediators Panel, < http://laws.lawsociety.com.au/solicitor/db/adrsearch.jsp >. Alternative dispute resolution practitioners are solicitors who are skilled and experienced in the practice of one or more dispute resolution processes (i.e. mediation, evaluation or arbitration). Those with panel appointments have met the Law Society's selection criteria for nomination to that panel.
Queensland Law Society			Yes. See < http://www.qls.com.au >. This site enables searches for mediators or arbitrators in Queensland to be conducted. Searches can be conducted on names of mediators/arbitrators, or firms or location.
Law Institute of Victoria		Yes – CPD	Yes: List approved by institute, < http://www.liv.asn.au >.
The Law Society of South Australia		Lists approved tertiary & other training courses.	Yes. List at< http://www.lssa.asn.au/profession/mediation.htm >. The Law Society has a list of lawyers who are qualified mediators. People seeking a mediator are provided with a selection of names together with contact details, charges and mediation experience.
Law Society Tasmania			Not specified on website
Law Society of Western Australia			Not specified on website

Group	Roles and/or functions		
	Formulation of policy	Offers professional development	Offers accreditation &/or maintains lists of mediators/ADR practitioners
Alternative dispute resolution institutes			
IAMA Institute of Australian Mediators and Arbitrators. Chapters in all states.		Yes	Yes: Offers multiple levels of accreditation. See < http://www.iama.org.au >. The Institute of Australian Mediators and Arbitrators has a panel of skilled and experienced mediators covering many commercial areas and professional disciplines, including: construction and engineering, law, finance, accounting, IT, health services, local government and others.
LEADR Leading Edge Alternative Dispute Resolution (formerly Lawyers Engaged in ADR)		Yes	Yes. The ACT Competency Standards for Mediators declared by the Minister pursuant to the <i>Mediation Act (ACT) 1997</i> are the mediation competency standards which must be complied with for accreditation as a LEADR mediator. ♦ 'LEADR runs an accreditation scheme which ensures our mediators maintain high standards of performance. The Scheme is chaired by former Chief Justice of NSW, Sir Laurence Street. ♦ LEADR is an Accredited Agency under the ACT legislation. ♦ Membership of LEADR is open to all professions and occupations, including engineers, architects, accountants and family relationship counselors' < www.leadr.com.au >.
State organisations			
ADRAQ Alternative Dispute Resolution Association of Queensland < http://www.ausdispute.unisa.edu.au/states/adraq.htm >.	Yes	Yes	No
SADRA South Australian Dispute Resolution Association < http://www.ausdispute.unisa.edu.au/states/sadra.htm >.	Yes	Yes	No
ADRA NSW Australian Dispute Resolution Association < http://www.adra.net.au/home.cfm >.	Yes	Yes	No
VADRA Victorian Association for Dispute Resolution Inc. < http://www.ausdispute.unisa.edu.au/states/VADR.htm >.	Yes	Yes	No

Group	Roles and/or functions		
	<i>Formulation of policy</i>	<i>Offers professional development</i>	<i>Offers accreditation &/or maintains lists of mediators/ADR practitioners</i>
Other organisations, eg.			
Relationships Australia All states			Yes, referral
Mediation Works			International group

Appendix C

Letter and survey to individual alternative dispute resolution practitioners

Date

Addressee

Dear (addressee)

We are undertaking a research project under the auspices of the Australian National Training Authority Adult Literacy National Project (funded through the Department of Education, Science and Training and managed by the National Centre for Vocational Education Research).

The purpose of the research project is to investigate the impact of limited literacy and numeracy skills on effective participation in and outcomes of Alternative forms of Dispute Resolution (ADR). An outcome of the project will be to develop guidelines for professional development resources for ADR practitioners about this issue.

A major part of the project is to ask mediators about their experiences in ADR relating to limited literacy and/or numeracy of ADR participants. We are hoping practitioners will be able to provide us with some actual case vignettes that could be included in the professional development resources to make them more interesting and informative.

Literacy and, to a lesser extent, numeracy difficulties in society are often stereotyped in terms of low socio-economic status, or for those whose first language is other than English. However, a survey of Aspects of Literacy, the International Adult Literacy Survey (IALS), undertaken by the Australian Bureau of Statistics in 1996 showed that native English-speaking adults from all walks of life might experience difficulties in reading and handling numerical information in English, even if it was their first language. For example from the survey results, some 42% of those with English as their first language were assessed at the minimum levels 1 (14%) and 2 (28%). These people outnumber in absolute terms those who did not have English as a first language. People with Level 2 skills are expected to be comfortable with only relatively simple, short and clearly structured printed material and straightforward calculations. Older Australians were more likely to be at these levels than younger people. The survey did not involve people in institutions or remote rural areas.

For all Australians, some 50–55% of tradespersons, 5% of paraprofessionals and 9–10% of managers and administrators were assessed at Level 1. The study showed that, although related,

low level literacy was not synonymous with low socio-economic status or unemployment. It is likely that people with these skills are involved in ADR for work or personal reasons.

A person with low literacy and numeracy may be unwilling to acknowledge the existence of difficulties when involved in ADR. As ADR is playing an increasing role in Australia today, we feel it is important to examine the impact of literacy and numeracy difficulty on ADR processes. This study is the first research we have identified in Australia, or elsewhere, on this topic.

We are asking if, in your role as a mediator, you would be able to assist in this study by completing a brief questionnaire. We can send the questionnaire by mail or as an e-mail attachment, or embedded in an email, if preferred, for ease of response. As the research at this stage is to gain information about literacy and numeracy issues in ADR, our goal is to obtain as much information as you are able to give us. It does not need to be exhaustive about your experiences, but that you can give us insights into how literacy and numeracy difficulties of participants may have had impact on a mediation or conciliation, and how you were able to manage any such impact, with examples, if possible.

Your participation in the study is voluntary, and all responses will be kept confidentially in a secure location. Responses of individual participants will not be identified or identifiable in the final report and other outcomes.

As the project is due to report by the end of August, we would appreciate your response by June 10.

We hope you are able to assist us in this work. We are happy to answer any queries by email to the addresses below, or by phone to Joy Cumming at (07) 3875 6862.

Thank you for your time in considering this project. Could you please indicate your willingness to participate in the project by completing the response form attached and return it in the reply paid envelope provided.

Yours sincerely

Professor Joy Cumming PhD JD

Project Leader

j.cumming@griffith.edu.au

Dr Jan Wilson

Research Fellow

j.wilson@griffith.edu.au

Response: Name: _____

- Yes, I am happy to participate in the project
- No, I am not able to participate in the project

I would prefer my questionnaire (tick as appropriate):

- sent by mail to:
 - address above
 - other address:

- sent by email to (please provide email address):
 - as attachment
 - within email text.

Please return in envelope provided to:

Dr Jan Stenton
School of Cognition, Language & Special Education
Faculty of Education
Griffith University
Brisbane Q4111

Questionnaire

Dear Mediator

We appreciate your responses to the following questions. The goal of the project is to provide a report on literacy and numeracy difficulties and ADR, and to develop materials to be available for general professional development of mediators in this area. Your responses do not need to be exhaustive. All information is valuable to the project.

Participation in the project is voluntary, and all responses will be kept confidentially in a secure location. Responses of individual participants will not be identified or identifiable in the final report and other outcomes.

Thank you for your assistance.

Joy Cumming and Jan Wilson

Background information (Please tick as appropriate)

Sex: Male Female

Years of experience as a mediator: 0 to 5 6 to 10 11+

Mediation accreditation: (tick as many as appropriate)

None

IAMA

LEADR

Law Society

Bar Association

Accredited within organisation where I mediate (Please name) _____

Other Please state _____

Legal qualification: (tick as many as appropriate)

None

Law degree

Solicitor

Barrister

Other Please state _____

Mediation experience

Please briefly identify the area(s) of dispute in which you usually mediate.

(for example, family, small claims, industrial).

Is any of your mediation work court-ordered? Yes No If Yes,, please briefly describe by which court (or tribunal), and approximately what proportion of your work is court-ordered.

Mediation and low literacy/numeracy (spacings reduced)

As an ADR practitioner, have you usually been able to determine if a party has difficulties in literacy or numeracy? If so, how have you been able to do this?

What aspects of ADR processes do you identify as causing difficulties for parties with low literacy levels? What is the possible impact of different types of ADR (for example, negotiation, mediation, voluntary versus court-ordered mediation)?

What aspects of ADR processes do you identify as causing difficulties for parties with low numeracy levels? What is the possible impact of different types of ADR (for example, negotiation, mediation, voluntary versus court-ordered mediation)?

How have you been able to address any of the aspects you have identified above?

Vignettes of actual events provide the most informative and interesting way to discuss literacy and numeracy issues for practitioners. We would appreciate any details (with confidentiality maintained) you can provide of ADR cases where literacy and numeracy issues have arisen and how they were handled, including a brief overview of the context of the ADR.

Finally, what suggestions would you make for enhancing awareness of ADR practitioners about possible encounter with clients with literacy and numeracy difficulties and who may try to keep these difficulties private?

Appendix D

Letter and survey to alternative dispute resolution organisations

Date

Addressee (Executive officer, organisation)

Dear (addressee)

We are undertaking a research project under the auspices of the Australian National Training Authority Adult Literacy National Project (funded through the Department of Education, Science and Training and managed by the National Centre for Vocational Education Research).

The purpose of the research project is to investigate the impact of limited literacy and numeracy skills on effective participation in and outcomes from Alternative forms of Dispute Resolution (ADR). An outcome of the project will be to develop guidelines for professional development resources for ADR practitioners about this issue.

A major part of the project is to ask organisations whose members are involved in mediation about issues in ADR relating to limited literacy and/or numeracy of ADR participants. We are also conducting a random survey of mediators in each state and territory for individual practitioner's perspectives. We are very interested in any vignettes of mediation experiences that could be included, in a confidential manner, in the professional development resources to make them more interesting and informative.

Literacy and, to a lesser extent, numeracy difficulties in society are often stereotyped in terms of low socio-economic status, or for those whose first language is other than English. However, a survey of aspects of literacy, the International Adult Literacy Survey (IALS), undertaken by the Australian Bureau of Statistics in 1996 showed that native-English speaking adults from all walks of life might experience difficulties in basic reading and numerical tasks. For example from the survey results, some 42% of those with English as their first language were assessed at the minimum levels 1 (14%) and 2 (28%). These people outnumber in absolute terms those who did not have English as a first language. People with Level 2 skills are expected to be comfortable with only relatively simple, short and clearly structured printed material and straightforward calculations. Older Australians were more likely to be at these levels than younger people. The survey did not involve people in institutions or remote rural areas.

For all Australians, some 50–55% of tradespersons, 5% of paraprofessionals and 9–10% of managers and administrators were assessed at Level 1. The study showed that, although related, low level literacy was not synonymous with low socio-economic status or unemployment. It is likely that people with these skills are involved in ADR for work or personal reasons.

A person with low literacy and numeracy may be unwilling to acknowledge the existence of difficulties when involved in ADR. As ADR is playing an increasing role in Australia today, we feel it is important to examine the impact of literacy and numeracy difficulty on ADR processes. This study is the first research we have identified in Australia, or elsewhere, on this topic.

We are asking if, as the Executive Officer of (organisation), you would be able on behalf of your organisation to assist in this study. Your response may be through presentation of the request and questionnaire at a board/society meeting, through your own knowledge of issues raised through your organisation, or through distribution of a small number of questionnaires to members. We are able to provide an electronic version of the questionnaire for ease of communication, if preferred, and responses could be returned directly to us.

The response to the questionnaire does not need to be exhaustive about experiences, but to help provide some insights into how literacy and numeracy difficulties of participants may have had impact on a mediation or conciliation, and how such impact can be managed, with examples, if possible.

Participation in the study is voluntary, and all responses will be kept confidentially in a secure location. Responses of individual participants or organisations will not be identified or identifiable in the final report and other outcomes.

As the project is due to report by the end of August, we would appreciate a response by June 10.

We hope you are able to assist us in this work. We are happy to answer any queries by email to the addresses below, or by phone to Joy Cumming at (07) 3875 6862. Where possible, we would be willing to meet with members such as the board of your organisation to discuss the work and consider responses directly.

Thank you for your time in considering this project. Could you please indicate your willingness to participate in the project by completing the response form attached and return it in the reply paid envelope provided.

Yours sincerely

Professor Joy Cumming PhD JD

Project Leader

j.cumming@griffith.edu.au

Dr Jan Wilson

Research Fellow

j.wilson@griffith.edu.au

Response: Name of organisation: _____

- Yes, we are pleased to participate in the project
- No, we are not able to participate in the project

Preferred method to receive the questionnaire (tick as appropriate):

- sent by mail to:
 - address above
 - other address:

- sent by email to (please provide email address):

- as attachment
- within email text.

Please return in envelope provided to:
Dr Jan Stenton
School of Cognition, Language & Special Education
Faculty of Education
Griffith University
Brisbane Q4111

Dear

We appreciate the response of your organisation to the following questions. The goal of the project is to provide a report on literacy and numeracy difficulties and ADR, and to develop materials to be available for general professional development of mediators in this area. Your response does not need to be exhaustive. All information is valuable to the project.

Participation in the project is voluntary, and all responses will be kept confidentially in a secure location. Responses of individual participants or organisations will not be identified or identifiable in the final report and other outcomes.

Thank you for your assistance.

Joy Cumming and Jan Wilson

Questionnaire (spacing reduced)

Name of organisation:

Background information

Do you require ADR accreditation for members who participate in ADR?

Yes

No

If yes, could you please detail?

Do you provide, or are you aware of, any professional development on literacy or numeracy issues in ADR training?

Yes

No

If yes, could you please detail? ____

Mediation and low literacy/numeracy

Do you consider ADR practitioners are usually able to determine if a party to be involved in ADR has difficulties in literacy or numeracy? If so, how would they do this?

From the experience of your members, what aspects of ADR processes could cause difficulties for parties with low literacy levels? What do you consider would be the possible impact for different types of ADR (for example, negotiation, mediation, voluntary versus court-ordered mediation)? (again, any vignettes of actual mediation experiences would be welcomed)

What aspects of ADR processes could cause difficulties for parties with low numeracy levels? What is the possible impact for different types of ADR (for example, negotiation, mediation, voluntary versus court-ordered mediation)? (again, any vignettes of actual mediation experiences would be welcomed)

How do you consider such issues in literacy and numeracy could be/have been addressed?

Finally, what suggestions would you make for enhancing awareness of ADR practitioners of the potential of encounter with clients with literacy and numeracy difficulties and who may not make these difficulties known?

Appendix E

Individual alternative dispute resolution practitioner participants in the study

Table 1: Return rate for individual mediator survey

State	No. sent	No. refused	No. returned to sender	No. responses	% return rate
ACT	11	0	0	4	36.4
NSW	71	2	4	21	29.6
NT	7	0	0	2	28.6
QLD	59	0	4	4	6.8
SA	11	0	0	3	27.3
TAS	2	0	0	1	50.0
VIC	61	1	2	12	19.7
WA	10	0	0	4	40.0
Total (incl all returned)	232	3	10	51	22.0 (27.6)

Table 2: Gender and experience of respondents to individual survey

Gender	Years exp.	N
Male	0–5	5
	6–10	7
	11 +	21
	Not advised	9
Female	0–5	1
	6–10	2
	11 +	4
	Not advised	1

Table 3: Accreditation information for respondents to individual survey

Accreditation	No.*
Accredited IAMA	32
Accreditation LEADR	15
Accreditation Law Society	11
Accreditation Bar Assoc	4
Other noted	23
None noted	6

* Respondents could record more than one accreditation.

Other accreditations included ACDC**SPELL OUT**, a Legal Aid Commission, Bond, CDR **SPELL OUT**, Conflict Resolution Service, Defence, Office of Fair Trading, Workers' Compensation, Victorian Civil and Administrative Tribunal, Land & Mining Tribunal, Harvard Law School Access, and membership of the Chartered Institute of Arbitrators.

IAMA = Institute of Australian Mediators and Arbitrators

LEADR = Leading Edge Alternative Dispute Resolution

Table 4: Legal qualifications for respondents to individual survey

Legal qualification	No.
Nil	19
Law degree, solicitor/barrister	20
Arbitration qual.	4
Retired judge	1
None noted	7
Total	51

Table 5: Participation of respondents in court-ordered mediation

Court ordered	No.	Nature
Yes	25	10% Supreme Court NSW, Commercial Tribunal 10% Supreme Court, District Court 10–20% Victorian Supreme Court 17% Supreme Court Vic, NSW 10%, District Ct NSW 2%, Federal Ct 3% 25% Supreme Court, & Federal Court of Aust 30% All NSW courts, retail leases 42% District Court 5% District, Supreme Courts 5% NSW Supreme Court 5% Supreme Court 5%, 10% planning tribunal 5% Supreme Court NSW 50% VCAT Supreme Court, County court 80% County & Supreme Courts, Federal Court 95% VCAT Civil claims, NSW community justice centres Consumer trade & tenancy tribunal District (little) Federal Magistrate Court, Family Court Magistrate Court, District, Supreme, Federal courts NSW Supreme Court, District Court, Vic. Supreme Court Qld Commercial and Consumer Tribunal Tribunals Not court but 33% by recom. to mediate
No.	20	
Not advised	6	
Total	51	

VCAT = Victorian Civil and Administrative Tribunal

Table 6: Areas of mediation indicated by respondents to individual survey

	Areas of mediation	No.
	Administrative appeals	2
Social	AAT	2
	22	
	Aged care	3
	Community	2
	Equal opportunity	1
	Estates	1
	Family	10
	Health	1
	Keeping peace	1
	Neighbourhood & community	2
	Sexual harassment	1
Small claims	4	
	Consumer claims, small claims	4
Building	16	
	Building, construction, property, development (defects, payments, variations)	13
	Building & engineering	2
		1
Planning and development	6	
	Construction industry (domestic)	
	Development disputes	1
	Land planning	2
	Property	1
	Strata title	2
Business	8	
	Business disputes	1
	Franchising	3
	Manufacturing disputes	1
	Partnership	1
	Retail leases	2
Commercial	21	
	Commercial	10
	Commercial (appeals development application)	1
	Commercial contractual disputes	2
	Commercial (large)	6
	Commercial and property law, high value matters, complex legal, corporate	1
	Commercial matters where valuation skills are necessary (large)	1
Local government	4	
	Civil municipal	1
	Local government	1
	Local gov't compliance etc	1
	Rate payer disputes	1

	Areas of mediation	No.
Workplace		17
	Industrial	2
	Industrial relations	1
	Workers' compensation	4
	Workplace (and workplace grievance)	9
	Workplace (defence)	1
International		2
	International trade law	1
	Transnational disputes	1
Other		19
	Contracts	3
	Court annexed disputes	1
	Engineering	1
	Environmental	2
	Immigration	1
	Intellectual property	1
	Leases	1
	Personal injuries	3
	Private clients	1
	Professional negligence	3
	Reinsurance	1
	Third party referrals	1

Appendix F

Organisations involved in alternative dispute resolution in Australia included in the survey

Law Council of Australia
Law Institute of Victoria
Law Society of South Australia
Law Society of Tasmania
Queensland Law Society
The Law Society of NSW
The Law Society of the Australian Capital Territory
The Law Society of the Northern Territory
Australian Capital Territory Bar Association
Bar Association of Queensland
Tasmanian Bar Association
The New South Wales Bar Association
The Victorian Bar Council
Western Australian Bar Association
Alternative Dispute Resolution Association of Qld Inc. ADRAQ
Institute of Australian Mediators and Arbitrators (IAMA)
IAMA ACT
IAMA Northern Territory
IAMA NSW
IAMA South Australia
IAMA Tasmania
IAMA Victoria
IAMA Western Australia
Law and Justice Foundation of NSW
Leading Edge Alternative Dispute Resolution (LEADR)
Relationships Australia NSW
South Australian Dispute Resolution Association (SADRA)
Victorian Association for Dispute Resolution Inc (VADRA)

Appendix G

Vignettes of mediations involving literacy, numeracy or language difficulties

De facto property settlement, female party of Romany descent, decent and working as prostitute, male party working in construction industry. Female party stated privately she had difficulty in reading but not with literacy. Catered for this during mediation. I felt her numeracy skills were greater than mine.

An arbitration within building industry

The builder was a highly articulate, intelligent and well-read person who conducted a building construction business in the field of small commercial, industrial and institutional buildings for building owners in Y. Much of his work is conducted with the state government building authority. The work consists of schools, office buildings, alterations and additions to public buildings, libraries and infrastructure projects.

The builder has made a study of legal cases over many years, and although he is very well read, confident, and able to express the legal arguments with considerable ability, in this case I decided that his arguments were not compelling, and he lost the case.

The state government was represented in the arbitration by the state government client representative, rather than the state government building authority representative. The State Government client representative was well educated and articulate in his field, but not in the field of building construction. There was only one issue of dispute to be resolved, but the builder had presented his case in the context of complex legal arguments, which the client representative did not understand and could not address. The client representative had been briefed by the Crown Solicitor to provide two responses to the claims by the builder, which, in this case, were all that he needed to say.

The builder's propositions were complex and difficult for a lay person (such as the client representative) to grasp. In this case, the client representative made no attempt to answer the legal arguments. Instead he relied entirely on the advice he had received which related, firstly, to clause 8 of the terms of the contract, and secondly to the fact that previous dealings between the government and the builder were irrelevant in this particular dispute.

In this case, the literacy skills of the client representative were not lacking. What was lacking was his capacity to express, in comparable terms, answers to the legal arguments presented by the builder. The client representative was also confronted by a variety of Latin expressions from the builder, which to those familiar with the legal profession and legal cases, are understandable, but

to this gentleman, they were words from a foreign language, which he did not understand ... the parties were able to express themselves in ordinary English. They all lacked the capacity, however, to explain the connections between the terms of the Contract, and the circumstances that had evolved on the construction site.

It is this difficulty, in my view, where the Mediator or Arbitrator must be alert to the advantage that one party may have in the presentation of arguments for this point of view. The building industry is one where the builder has had many years of experience and knowledge of a work environment that is full of subtleties and which are difficult to appreciate in the context of dispute resolution.

- ✧ In the NT I facilitated in many cases as the Anti-Discrimination Commissioner, in situations where a party or parties had English as a second or third language. One particular case was the Alice Springs Taxi case. This involved alleged abuses of Aboriginal customers by a small number of taxi drivers. We met with a diverse group of parties over a period of 12 months, including Aboriginal community representatives and their clients, government bodies and the industry representatives. Such facilitation requires much patience, understanding and moving into a zone of acceptance for issues and problems often ignored. Use of interpreters, legal representatives and community representatives is often vital in such situations.
- ✧ In many cases, I would use a facilitated meeting and call the session 'information sharing session'. I would then coach the parties, whether they were community participants or the developers, into putting together a presentation for the purpose of expressing themselves fully in what they were wanting, or effects that they were having. I always put a lot of time and energy into these premediation sessions, as often parties needed to be coached and trained in understanding what was the base of their perspective and being able to share that with someone who may have no beginning empathy in content or context. In one case, the party was a multinational corporation and they sent their PR person to the initial meeting with me for the preparation to the information sharing sessions. It did not take long before this person realised that their skill in promotion was not the skill required and the meeting had to be reorganised to include the knowledgeable people. There are basic assumptions of skill that constantly need to be tested in the process of mediation regarding communication.
- ✧ Often parties would have their professional advisors with them, architects, or other professionals who uses maps or plans as their main communication tool. I would do many things to ensure this was not an area of disadvantage. I would ask parties to talk initially about their perspectives without the use of tools and then when they were introduced I would ask the people around the table to identify those skilled at reading the information. This would always identify those not skilled. More often than not an interesting reaction would occur where a bond would arise between all those skilled, no matter which side of the fence they were in the dispute, and then the others were isolated. I would then ask the skilled to assist in explaining how the plan, map whatever worked. The main part of my job at this point was always to ensure all were participating via shared meaning. It would often require creativity and patience and I would often thank the parties for the use of these qualities.

Further reading

- Community Legal Centres (WA) Inc. 2002, Submission to a Senate Enquiry, Legal aid and access to justice viewed 26 April 2005, <http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/submissions/sub93.doc> (Google search).
- Legal Aid Commission of NSW, viewed 26 April 2005, <http://www.lawlink.nsw.gov.au/ar2002/clients.html>.
- Northern Territory Law Reform Committee 1997, *Alternative dispute resolution in the context of family and other domestic disputes*, Northern Territory Law Reform Committee, Darwin.
- Queensland Government, (undated), *Aboriginal English in the courts. A handbook*, viewed 26 April 2005, <<http://www.justice.qld.gov.au/lawyers/facts.htm>>
- Queensland Government (undated), *All about mediation in Aboriginal and Torres Strait Islander communities*, Fact sheet no.19, viewed 26 April 2005, <http://www.justice.qld.gov.au/mediation/about/factsheet19.htm>.