

Who says you're a mediator?

**Report on NADRAC workshop on mediator accreditation at
7th National Mediation Conference, Darwin 2 July 2004**

Introduction

NADRAC convened a workshop on mediator accreditation at the 7th National Mediation Conference. The aim of the workshop was to promote discussion among ADR practitioners and organisations about the development of systems for mediator accreditation.

Cognisant that many people with an interest in mediator accreditation would not be able to attend the Darwin conference, NADRAC invited written comments to its discussion paper, *Who says you're a Mediator? Towards a National System for Accrediting Mediators*, which was released in March 2004. The 32 responses to the paper were consolidated, placed on NADRAC's website prior to the conference and made available at the conference itself. An overview of the submissions was also provided to conference participants and subsequently placed on NADRAC's web-site. The chair of NADRAC, Justice Murray Kellam, reported on the issues raised in the responses to the discussion paper during the morning plenary session on 2 July.

At NADRAC's request, Professors Laurence Boule and Tania Sourdin facilitated an interactive session with conference participants on the final afternoon of the conference. The session was introduced and chaired by the convenor of NADRAC's quality and accreditation committee, John Spender QC.

It is estimated that 200-300 people attended the workshop.

The workshop at the conference was seen as only one part of an ongoing discussion about mediator accreditation. The Commonwealth Government has indicated its support for this process. Attorney-General Philip Ruddock announced, on the first day of the conference, a grant of \$30,000 to the National Mediation Conference Limited, which is the company that runs the mediation conferences very two years. The grant will enable the National Mediation Conference Limited (NMCL) to engage a facilitator acceptable to stakeholders who would conduct further consultations on the mediator accreditation issue. These consultations would build on NADRAC's workshop and paper. The NMCL is required to provide the Attorney-General's Department with a consultation plan by 30 September and to produce a report on the outcome of the consultations by the end of June 2005. It was envisaged that further developments would be discussed at the 8th National Mediation Conference in 2006.

Who says you're a mediator

The first part of the workshop involved a facilitated discussion on the question of 'who says you're a mediator?' Matters to arise out of the discussion included:

- There are many accrediting authorities and panels.
- The parties say who is a mediator, as the mediator keeps getting work.
- A training course does not make a person a mediator.
- It is hard to say at what point one 'becomes a mediator', but it is possibly after hundreds of hours of experience.
- Sometimes practitioners feel like 'mediators', other times not; and yet people continue to see themselves as lawyers, psychologists, etc..
- A good mediator may well be 'invisible' as the parties own the outcome.

The question was also raised as to how someone complains about or gives a compliment about one's service. Options included direct feedback, surveys, formal channels and being removed from a list. The key to accreditation was as much about how one 'stops' being a mediator as how one 'becomes' a mediator. A mediator may be removed from one list on the grounds of incompetence or misconduct, but there was nothing to stop that same person joining another list.

Small group exercise

Participants were invited to write down person responses to two key questions:

1. What do you do when you mediate?
2. How do you know if you are doing well?

Responses are grouped below.

What are you doing when you mediate?

Client outcomes

- Assist clients achieve their stated aims
- Assist people to work together with respect
- In practice, try and help people find their own answers and keep them out of court, if possible
- Help people communicate better
- Make a happy and healthy person
- Help people talk and, more importantly, listen
- Assisting couples to [reach] agreement around family issues
- Clients achieve outcomes they can live with and feel they own and can implement

The role of the mediator or the mediation process

Formal role

- Mediate
- Conciliation
- Problem solving
- Process, ethics, skills, knowledge

- Type of practice – commercial, family and child mediation, workplace, neighbourhood
- Employed as a mediator, paid as a mediator, have qualification that says so, demonstrate competencies
- Looking for paid work, try to make a living
- Working a second job

Models

- Diamond model/co-mediation
- Relationships Australia model
- Facilitative mediation model
- Co-mediation
- Follow model approved by our organisation
- LEADR model and psych training
- To socialise the model and test it; to launch as model for mediation at the Timor Centre

Intake/preparation; explanation of design of the process

- Determine with the parties the appropriate intervention
- Explain and promote mediation and benefits
- Ensure a thorough assessment is done
- Conflict coaching

Structure/space

- Act as the catalyst for safe, constructive dialogue between dissenting parties
- Make a space for communication
- A safe place and a clear process
- Create a space for communication
- Provide a structure to ensure discussion
- Create a frame

Communication

- Act as communication facilitators
- Guide disputants
- Dialogue – [enable clients] to tell their story
- Facilitative communication – client self-determination
- Spiritual conduit of subtle energy
- Destructive – constructive

Mediator behaviours

Communication

- Reflect [what I see and hear]
- Listen
- Question
- Summarise
- Empathise
- Communicate when more than one party engages in discussion
- Yarn

Orientation to the parties

- Support
- Stay non-judgemental
- Be humble and keep a sense of humour
- Meet the clients where they are at
- Be reflective and responsive to clients' needs
- Be respectful
- Help people
- Remain impartial
- We hang in there!
- Enjoy talking to people, enjoyment of rich tapestry

Intervention/management of process

- Facilitate
- Intervene
- Provide information
- Suggest
- Advise (oops!)
- Assist communication
- Provide opportunities to listen
- When parties are ready, or need to move on in the process, direct discussion to future options
- Caucusing, shuttle, private session
- Use creativity
- Reframe
- Manipulate – creates omnisppection, omnidistance
- Explore options
- Reality checking
- Discuss outcomes and possible impact on all parties
- Clarify the resolution/settlement
- Hold, let go

Change

- Change agents
- Trying to influence policy and tradition

How do you know you have done it well?

Feedback from clients – informal/immediate

- Direct and indirect client feedback at stages of the mediation
- When the clients tell me I've done it well
- [or say] 'it was so calming'
- Strong, positive client feedback
- Post-mediation party said, 'Boy, you're good'
- A kiss on the cheek
- A bag of avocados
- Thank you from client

Feedback from clients– formal/follow up

- Client satisfaction
- Parties feel positive, three months on
- Feedback evaluation sheets
- Client feedback forms
- Testimonials
- Client surveys (including online)
- Ask/elicite clients for feedback [and] use feedback received for training and improving processes

Feedback from supervisors

- [Clinical] supervision
- Supervision discussion
- Feedback from coordinator
- Performance appraisal by employer

Feedback from peers

- Debrief with peer; feedback during debriefing
- Co-mediation feedback; co-mediators honest and frank, summaries and drafts – scrutinised thoroughly
- Positive feedback from panel surveys
- I rely on competent others (colleagues) to inform my practice

Feedback from self

Subjective assessment

- My sense of what has happened
- Personal sense/observation
- Just a sense it worked
- Own assessment
- Self-reflection
- My own sense of success/failure
- Magic moment
- It's a matter of constant, critical and demanding self-critique

Behavioural indicators

- [I] see the shift in the individuals – the parties, also mine as mediator
- I'm not doing well when I'm taking responsibility to fix the situation

Learning

- Reflection
- New tools
- Building complementary ADR networks
- Video
- Ongoing training
- Learning widely and often

Feedback from the market

- Word of mouth
- Market says [I am doing well]
- Credibility
- Referrals
- Return/repeat business
- Still in business – referrals keep coming in!
- The customers keep coming
- ‘I do it a lot’
- Making money
- Insurers tell me they respect the process
- Are we respected by clients?

Feedback from the outcomes of mediation

Behavioural indicators

- Parties listen and acknowledge
- When parties both say they are happy with the process, the way I’ve managed it and feel they have a greater understanding of the other
- When people are able to share their stories
- Subjective impressions – body language, spoken language
- Clients become happy
- Clients tell us, ‘We could have done this ourselves’ [and] don’t come back
- People report that they are able to open up opportunities for shared understanding and not have to ‘reach agreement’ as this may come later

Assessment of outcomes

- Peace breaks out
- People are empowered by the process
- [There is an] improved relationship between parties
- Parties are satisfied and moving on
- Parties agree to a fair outcome
- An outcome, or outcomes, that the parties can live with

Formal indicators

- Increased number of settlements
- Monitor outcomes, full/partial/no agreement
- Longitudinal monitoring of agreements

The absence of the negative

- Not being sued
- No stalkers
- Do we get paid?

Issues raised in plenary discussion

Issues were also raised by participants in plenary discussions at the workshop, as well as in the morning plenary session. These issues included:

- How should the needs of remote locations be taken into account?
- How do we ensure recruitment of people from culturally and linguistically diverse and Aboriginal and Torres Strait Islander communities?
- How do we maintain collegiality among mediators?
- How can we get feedback from consumer groups?
- How do accountability and immunity overlap?
- How flexible should the requirements be for professional education?
- An over-arching system is needed.
- There are shifting definitions of mediation and ADR practice.
- People do not need standards to get work.
- It is not possible to remove inappropriate operators without legislation. The franchise industry is a case in point.

Process from here

Suggestions and comments were raised about the process for further discussion, in light of the grant to the NMCL. Some written and oral comments were also provided at the conclusion of the workshop. These suggestions included:

- Any system needs to promote diversity. It is crucial to recognise other cultural models and to recognise Indigenous groups and practices. The recognition and accreditation of Indigenous practitioners is a critical issue that cannot be ignored.
- What is needed is a 'mediators' mediator'.
- We need to bring people together and ensure stakeholders are represented.
- Identify the interests of stakeholders.
Gather information on options.
Test options against criteria.
- Tangible results are needed: a project methodology needs to be developed; a staged sequential approach is needed.
- We need decision-making, not just consultation.
- There needs to be segmentation to recognise different areas of practice.
- In the commercial arena, there are repeat users and sophisticated advisers. Therefore the need for accreditation is different.
- We need to create a small 'p' profession.
- Don't limit accreditation to those with degrees and post-nominals.
- We need to avoid re-inventing the wheel; other groups have developed standards; we need to examine the models developed by others. Overseas models could also be considered; for example, Austria.
- In looking at accreditation and examining different models, we need to be careful not to over-regulate ourselves to the point of stifling the practice, for example, the Migration Agents Registration Agency.
- The process needs to be taken up again at the next National Mediation Conference.