Collaboration in the ADR space - formation of the NADRN

Peter Johnstone (QCAT) Louise Clegg (NCAT) Ian Lulham (VCAT)





victorian civil & administrative tribunal QCAT

Queensland Civil and Administrative Tribunal

Overview of presentation

- ► What is NADRN?
- ► Why was it formed?
- ► Who is involved?
- ▶ What does it hope to achieve?
- What has been achieved to date?
- Opportunities for collaboration?

NADRN – National Alternative Dispute Resolution Network

Purpose

The Productivity Commission's report into Access to Justice Arrangements stated that "ADR is increasingly used by courts and tribunals as an alternative or complement to formal hearings" and that ADR processes are "procedurally simpler and potentially less adversarial than resolution by hearings in courts and tribunals".

How do tribunals deliver more efficient and effective ADR?

Membership

- Peter Johnstone Queensland
- Luke Tilley Queensland
- Louise Clegg NSW
- Vikki Hardwick NSW
- Ian Lulham Victoria
- Professor Peta Spender ACT
- Kristy Soper ACT
- Richard Bruxner Northern Territory
- Michelle Player Brown South Australia
- Wendy Wakefield South Australia
- David Aitken Western Australia
- Mark Street Western Australia
- Justin Toohey AAT

Goals

- To facilitate the sharing of information and best practice between Tribunals
- To gain consensus where possible and appropriate (definitions, measures etc)
- To facilitate collaboration on projects of mutual benefit

Current topics of discussion..

Efficiency in delivery of ADR services

Training / accreditation of members and staff



Minor Civil Dispute Mediation Trial – QCAT

Peter Johnstone ADR Manager, Queensland Civil & Administrative Tribunal

- QCAT has monitored settlement rates over a number of years
- Settlement rates had not reached the agreed benchmark and had in fact declined :
 - 2011: 46% (39% Brisbane)
 2012: 45% (35% Brisbane)
 2013: 44% (33% Brisbane)
 2014: 52% (42% Brisbane)

- QCAT decided to conduct a trial of different mediation models to determine if there was a particular model better suited to MCD mediations
- The trial was largely based upon a 2011 article written by Professor Nadja Alexander - "The Mediation Meta-Model - the realities of mediation practice"
- Four mediation models were trialled

- MCD mediations occur within a very specific environment requiring the application of a specific model of mediation:
 - Mediation occurs within the shadow of a determinative process

 this impacts on how parties frame their dispute and how they
 behave in mediation
 - Many parties perceive MCD mediation as simply being part of a broader Tribunal process – this impacts upon their expectations of the mediator
 - Parties are typically unrepresented at QCAT and therefore often have limited knowledge of legal processes and unrealistic expectations regarding their matter and potential outcomes

Settlement Rates

Advisory B	•	74%
Advisory A	•	60%
Settlement	•	49%
Facilitative	•	31%

(settlement rates were adjusted to account for any bias associated with dispute types or claim value)

Client Survey (Overall Satisfaction)

- Advisory B : 86%
- Advisory A : 92%
- Settlement : 82%
- ► Facilitative : 90%

Client Survey (Satisfaction with outcome)

- Advisory B : 48%
- Advisory A : 80%
- Settlement : 57%
- Facilitative : 52%

ADR in QCAT

- QCAT has opted for the <u>'process advisory'</u> model of mediation
- The model will include the provision of information regarding QCAT processes to aid more informed and detailed testing of parties' options
- The model will also focus upon more rigorous reality testing, particularly during private sessions
- It is anticipated that this model will generate improved settlement rates while maintaining satisfactory client satisfaction

MCD Mediations

- During the trial period QCAT also travelled to four regional DRC's and observed intake and mediation
- Observations suggested that, in general:
 - Issues mediated in regional areas were slightly less complex
 - Parties to mediations were less combative and more concerned about relationships

In summary:

- QCAT has sought to maximise settlements achieved in MCD mediations through application of a more appropriate mediation model
- In 2015 2016 the benchmark for QCAT mediations will rise from 50% to 55%
- This will represent significant savings to QCAT
- Increased settlements also result in higher client satisfaction rates

NCAT Online Dispute Resolution Pilot

Louise Clegg

Manager, Dispute Resolution and Case Management, New South Wales Civil and Administrative Tribunal

NCAT background



- NCAT objective to provide a Tribunal service that is prompt, accessible, economical and effective
- The practice and the procedure of the Tribunal should be to facilitate the resolution of the issues between the parties where the cost is proportionate to the subject matter

NCAT Division	Current ADR practices
Administrative and Equal Opportunity	Planning conferences Mediation
Occupational	Planning conferences - only in Health matters to develop agreed statement of facts
Consumer and Commercial	Prior to lodgement of application - Mediation by Community Justice Centre, Fair Trading, Small Business Commissioner Conciliation Formal mediation conducted by Tribunal Member Onsite conclave
Guardianship	No formal ADR - hearing model non-adversarial. Orders made by discussion and negotiation Conciliation currently being piloted in selected matters





- 1. Simple to establish and use
- 2. Low cost to the user and NCAT
- 3. Quick to resolve matters
- 4. Accessible simple to use
- 5. Availability throughout state including regional / remote areas
- 6. Enforceable orders converting agreement to a consent order
- 7. Satisfactory to users outcome and system usability





Consumer and Commercial General List matters

- 1. Consumer claim
- 2. Application lodged online
- 3. Single issue
- 4. Claim less than \$5000



Invitation sent to Applicant & Respondent to voluntarily participate in ODR At the same time matter listed for conciliation and hearing

Applicant & Respondent register for ODR

Parties guided through the ODR system

(Identify issues, jointly develop solutions, generate negotiated agreement)

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File closes on ODR website 3 days prior to the hearing

Agreement/withdrawal advice to registry - processed administratively Finalised prior to hearing OR Settlement/withdrawal no advice to Registry & no appearance at hearing Application dismissed

No agreement/withdrawal Parties proceed to hearing on scheduled date

Outcomes & Feedback



Outcomes

- 56% take up by one party
- 5.5% increase in matters finalised prior to hearing
- 3% increase in matters finalised at the hearing
- 8.5% reduction in matters adjourned for a formal hearing
- Based on pilot outcomes possible saving of 12 hearing days per month

Feedback from client survey

- 65 % agreed or strongly agreed that ODR was convenient and that they would use it again
- 37% agreed or strongly agreed that ODR helped them to explain the issues and narrow the areas of dispute
- 63% agreed the ODR website was easy to access and use

Conclusion & Future considerations

• There is an appetite for a simple ODR facility to be available anytime and anywhere

NCAT

NSW Civil &

dministrative Tribuna

- Continue concurrent process of ODR option and listing for hearing for a seamless case management pathway
- Future model to be integrated with the Tribunal Case Management System
- Will the inclusion of an online facilitator be cost effective
- Should the target group expand to include claims over\$5000
- NCAT will explore implementation of ODR to enhance rather than replace current resolution processes.

VCAT Fast Track Mediation

Ian Lulham

Deputy President / ADR Member, Victorian Civil and Administrative Tribunal

In this financial year 2014 - 2015 66% of cases listed for Short Mediation and Hearing "SMAH" were resolved without a hearing. ► What the parties see:

The case is listed for a 1 hour Mediation, and with a hearing on the same day if needed. Within the Tribunal – what the parties do not see:

- Screening of files to see that they meet the criteria
 Scheduling
- Information to parties Notices & Website
- Roster
- Coordinator
- Debriefing for Mediators
- Data collection

The criteria for cases to be listed for a SMAH:

- Civil Claims under \$3000.00
- No counterclaim
- No witnesses or appearances via video/telephone expected
- No Security issues

Frequency of listing:

One day per week

Up to twelve matters listed per day

In this financial year, 41 weeks have been listed. At 12 per listed day this is 492 mediations. Who conducts the Mediations:

Eighteen VCAT Registry staff members who have achieved National Accreditation, having attended a 6 day training program and training in comediation

Style of Mediation:

- A facilitative model is used
- Mediations are conducted by sole mediators and by comediators.
- Co-mediators follow a model developed by the Dispute Settlement Centre of Victoria
- The Tribunal has standard Terms of Settlement available for the parties to consider
- An Order will always be made not by the Mediator but by a Member
- Frequently, due to the parties agreeing that their settlement is confidential, the Order does not record the settlement

Efficiency:

- Time efficiency: each 1 hour Mediation which results in a settlement saves 1 hour of hearing time
- This is better that "1 for 1" because (a) there is no additional writing time spent by the Member, and (b) from a budgetary perspective, Mediators' remuneration is less than Members'
- In financial year 2015 2016 the Tribunal intends to conduct a thorough cost / benefit analysis of its ADR programs, including the SMAH program

Training and Development

- ADR training for staff & members NMAS common standard
- Mediation training delivered by a range of providers
- VCAT is a registered mediation accreditation body (RMAB) and assists a number of Tribunals
- Recognition of value in ADR training for staff assists in registry operations
- Ongoing professional development
 - Requirement under NMAS
 - In-service sessions are provided by staff, members and external providers
 - Several tribunals maintain valuable partnerships with universities
 - Relationships are limited however by availability of academics with ADR expertise

Training and Development

Future opportunities for co-operation

- Pooling of resources (eg Pepperdine)
- On-line collaboration
- Recording of sessions
- Heightened quality of training

Looking Forward....

- Med/Arb models and their use
- ► Use of ADR in guardianship matters
- Charging for services
- Member conciliation / mediation vs decision making
- ► ADR research opportunities
- Common definitions / terminology / measurement

Where to from here....