

## ADRA INITIATIVES

### DOMESTIC VIOLENCE AND MEDIATION SEMINAR

ADRA is proud to be presenting in Sydney on 26 October a seminar on DOMESTIC VIOLENCE AND MEDIATION. Speakers will include experts from all over Australia on the highly controversial issue of whether it is appropriate to mediate where there has been domestic violence between the parties.

In her excellent article *Domestic Violence and Mediation* published in this issue, Anne Duffield presents some of the complex issues involved and provides a valuable summary of problems we will be dealing with on 26 October.

Julie Stewart on behalf of the NSW Domestic Violence Committee of the Women's Co-ordination Unit will present the policies of the NSW Government. A representative will present a paper on behalf of the National Committee on Violence against Women outlining the policies of the Federal Government.

Cathy-Ann Grew of the Domestic Violence Advocacy Service in Sydney will highlight the safeguards that need to be incorporated into every Mediation Agency policy on domestic violence. Eric Stevenson from Unifam and Linda Fisher from Marriage Guidance will describe the safeguards which have been adopted into the policies of the major agencies to deal effectively with domestic violence.

Angela Karpin, the Deputy Chief Magistrate of the Local Court, will discuss the problems from the perspectives of the Bench. Dianne Gibson, the Acting Director of Mediation, will outline the policy of the Family Court towards mediation where domestic violence has occurred. This is now particularly important because of the recent amendments to the Family Law Act which will *officially* make mediation one of the dispute resolution options in Court proceedings.

John Pollard, Solicitor and Mediator, will highlight the problems for Mediators in identifying domestic

violence, particularly psychological duress and the problems of maintaining neutrality and impartiality.

There will be ample opportunity for panel discussion and questions. Practical problems will be raised and debated. Participants in the audience will be given an opportunity to raise issues and suggest solutions.

I hope that every family and community mediator in Australia will try to attend this important seminar. This is the first time that these fundamental issues will be discussed and debated for Mediation in Australia with input from such renowned experts. It will educate us to the problems and solutions.

At the end of the day, I hope there will be a consensus as to the rules which must be followed to ensure the protection of victims from violence, duress and exploitation and also protection for the mediation process - to ensure that both parties are treated fairly. Dr Greg Tillett, the Director of the Conflict Resolution Centre at Macquarie University, will wrap up the proceedings by summarising the essential safeguards and matters upon which there is substantial agreement.

This day is a **must** for family mediators. All mediators, lawyers and other community workers will benefit from attending this seminar. In recognition of the quality of the presenters NSW solicitors may claim 5.5 MCLE points for attendance. Only 140 places are available and we are expecting participants from all over Australia, so please make sure that you register soon. Debbie Oddi on (02)264-2573 will be pleased to answer enquiries.

*John Pollard*

*Vice President and Convenor of the Family Mediation Division of ADRA*

### PROPOSED COMMUNITY MEDIATION DIVISION

*On July 1 a meeting was organised by Ruth Charlton and Robyn Claremont with a view to forming a Community Mediation Division of ADRA.*

John Pollard, the Vice President of ADRA, opened the meeting which was attended by of 23 community mediators. John gave an overview of the aims of ADRA as a professional association of mediators in Australia. He spoke of the role of ADRA as an accrediting body, which would be able to regulate standards of practice and training for mediators.

John outlined the concept of *divisions* and spoke of the work of the Family Mediation Division in providing ongoing professional support and opportunities for development to mediators practising in the family area. He believed a Community Mediation Division could operate in a similar way to further the aims and practice of community mediators.

The meeting then broke into four discussion groups to consider what the role and function of the proposed Community Mediation Division might be.

*Continued on page 2*

#### STOP PRESS

The ADRA Board of Management has approved the establishment of the Community Mediation Division. Enquiries concerning the Division and its future meetings should be addressed to Tom McDermott (02) 268-3149

## PROPOSED COMMUNITY MEDIATION DIVISION

*Continued from page 1*

When the meeting reconvened, a list was drawn up of what the mediators present saw as the role of the Division, and of the kind of program which it might follow.

### Role:

- To define community mediation
- To enhance the status of community mediation
- To represent community mediators
- To provide standards of accreditation, and for cross-accreditation between divisions
- To consider what marketing strategies ADRA might offer community mediation
  - To provide ongoing training and skills enhancement
- To provide representation on ADRA of the interests of community mediators
- To examine different models of community mediation

### Program:

- Specific training and development sessions
- Consideration of changing expectations within and between communities
- Regular meetings to set agendas and determine the direction of the division
- Participation in conferences

The meeting resolved to request ADRA to approve the foundation of a Community Division to carry out these roles and functions. A working committee was established.

The next meeting held on Monday August 12 will take the form of a discussion group to consider the NSW Law Reform Commission's Discussion Paper on *Neighbour and Neighbour Relations*. It seems very timely that the group should have the opportunity to put forward a submission from practised community mediators. Copies of the Discussion Paper are available from the Law Reform Commission (02) 252-3855 or from the Community Justice Centre, 12th Floor, 175 Liverpool Street, Sydney.

Ruth Charlton  
Robyn Claremont

## THE INTERVIEW:

The services of the Community Justice Centres are designed to assist members of the community in dealing with personal disputes. The Centres provide mediators and neutral ground where the disputing parties may attend in a joint session and (hopefully) make a joint decision. Emphasis is put upon neutrality, impartiality and confidentiality.

The parties' voluntary participation is essential to the mediation process. People are given the option of taking into their own hands the power of deciding and solving their own disputes rather than relying on authority figures to make the decision for them. The mediation service at the Community Justice Centre (CJC) is in fact aimed at establishing direct negotiation between parties and empowering them with a full negotiation of options for resolution.

As a 'universal' service, this is open to everyone in the community. Rich or Poor! However, the rich will more often seek the services of a solicitor.

As the Interviewing Officer at Bankstown CJC it is my role to explain all this to people who contact the CJC.

The objectives of the Centres are to:

- 1) provide information regarding the Centre's role, e.g. assistance in dispute resolution;
- 2) assess the need of the disputant and suitability for a mediation session or conciliation, and
- 3) if unsuitable, make appropriate referrals.

A person contacts the Community Justice Centre when a dispute exists. He/she may have been referred by the Chamber Magistrate, police or any of the many other agencies within the community. Lately there has been an increased number of self-referred people, which is a good indication of better awareness within the community of the existence of the CJC.

The interview may take place by telephone (mostly) or face to face. When mediation is not possible for some reason, for example, mobility or distance, further information and referrals may be offered.

Conciliation may arise out of the intake interview and is, in most cases, carried out by the Interviewing Officer.

Conciliation is a form of shuttle negotiation during which the interviewer/conciliator 'acts to bring the principals together for the purpose of dispute settlement and may "transmit" offers for settlement from one party to the other' (Faulkes 1986 page 1). The parties are still in control of both the content and the outcome. The Interviewing Officer controls only the process.

When both parties agree to attend, a mediation session is organised and the parties are passed on to the capable hands of the mediators.

### The Intake Interview

Disputes may involve similar issues, but every problem and every disputant is unique and is treated as unique.

In my role as Interviewing Officer I must first inspire trust before I can attempt to do anything else.

I must look at the person's needs. I must listen and hear. This and empathy helps to establish a good rapport (which continues through the interview). I must support emotionally and professionally.

I must consider the emotional state of the clients. They may be threatening, irate, emotionally disturbed, upset and/or lonely. I must consider how to cope with each situation. To the threatening man I may say calmly, 'Sit down please', to the irate woman, gently 'Don't shout please', to the upset 'Let's talk when you're ready', to the lonely 'You must go now, I have much to do' and so on.

Finally, I introduce them to the skills of dispute counselling to convince them that a mediation session will give the possibility of resolution to this dispute.

Of course, this must be done all over again with the second party (Party B) who most of the time is more difficult than Party A.

### ADRA AIMS

- to promote alternative dispute resolution throughout Australia by
  - \* Disseminating information
  - \* Exchanging ideas and experience
  - \* Supporting education and research
  - \* Developing and maintaining standards
  - \* Enhancing skills
  - \* Co-operating with other organisations
  - \* Representing members

# MY ROLE AS THE INTERVIEWING OFFICER

There are many occasions where clients do not want the Interviewing Officer to be neutral; quite the opposite, they want me to act as an advocate for them. They may say 'Write to the other party and tell them what they are and are not allowed to do.'

At all times I assure parties involved in a dispute that the philosophy of the Centres is for the parties themselves to assume responsibility for resolving the conflict of their own dispute, convincing them that the interest of both is best achieved through joint problem solving and direct negotiation.

I also put emphasis on the Centres' ability to guarantee confidentiality of all discussions, with respect to the personal, moral and cultural views of those involved.

Although my interviewing model may vary according to the circumstances, the issues in dispute and the ethnicity of the parties, generally it can be described in four steps.

- 1) Preparing for the interview involves making physical arrangements, my desk as tidy as possible (no record of other files on show), checking my personal appearance and being aware of the time available for the interview. (I try to limit *normal* interviews to ten minutes on the phone and twenty minutes face to face. They may take longer if the client is very distressed.)
- 2) The introduction includes clarification of the expectations and needs as the client sees them, listening and deciding what terminology is appropriate for the client.
- 3) The development stage involves listening, empathy, refraining from premature diagnosis, evaluation and assessment, information giving, clarification, relevant note taking of the essential information, for example name, address and a short summary of the nature of the dispute, and implementation of action.
- 4) Termination takes in ending on a reassuring note, giving referrals, if necessary, and reassurance of confidentiality.

## References

- David J 1986 'Alternative Dispute Resolution: What is it?' in Mugford J (ed) *Alternative Dispute Resolution Proceedings No 15* Aust. Institute of Criminology, Canberra.  
Faulkes W 1986 *Conciliation at Community Justice Centres* Unpublished paper.

## CASE RECORDING NO. 1

Identifying Data: Date, Place. Mrs P, 42, Italian Migrant, 6 years in Australia, Widow on Benefits, referred by Anti-Discrimination Board; a long standing dispute with her neighbour.

Interview: Mrs P waited for me to prepare the interview. She was glad to see a person who could speak Italian; the interview was conducted in Italian. She told how upset she was with her Australian neighbour; so bad for her to cope, 'with Australian people, that are against you...' Her husband died two years ago, she was too sick to work, (I wondered if she was going through her menopause), she was being called a 'wog' all the time, she didn't have a man to protect her, everybody was against her especially the Australians. I said I could understand how she felt 'It is hard to manage all alone.' Mrs P said she had no family or friends, the three children next door were tormenting her, especially the ten year old son, swearing, name calling and throwing rubbish over the fence, she couldn't speak much English, when she tried to tell the mother, the woman only laughed. She was seeing a doctor for her nerves. Mrs P said that she would gladly attend a mediation session, when I explained what it would involve.

Assistance: Initial arrangements to contact second disputant with a view to arranging a mediation session; Italian language spoken (appreciated).

Feeling Components: Myself: Could I have been biased because I was the same nationality as the disputant? Accepted - I showed empathy when Mrs P was telling me about her loneliness 'No husband, friends...' I felt angry with myself for thinking that Mrs P could be going through the menopause - who ever qualified me as a doctor? Client: Upset, victimised ('wog'), sad (remembering her husband), lonely (no family, friends), inadequate (too sick to work), comfortable with me (I could understand her language, her feelings, her problem).

Finally I spent a few minutes in reflecting, re-living the interview to consider further improvement.

## CASE RECORDING NO. 2

Identifying Data: Date, Place Mrs S, 38, Australian, three children (one 10 year old retarded), on supporting parent benefit; rang in answer to letter received from Agency regarding complaint by Mrs P. The letter suggested a mediation session.

Interview: Mrs S said how upset she was (she sounded it) to receive 'such a letter'; nobody knew what trouble she was having with the neighbour (Mrs P), how that Italian woman was screaming at her and her mentally retarded son. I tried to calm her down. Mrs S said she tried her best to control her son, other kids were telling him to do things; she was a deserted mother with many problems, she didn't need 'that Italian woman' with more problems. I asked Mrs S if her neighbour knew about her boy's condition, as I was sure Mrs P hadn't mentioned this during the interview some days ago. I could understand and said so, how hard it must be to bring up three children on her own. 'Maybe,' I said, 'there was a communication breakdown because of the language barrier.' I suggested that a mediation session could be a good way to clear this problem; a bilingual mediator as well as an Australian mediator would be appointed; things could be explained to Mrs P in her language and hopefully they could come to a solution. Mrs S agreed because she was getting so upset over this matter, she was seeing a doctor, her nerves were giving up. The interview continued longer than usual, but in the end Mrs S said she felt good talking to me and she wished that 'All Italian could speak English!'

Assistance: Arranging mediation session - appointment cards etc.

Feeling Components: Myself: Careful to do the right thing towards a mediation session. Pleased for feeling accepted (I thought Mrs S would resent my accent - she didn't). Pleased with my empathy (I questioned my possible biased feelings). Client: Very upset when first started conversation; reassured with what I was saying (from her response), worried about her son, confused, then glad and hopeful of end to the problem with Mrs P. Reflecting and re-living the interview, I thought about both sides of the story and how a language barrier may cause problems and increase them.

*Silvana Gruber presented this article at an ADRA Seminar*

## THE MYTHS OF MEDIATION

Dr Greg Tillett sees mediation as surrounded by various myths, mainly in the four areas of research, theory, education (the *what*, *why* and *how* respectively) and ethics and professional standards (the question of accreditation).

**Myth 1** - There is a sound theoretical base to mediation (or alternatively there isn't but it doesn't matter).

**Reply** - The practice of mediation is more developed than the theory, and there is a pressing need for more theory.

**Myth 2** - Mediation is value free; it is a practical technology independent of any specific ideology.

**Reply** - A theory of the nature of conflict and human behaviour underlies every system of mediation.

**Myth 3** - Mediation is culturally neutral.

**Reply** - Mediation arose within a specific social and cultural context and there is not one set of conflict resolution norms which is common to all cultural groups.

**Myth 4** - Mediation is a private process occurring between two individuals and unrelated to issues of public concern or social justice.

**Reply** - All people are elements of a social structure and therefore mediation must raise issues of social justice and inequality despite being confined to specific participants.

**Myth 5** - Mediation is the application of a set of simple processes which if neutrally applied result in conflict resolution.

**Reply** - Mediators cannot be neutral because we each have a world view; appearing impartial is not the same as being *neutral*.

**Myth 6** - Mediators do not intervene.

**Reply** - Training strategies, techniques and practices expose the fact that intervention is a normal part of mediation - made necessary by the particular need arising in the situation.

**Myth 7** - Mediation is confidential.

**Reply** - Only sometimes under some circumstances for some people is mediation confidential.

Dr Greg Tillett is the Director of the Centre for Conflict Resolution at Macquarie University. Formerly the Senior Conciliator at the Anti-Discrimination Board of NSW, he is qualified in Anthropology (Honours) and Religious Studies (PhD).

Greg was the guest speaker at ADRA's first inner-Sydney seminar-dinner of 1991. Held on July 9 at the Strelitzia Restaurant, Surry Hills, the seminar was attended by 25 members and guests. A word of thanks to the organisers, particularly Debbie Oddi, for making the evening a success - the venue was winsome, the food excellent and the company ideal!

In his 30 minute, deliberately thought-provoking presentation, impressive for its in depth analysis, Greg intended more to raise questions than to answer them. One of his main themes was the need for mediators to clarify their values - both during training and practice. The significance of the points was made clear by the use of examples and vignettes from Greg's own work experience.

Dr Greg Tillett is a fine role model for all who strive to unite the theory and practice of mediation. His work is certain to come to our attention increasingly.

Paul Lewis

### MEMBERSHIP

\$A35 per year

Four Newsletters a year and discounts at ADRA functions are among the advantages of membership.

Membership is open to individuals or organisations who fulfil the eligibility requirements. Write to:

**Australian Dispute Resolution Association Inc**  
P.O. Box 313 Turramurra  
NSW Australia 2074

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IF YOU HAVE NOT  
RENEWED YOUR  
MEMBERSHIP  
THIS WILL BE THE  
LAST NEWSLETTER  
YOU WILL RECEIVE!**

**ADRA Seminar**

**DOMESTIC VIOLENCE  
AND MEDIATION**

**October 26**

### REQUEST FOR INFORMATION

You may have information about a Neighbourhood Justice Centre, Family Mediation Service, Commercial Dispute Agency, Conflict Resolution Workshop, Ombuds-person or Complaints Officer. There may be services for juveniles, victims and offenders, small civil claims, personal injury claims and problems in the workplace. These services may be independent, within a government department, annexed to a court process, related to counselling or therapy. Whatever the service, please share your information, even if you think someone else will tell me!

Please send to  
The Editor, ADRA Newsletter  
PO Box 850 Epping  
NSW Australia 2121

pamphlets, information sheets, annual reports or a short article on how the service operates, who uses it, the types of disputes handled, the processes used, funding, training, areas of expertise, successes and problems - ANY (or all) of these will be greatly appreciated.

Anne Duffield

## DOMESTIC VIOLENCE AND MEDIATION

*A battered woman facing mandatory mediation of child custody has left her bad marriage and is attempting to resolve her domestic problems by separation or dissolution. She may have left her marriage out of a sense of hopelessness or because of extreme physical danger....*

*In a mediation session the mediator is likely to find that the husband, in contrast to the wife, is dominant, charming and manipulative, agreeable, socially facile, controlling and holds an unequal amount of power in the marriage relationship. Placing the two together in a working mediation session is likely to resuscitate the old relationship, putting the wife back into her submissive and non-assertive mode...and she may enter into an agreement that she does not want in order to get out of the mediation situation.*

*The wife in the mediation context may be unable to express herself at all, so that often only the husband's view is articulated....Thus the history of domestic violence and the personality dynamics of the couple may not be identified in the mandatory mediation session.*

*Forcing the parties to mediate custody leads to the possibility that the woman will be emotionally overwhelmed and will return to her violent marriage simply because of her inability to cope with her husband in mediation. (Germane page 188)*

These comments are directed to mandatory mediation. Are they applicable to the Australian situation where the parties are referred to mediation by a magistrate, legal aid officer or other person in authority? Are they also relevant where it is the batterer who requests the mediation?

Gribben, while realising the problem of interpretation, lists conditions that make mediation inappropriate:

(a) *One or both parties are:*

- *unable to control their behaviour whether physically or verbally, inside or outside the mediation room*
- *unable to keep agreements*

*- suffering from an emotional or physical disability which prevents informed and effective negotiation - so frightened of the other, or of the possibility of conflict, that they are unable to represent their own interests.*

(b) *There is a significant power imbalance which the mediation process cannot deal with. (Gribben p.92)*

How can mediators recognise these personality dynamics and emotional disabilities? As Gribben points out 'the problem with these supposedly clear guidelines is that they are very much a matter of individual perception e.g. what is described as out of control behaviour by one person seems relatively normal to another.'

Scutt doubts the value of mediation where there is any power imbalance whether it be in social, economic, political, sex or gender terms. She argues that if mediators are neutral they will not balance inequalities but reinforce them. On the other hand when discussing the matching of mediators with disputants she points out the difficulties in maintaining neutrality - a match is unlikely where a party thinks that 'violent and aggressive acts against his wife are appropriate.' (Scutt p.551) However, the batterer may appear to be charming and agreeable - an easy match! How can mediators recognise and resolve these problems?

*Mediation can provide an effective remedy for many victims of domestic violence. "Effective" in this context means that 1) there is a greatly reduced likelihood of any further violence or threatening behavior; 2) the process is perceived as fair by both complainant and respondent; and 3) the process is no more time-consuming or costly than alternative remedies likely to be available for that class of dispute. (Bethel p.16)*

Bethel and Singer looked at several programs in the United States and found that mediation could be used to 'help resolve an immediate crisis and lessen the likelihood of a recurrence.' (Bethel p.17) Because it is prospectively orientated and not therapy, it has resulted in workable

agreements. The process has been found to teach at least some parties how to interact more respectfully and how to communicate, although in domestic violence cases private sessions are often used. Notwithstanding that there may be strong pressures to co-operate (eg court action), mediation is considered to be voluntary if the individual can still choose whether or not to participate. Where the violence has not been repetitive or is (in the view of the victim) a relatively minor component in a complex set of problems, the victim may still have sufficient power to participate in the mediation. The presence of a friend and private sessions can also help.

*In many instances violence will flare between a couple when it has not occurred before, or has occurred only rarely. The current relationship may be in crisis, may in fact be ending, but the parties will continue to have some involvement with each other. Neither party may wish to punish the other, but the complainant may be ready to pursue a legal remedy if there is no other way to resolve the situation. The chances of their developing a long-term abusive pattern of behavior may not be great, but in some cases this is a real possibility if the parties' behavior does not change. In these circumstances swift intervention is necessary, but it does not have to be intervention by a court to be effective. (Bethel pp.21-22)*

*There is a large class of cases for which legal sanctions are unlikely and/or inappropriate. It is for these cases that mediation offers its greatest promise. (Bethel p.17)*

Although Stubbs and Powell found that, in NSW between 1980 and 1987, the number of 'assault female' charges and Apprehended Domestic Violence Orders increased and the withdrawal rate of 'assault female' matters listed before the courts fell from 55.7% to 20.2%, they also concluded that domestic violence was still under-reported. Thus in Australia there would also be 'a large class of cases for which legal sanctions are unlikely.' How many of these cases could mediation assist?

Stubbs and Powell interviewed 88 applicants for Apprehended Domestic Violence Orders and found that 32 of these decided not to proceed to a court determination.

The decision was often a considered and rational one, and not simply the result of the complainant 'changing her mind' for no particular reason. Some complainants clearly saw benefits to be gained (for example, their own safety, or concessions from their (ex) partners) whilst others found that simply initiating action had assisted. In some cases the proceedings lapsed due to difficulties in the criminal justice process such as summons not being served, or lengthy court delays. (Stubbs p.91)

Three complainants had reconciled with their partners. One did not want the defendant to go to goal. Another felt degraded by her first court appearance and would not return after an adjournment. Another felt that using the police and going to court was too severe and would have preferred 'some other, nicer, friendlier way to get him to stay away.' (Stubbs p.100) Would these cases be suitable for mediation? Would those who did not proceed because their partners made concessions prefer those concessions to be agreed upon in mediation?

Addressing a conference of lawyers, Fisher expressed the view that with guidelines (such as the Community Justice Centre Guidelines reproduced in the CJC Annual Report 1988-89) mediation can be used in cases where domestic violence has occurred. Adopting a practical approach she emphasised the importance of:

- \* the safety of the victim and mediator
- \* referring the parties to counselling
- \* giving the victim information on other options (e.g. refuges and legal action).

Astor lists 18 recommendations for mediating domestic violence disputes.

1. Mediators should have training in domestic violence and be familiar with the literature in the area...
2. Only the best, most experienced mediators should accept cases of abuse...
3. Screen all cases for a history of abuse...

4. Participation in mediation should not preclude other relief...
5. The fact of violence is not a mediable issue...
6. Address all issues with the overall goal of stopping further abuse...
7. Consider carefully the nature of the power relationships between the parties. Conduct the mediation to equalise the balance of power between the parties...
8. Use advocates to represent each party...
9. Require each party to go through several weeks of counselling before attempting mediation...
10. Begin mediation by meeting separately with the parties...
11. Address all attempts at control made by the abuser during the session...
12. Do not condition the abuser's agreement to stop the violence on the victim's agreement to do or not to do anything...
13. Mediation of domestic violence cases is highly likely to require multiple sessions...
14. Do not avoid difficult issues in order to reach agreement - keep an open option that no agreement will be reached...
15. Include a provision that the batterer will participate in counselling...
16. Consider third party supervision of access to children...
17. Reality test agreement carefully...
18. Follow up and monitor agreements to review compliance and ascertain if there has been subsequent violence... (Astor pp.146-150)

The selection of views presented here are intended to be thought provoking. Should disputes where there has been domestic violence be mediated? If so, how? when? by whom? and why?

#### References

- Astor H 'Domestic Violence and Mediation' (1990) *Aust D Res J* 143-153
- Bethel C & Singer L 'Mediation: a new remedy for cases of domestic violence' (1982) 7 *Vermont Law Review* 15-32
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- Germane C, Johnson M & Lemon N 'Mandatory Custody Mediation and Joint Custody Orders in California: The Danger for Victims of Domestic Violence' (1985) 1 *Bar Women's L J* 175
- Gribben S 'Mediation of Family Disputes' National Family Law Conference 1990
- Matka E 'Domestic Violence in NSW' [1991] *Crime & Justice Bulletin* (12) 1-5
- Norbury K, Southward J & Loos R 'Family Court - does it cause violence?' *The Sun-Herald* (20 January 1991) 12-13
- Scutt J *Women and the Law* (1990) Sydney
- Stubbs J & Powell D *Domestic Violence: Impact of Legal Reform* (1989) Sydney

#### DID YOU KNOW?

- \* 1 in 3 families is affected by domestic violence.<sup>1</sup>
- \* Domestic violence affects all social strata and people of all socioeconomic levels.<sup>2</sup>
- \* 'Some victims maintain strong feelings of love or concern for their partners despite being abused.'<sup>3</sup>
- \* The separation of parties is an occasion where the risk of violent attack takes place.<sup>4</sup>
- \* More than half of those seeking protection orders in NSW were separated.<sup>5</sup>
- \* 19,000 women were assaulted in their own homes in NSW in 1989.<sup>6</sup>
- \* 33% of murders in Victoria between 1985 and 1988 stemmed from domestic violence; 75% of those killed were women.<sup>7</sup>
- \* 67% of all women killed in NSW are killed by a family member.<sup>8</sup>
- \* Domestic violence includes threats; verbal, emotional and psychological abuse; sexual assault; financial, economic and social abuse; and physical assault with and without weapons.<sup>9</sup>
- \* In April 1991 the Premier of NSW endorsed a Statement of Principles which are to guide the policy of NSW ministers.<sup>10</sup>

Anne Duffield

1. Estimate by Public Health Association of Australia reported in Norbury p.12 and supported by overseas research (Stubbs pp.3-4).
2. Matka pp.3-4 and Stubbs p.5.
3. Matka p.3.
4. D. Weatherburn of the Bureau of Crime Statistics and Research (reported by Norbury p.12).
5. Matka p.4 - 58% in 1989; Stubbs p.32 - 66.2% in 1987.
6. Estimate based on Australian Bureau of Statistics figures. See Matka pp.1-2.
7. Norbury p.12.
8. D. Weatherburn of the Bureau of Crime Statistics and Research (reported by Norbury p.12).
9. Matka p.1.
10. For further information about this Statement contact Julie Stewart at the NSW Women's Co-ordination Unit (02)561-8832

## REVIEWS OF NEW PUBLICATIONS

*Dispute Resolution in the 90s: Proceedings of the Conference (5-6 October 1990, Bronte Inn, Sydney)* edited by Linda Fisher, 1991 Australian Dispute Resolution Association, 167 pages, available from ADRA for \$35 (including postage)

A wealth of information on the state of dispute resolution in Australia at the beginning of the 1990s is provided in this book. It is both an overview of services, a discussion of techniques and a consideration of the various processes used and the types of disputes for which they are used.

Services described include the NSW Department of Housing Tenancy Service, the Anti-Discrimination Board and the State Rail Authority. There are papers on *Conflict Resolution and HIV Infection*, *Construction Industry Dispute Resolution* and *Dispute Resolution as part of Legal Education*. The situation all over Australia and in the United States is outlined.

Court services, community agencies and mediation as part of legal practice are described. Techniques from arbitration to counselling are presented. Many forms of mediation including family, commercial and juvenile are examined.

Problem areas, such as domestic violence, are discussed. New fields, such as environmental mediation, are considered. There are papers on the challenges and future directions.

The presentations vary from full length journal articles to brief reports. The quality also varies - some are excellent, in particular Linda Fisher's Introduction and Greg Tillet's Concluding Overview.

*Dispute Resolution in the 90s* is a valuable resource which mediators, lawyers, researchers and all interested in dispute resolution should have on their shelves.

*Cultural Differences and Conflict in the Australian Community*, Working Papers on Multiculturalism No. 11, Linda Fisher and Jeremy Long, 1991 Centre for Multicultural Studies \$20

Another recent publication of interest to mediators is this report of a study commissioned by the Office of Multicultural Affairs. It is the first published research on the effect of mediation on cross-cultural conflict.

A brief overview of dispute resolution in Australia and in the Community Justice Centres (CJC) in

particular, is followed by an examination of the literature referring to research in several countries on cultural difference and conflict resolution.

The methodology of the study is discussed. The two questionnaires used are reproduced in the Appendices. One was completed by CJC mediators and the other (on a voluntary basis) by users of the CJC service. In addition, interviews and reports were used to gain more qualitative information.

The efforts of the CJC in making their service accessible to and appropriate for members of ethnic groups is described. Statistics are given to show the extent to which users are from different cultural backgrounds.

The Paper then examines 'racial' disputes and cross-cultural misunderstandings and the ways in which the CJC deals with cultural differences (for example matching mediators and the use of interpreters). Statistics show some differences in 'success rates' according to the ethnic origins of the disputants.

The Paper concludes with a summary of findings and a list of recommendations including

- \* that the Commonwealth Government support services such as the CJC and encourage their use by immigrants and workers of Non English Speaking Background;
- \* training courses for interpreters in mediation; and
- \* further research.

*Cultural Differences and Conflict in the Australian Community* is clearly written and attractively presented. It is to be hoped that we see more of this type of empirical research.

Anne Duffield

**Introduction to Mediation Skills**  
ADRA proposes a weekend workshop in November at a reasonable cost, if there is sufficient interest.

If you would be interested in attending, please advise  
**Anne Duffield**  
**PO Box 850, Epping 2121.**

### ADRA ANNUAL GENERAL MEETING

5.15PM SATURDAY  
OCTOBER 26

at the Metcalfe Auditorium,  
State Library  
Macquarie Street, Sydney

Members are urged to attend the Annual General Meeting to learn what has been happening for the last year and to voice their opinions as to what ADRA should do in the future.

The **Standards for the Training of Mediators** will be put to members for approval.

A new Board of Management will be elected. Only financial members may vote.

### FROM THE LIBRARY

Some interesting materials are available for borrowing from the ADRA Library. Please contact Linda Fisher (02)416 8770. A small deposit is required. The materials include:

- \* Tapes from the Academy of Family Mediators Conference held in Boston USA, 23 July 1990: Raymond Shonoltz *New Frontiers in Conflict Resolution Programs- Poland, Russia and Eastern Europe* (1 tape)
- James Melamed *Resourceful Mediation* (2 tapes)
- Bill Ury, Ray Shonoltz, Stephen Erickson and Albie Davis) *Conflict Resolution Systems - Varieties of Application* (2 tapes)
- Ann Milne, Dianne Bryner, Linda Girdner, Dennis Marthaler, Jane Oberton, Tim Salius *Bargaining with Batterers- Policies relating to Spouse Abuse and Mediation* (2 tapes)
- Janet Rifkin *Rethinking Neutrality*
- John Haynes *The Use of Metaphor in Everyday Life* (1 tape)
- Kenneth Cloke *The Magic of Forgiveness* (1 tape)

\* *Beyond Dispute: Alternative Dispute Resolution in Australia* by Gordon Pears (Corporate Impacts Publications 1989).

\* *Cultural Differences and Conflict in the Australian Community*, Working Papers on Multiculturalism No. 11, by Linda Fisher and Jeremy Long, 1991 Centre for Multicultural Studies

## SETTLEMENT WEEK IN NEW SOUTH WALES

Settlement Week is scheduled for 14-18 October 1991. During that time cases listed for hearing in the Supreme Court may be mediated instead of litigated. Settlement Week is a major project of the Dispute Resolution Committee of the Law Society which is organising it. The scheme is entirely voluntary as the Supreme Court has no power to direct parties to mediate.

The Settlement Week Committee has received the full co-operation of the Supreme Court, the GIO, the Legal Aid Commission, the NSW Bar Association and representatives of the general body of plaintiffs' solicitors. The Attorney-General's Department has expressed its interest. The project has received a grant from the Law Foundation of NSW.

Approximately 7,000 solicitors have received invitations from the Law Society to volunteer cases for Settlement Week, and the Supreme Court has assisted in identifying these cases.

A list of 60 approved mediators (a number of whom are ADRA members) was compiled by the Committee. They are all qualified lawyers who have completed an approved course of training. Included in the list of mediators is Sir Laurence Street, the former Chief Justice, who is an experienced mediator and Chief Editorial Consultant to the *Australian Dispute Resolution Journal*.

All the mediators were required to attend a one-day refresher course. An evening workshop was also held to provide special training for mediators in personal injury cases (which represent a significant proportion of Settlement Week cases).

Mediators will be paid \$800 for conducting a preliminary conference and a three hour mediation session and for performing the necessary administrative work.

The NSW Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution) has organised a meeting during August for its members and other solicitors involved in Settlement Week to explain and demonstrate how solicitors can best represent their clients during mediation.

The response to Settlement Week has been gratifying. As at 26 July, 243 matters are ready to proceed to mediation; 1418 single, positive responses have been received; in 495

matters at least one party has declined to participate in mediation. Participation is entirely voluntary.

The Dispute Resolution Committee of the Law Society is undertaking an evaluation of Settlement Week. It proposes to include other jurisdictions (such as the District Court) in subsequent years. Queensland is organising its own Settlement Week for early 1992.

The NSW Attorney-General, Mr Collins, recently stated that he is seeking changes in the legal system to make legal services more readily accessible and cheaper. Among the changes supported by the Attorney-General is the wider use of mediation as an alternative to litigation. Thus, Settlement Week is certainly a timely development.

*Micheline Dewdney*

### ADRA BOARD OF MANAGEMENT

*Basil Evangelinidis* President  
(02)489 1724

*John Pollard* Deputy President;  
Family Mediation (02)264 2573

*Rod Young* Treasurer  
(02)569 7863

*Peter Irving* Secretary (02)357 7222

*Margaret Burns* Parent Adolescent  
Mediation (02)890 1500

*Ruth Charlton* ADR Journal  
(02)451 0174

*Robyn Claremont* Community  
Mediation

*Anne Duffield* Newsletter  
(02)232 5944; 876 8220

*Linda Fisher* Immediate Past  
President (02)416 8770

*David Newton* Interstate Liaison  
*Greg Tillett* Training and  
Accreditation (02)560 9528

### NEW CHIEF FOR ACDC

Carol Dance was recently appointed the Chief Executive Officer of the Australian Commercial Disputes Centre. Carol has a BA from Drew University in the USA and an MBA from the Australian Graduate School of Management, where she was the Associate director of the MBA Program for several years.

David Newton, the previous General Secretary of ACDC, has established a private mediation consultancy practice.

### FOR THE LIBRARY

- \* *Dispute resolution in the 90's* (see Book Review, this issue)
- \* *ADRA Newsletters* available from ADRA at \$10: set of issues from Volume 1 Number 1 August 1987.
- \* *Culture's Consequences in Dispute Resolution* available from ADRA at \$30: Proceedings of the ADRA Conference 1988.
- \* *Australian Dispute Resolution Journal* available from the Law Book Co.
- \* *Community Justice Centres Annual Report 1989-90* available from CJC.
- \* *Commercial Alternative Dispute Resolution* by Maxwell J Fulton (Law Book Co 1989). Comprehensive guide to all, not only alternative, commercial dispute resolution.
- \* *Legal Aspects of Child Custody and Divorce* by G Gersbach, P Irving, S Munslow, J Pollard available from Elizabeth Meggitt PO Box 925 Parramatta 2124 at \$5 plus postage (\$1.20 single copy). Discount for bulk orders. Of particular value for distribution to disputants and as a handbook for mediators.
- \* *Everyone Can Win* by Helena Cornelius and Shoshana Faire (Simon Schuster Australia 1989) available from Conflict Resolution Network PO Box 1016 Chatswood 2057 at \$17 plus postage and handling \$3 NSW, \$4 other states.
- \* *Hearing the Cry* by Margaret Appleby and Margaret Condonis available from Adolescent Family Therapy and Mediation Service (02)890-1500 at \$6. This book about suicide prevention tells what to look for, what to do and where to go.

## FUTURE EVENTS

### ADRA ANNUAL GENERAL MEETING

**5.15PM SATURDAY OCTOBER 26**

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### MCLE Conference of Lawyers Series II

October 5-12 1991  
Hamilton Island

**Speakers** will include Sir Laurence Street, The Hon. Justice Paul Stein and Linda Fisher.

**Topics** will include Arbitration and Mediation; Commercial Mediation; Role of the Mediator; Responsibility of the Legal Profession (in ADR); Family Mediation; Community Justice Centres and Mediation in the Lower Courts. An introductory course on mediation skills for lawyers will be conducted in association with the Queensland Community Justice Program.

**Enquiries:** MCLE Conferences, Suite 1, 36A Bay Street, Double Bay, NSW 2028, Telephone (02) 363 1424

### ALBIE M DAVIS '91

Albie Davies, the Director of Mediation for the Administrative Office of the District Court Department, Massachusetts will conduct **EIGHT HOUR WORKSHOP**

September 5 and 6

**HALF DAY SEMINAR**

September 7

**TWO DAY WORKSHOP**

September 8 and 9

**Enquiries:** Deirdre Stewart (02) 906-1586

## ADRA

The Australian Dispute Resolution Association is organising a one day seminar on

### DOMESTIC VIOLENCE AND MEDIATION

to be held on

**SATURDAY OCTOBER 26**

at the Metcalfe Auditorium, State Library  
Macquarie Street, Sydney

Speakers are expected to include:

- \* Julie Stewart, Domestic Violence Committee, Women's Co-ordination Unit
- \* National Committee on Violence against Women
- \* Cathy-Ann Grew, Domestic Violence Advocacy Service
- \* Eric Stevenson, Director, UNIFAM and Family Mediation Centre
- \* Dianne Gibson, Director of Mediation, Family Court of Australia
- \* Angela Karpin, Deputy Chief Magistrate, NSW Local Court
- \* Greg Tillett, Conflict Resolution Centre, Macquarie University
- \* Linda Fisher, Couples Mediation Service: Marriage Guidance NSW
- \* John Pollard, Solicitor/Mediator

The Seminar promises to be informative and thought provoking. The presenters are excellent speakers and experts in their fields. The topics are intended to educate and to bring into the open controversial issues, such as:

- \* the recognition of domestic violence
- \* the effect of domestic violence on parties in dispute
- \* the problems that domestic violence poses for mediators.

The fee, which includes Seminar papers, teas and lunch, is:

\$60 for ADRA members  
\$85 for Non-members

NSW solicitors may claim 5.5 MCLE points.

**For registration papers and further information**

telephone **Debbie Oddi (02) 264-2573**  
or write to: **ADRA, PO Box E468, St James, Sydney, NSW, Australia, 2000**

## FUTURE EVENTS

### AUSTRALIAN COMMERCIAL DISPUTES CENTRE MEDIATION TRAINING COURSE:

Course Leader: Dr Peter Adler  
September 26, 27 and 28  
Holme Function Centre  
Sydney University

Dr Adler, the Director of the Centre for Alternative Dispute Resolution of the Supreme Court of Hawaii, is an experienced mediator and trainer, and has taught mediation at the American Arbitration Association. The course co-leader, David Newton, an experienced mediator and trainer will provide many Australian examples of dispute resolutions. For brochure, please contact Jackie Bell at ACDC on (02) 267-1000.

### LUNCHTIME SEMINARS

Law School 173 Phillip St Sydney  
Lunch available from 12.30pm for \$6  
Speaker: 1.00pm

NSW solicitors may claim 1 MCLE pt  
Enquiries: Anne Duffield (02) 232 5944

### WEDNESDAY SEPTEMBER 4

Professor Kim Oates  
from the Department of Paediatrics  
Royal Alexandria Hospital for  
Children will speak on  
Indications of Child Abuse

### WEDNESDAY OCTOBER 2

Eric Stevenson, Director of UNIFAM

### COMMUNITY MEDIATION DIVISION MEETINGS

CJC 12th Flr 175 Liverpool St, Sydney  
All members welcome  
Enquiries: Tom McDermott (02) 268-3149

### FAMILY MEDIATION DIVISION MEETINGS

Family Mediation Centre  
6th Floor 262 Pitt Street, Sydney  
All members welcome  
Enquiries: John Pollard (02) 264-2573

### ADVANCED MEDIATION Using Neurolinguistic programming WORKSHOP

with Michael Grinder  
October 19 & 20

Olims Hotel Poits Point Sydney  
At this year's NCPCR in Charlotte, N.C., USA, mediators, academics and practitioners in conflict resolution attended 2 days of workshops before the seminars began. Of the 63 individual workshops offered, the *Incorporation of Neurolinguistic Programming into Mediation Practice* presented by James C. Melamed J.D. attracted an overflow audience with participants turned away. Melamed credits much of his expertise in using NLP to Michael Grinder. The investment for two days of high quality mediation skills training is \$395. You save \$50 if you send a \$50 non-refundable deposit postmarked on or before September 6. To make the training even more efficient, effective and valuable if two or more persons from one organization book at the same time, each will receive an additional 10% reduction and the stimulus of reinforcing each other's new skills and learning. Contact Andree Reese Maddox at ADR (02) 357-2245

### MEDIATION CURRENT CONTROVERSIES AND FUTURE DIRECTIONS

A one day seminar for  
practitioners

Saturday November 9

North Sydney

Speakers to include

Greg Tillett, Linda Fisher,  
Marj O'Donnell, Jenny David,  
David Bryson

Format to allow discussion of  
such issues as training,  
accreditation and standards

\$125

Enquiries:

Deborah Brooks (02) 878-4004

#### ADRA Newsletter

Editor: Anne Duffield

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the accuracy of material printed.  
Views expressed do not necessarily  
reflect those of ADRA.

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#### DEADLINE

for the next issue of the ADRA  
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