harmony. Instead of preserving the relationship as the indigenous disputant had hoped, it had served only to undermine it from the point of view of the foreigner.

The video demonstrated that we cannot make assumptions about NESB disputants and their understanding and acceptance of the philosophy and process of mediation.

HOW PROBLEMS IN CROSS CULTURAL ENCOUNTERS CAN ARISE

1. **Non-Understanding:**
   Simply put, this is failing to understand what has been said. Usually this will be due to language difficulties and does not give rise to judgments being made by either party.

2. **Mis-Understanding**
   This occurs where the words are understood, but the intention behind them is mis-read. In the video recording of the simulated mediation, Julie understood what Mrs Rabi said to her when she first alluded to the problem of the goat, but the indirectness of her words failed to convey to Julie her true meaning.

3. **Clashes in Outlook and Values**
   When this occurs, it may lead to disagreement with, or even disapproval of, values expressed by words or behaviour.

DIFFICULTIES SOME NESB PARTIES MAY HAVE WITH THE STRATEGY OF RE-FRAMING

Re-framing is a strategy used by mediators to translate into neutral terms emotionally charged or `toxic' language used by one of the parties. Re-framing may create problems if, for example, it enforces directness on a party whose cultural values require her to be indirect.

Other problems which may arise from re-framing are the following:

1. A re-frame may be too formal.
2. Important feelings can be lost. This is particularly important where the culture of the NESB disputant values emotion as an expression of self.
3. Sometimes in 'taking the sting out', the meaning is also taken out.
4. A re-frame can suggest a solution.
5. A re-frame may present a danger of the mediator taking too much control.
6. Interpreters may interpret inappropriately.
7. The re-frame might undermine the NESB disputant's strategies.

Some of the responses suggested by the groups for overcoming these difficulties were:

1. To match the mediators with the disputants;
2. There should be consultation between interpreters and disputants prior to the mediation;
3. Mediators should take care not to make pronouncements.

One problem for an NESB disputant using English is that in using the English language the disputant has already removed herself one step from an accurate representation of herself. This could mean that the disputant has less confidence to correct or refute inaccurate re-framing by the mediator. Indeed there may be cultural factors for that party which militate against disagreement with an authority figure (assuming that the mediator is seen as an authority figure). In such cases, the easier option is simply to agree with the re-frame with all its inaccuracies.

Where there is an NESB disputant together with an interpreter, the potential for the disputant to lose ownership of ideas is multiplied. This can lead to a sense of powerlessness and a loss of trust in the mediator and the mediation process.

SOME ASPECTS OF DISPUTANT LANGUAGE WHICH MAY BE PROBLEMATIC

We assume that participants in a mediation resolve their disputes by being open and direct. We also assume that they will be assertive. Some disputants prefer indirectness of language. Others believe that general harmony is more important than the needs and wants of the individual.

In Eskimo societies, disputes are not solved by direct confrontation between the disputants. The plot of the dispute is acted out by clowns and buffoons in costume (no doubt putting humour to good effect) and the spectators decide the outcome.

In Arabic societies, the language of dispute resolution uses fable and metaphor. To the uneducated observer, the parties appear to be telling a story about people other than themselves. But this style of dispute language has the effect of being conciliatory and it distances the parties from their own dispute.

Thus, in mediation between Arabic spouses, the wife might say:

> 'I know a woman in my neighbourhood who has a difficult life because her husband does not give her enough money for housekeeping.'

A skilled mediator might then invite the other party to help his wife by suggesting advice she might give to her friend.

The skills in recognising the need for fantasy and indirect language to deal with uncomfortable realities are not unknown to us. Social workers investigating child abuse often find that the child is unable to use direct language and is able to communicate only through telling stories and using dolls.

Mediators in cross cultural conflict must develop skills in recognising situations where direct speech is not the appropriate style of dispute language.

The groups suggested the following strategies for coping with indirectness:

1. Training courses should include some input on different cultures, the varieties of indirectness and the extent to which mediation may be seen as threatening;
2. Interpreters should be encouraged to talk with the mediators regarding the approaches and strategies of indirectness that they need to be aware of;
3. Go along with the participant's approach. A mediator might see a party using indirect language as being resistant. There is a need for mediators to consider that everything the participants bring to the mediation is co-operative in its own way. The task of a mediator is to perceive how the participant is being co-operative and to support that process of co-operation;
4. Be flexible;
5. Mediators should match indirectness with their own metaphors.

WHAT ARE THE IMPLICATIONS FOR PRACTICE, TRAINING AND POLICY?

1. Practice

- Mediators should be aware of their own flexibility/biases.
- Learn from interpreters.
- Caucus with interpreters during the mediation on cultural matters.

- Talk with interpreters prior to mediation and debrief with them afterwards.
- Question the assumptions/values underpinning mediation.
- Consider all aspects of culture - gender, age, class, disability etc.
- Continually check and ask for feedback.
- Take a 'one down' position.
- Only well trained mediators should be used.

2. **Training**
   - More information should be given about cultural differences.
   - Assumptions and biases about mediation should be examined and challenged.
   - Special consideration should be given to techniques of re-framing.

3. **Policy**
   - Committees of interpreters should be set up.
   - There is a need to research the effectiveness of intervention strategies.

Establishing a Youth Mediation Program

Yolanda Pannuccio

Program Co-ordinator, Youth Mediation Program
Werribee Support and Housing Group

I am currently working at Werribee Support and Housing Group to establish a Youth Mediation Program there. My task at the moment is to set up a mediation service that is based at a housing group and at a school and involves the two organisations.

The auspicing body is the housing group. The background to the program is that the housing group was receiving a high number of referrals from the local secondary college which has over 1,000 students. A number of young people were going to the housing group seeking housing assistance and the reason they wanted to leave home was that they couldn't handle the ongoing conflicts with their parents. Some young people had experienced violence at home. There was a considerable percentage of young people who cited ongoing conflict with their parents as their reason for wanting to leave the family home. So the housing group and the secondary college got together; neither of them had the resources to deal with this on their own, so they put in submissions for a mediation program. The original submission had a direct service component as well as a community education focus. The idea was to educate young people in conflict resolution skills, educate parents and provide some education to professionals working in the area to get them to recognise the signs of conflict at home and how to deal with it.

My background is that of a mediator with the Noble Park Family Mediation Centre. I was selected in their first intake of mediators in 1985. At the time I was 18 and I was specifically selected to deal with parent/adolescent disputes. After a couple of years of mediating I went on to be the mediator co-ordinator/trainer with that organisation and I did that for a few years before moving on to the Dispute Settlement Centre program which is similar to the Community Justice Centre program here in NSW. I was employed as the training consultant with that program. I dealt with neighbour disputes and while I was with them they picked up family law and parent/adolescent disputes as well.

The Dispute Settlement Centre Program has now been reduced - the funding has been cut back and I moved on from there and I'm at Werribee now so my background is that of a community mediator.

Today I will start off by looking at parent/adolescent disputes and developing an understanding of those disputes and then go on to talk about mediation, look at a brief overview of the different models of mediation that are being used at the moment and then I'll talk about the model we are using out at Werribee because it's slightly different to a traditional community based model.

Studies have shown that for most young people, or most adolescents, this period results in an increase in conflict with their parents. They suggest that the young person is rebellious during this stage and that the purpose for that is so that they can develop an identity in their own right. It is part of separating themselves from the others and being acknowledged as an individual. The research shows that the conflicts can result in a deterioration in the relationship between the parents and the young person. But other research shows that where

you have got conflict it doesn't necessarily have to result in a deterioration of relationships - it can have positive consequences such as the promotion of communication, problem solving and positive changes for individuals involved.

Watching the young person move away or develop their own identity, the fear of letting go, the value clashes, can be really emotional too. There's a lot of emotion behind parent/adolescent conflicts which results in uncertainty between the individual and within the relationship during that time. There are also other pressures that result in parent/adolescent conflicts. For example, the young person may be stressed out with their own situation at school and not have the energy to deal with ongoing conflicts with the parents so it really explodes. Similarly, there are pressures on families and on parents at the moment: the lack of jobs, the uncertainties for young peoples' futures. Many parents are wanting to do the right thing by their child or the young person; they want the young person to succeed. It would be fair to say that every parent wants the best for the young person. So they are concerned at the moment. We're in a climate where there are no university places or it is very difficult to get in, jobs are scarce for young inexperienced people so when these young people are at school the parents are often reminding them that this is the situation and that can really put a lot of pressure on young people and can result in clashes at home.

Parenting styles also can result in conflict. Parents may feel uncomfortable changing the way they parent or they may fear losing control of that young person and what the consequences might be for them.

Another thing that often comes up is the difference in parenting styles between one parent and the other. One parent is okay about something so the young person goes off and does it. The other parent finds out about it and all hell breaks loose. That produces a conflict between the adults which also affects the young person so you get a triangular system of conflict.

There are also cross-cultural issues for families who come from a different cultural background. When the young person goes through that stage of transition and they are developing their own identity they sometimes take on the opinions or the views of the dominant culture. Part of the parent's fear of letting go or moving away is that they are not only losing the young person or losing control but there is also the fear of losing their cultural base and their cultural values. They are really experiencing a loss of their roots.

There are three common themes in parent/adolescent conflict. Behind the conflict about, say, the boyfriend or the friend, there are **process issues** - conflicts over **how the decisions are to be made**. **Substance issues** concern **what the decision should be**. The young person may be saying, "I choose my friends, and this is who I choose". The parents say, "I have a responsibility to make sure you're safe, they're a bad influence, so I'm going to choose your friends".

There are also **value issues**. Value issues are those values and principles that are behind the decisions we make. For families of non-English speaking backgrounds, these value issues come up in a lot of situations because there may be a totally different value base behind the parent's decision making from the young person's decision making.

How do parents and young people actually go about sorting out their conflicts? They may end up clashing. One person may try and approach the issue, then they get all steamed up, and they're at it, on for young and old. That's not surprising because the values or the emotion behind the conflict can result in an explosion and those emotions take over the way you deal with the issues. Another way is to withdraw. They try to escape the situation by running away, by withdrawing, by sneaking around and doing their own thing anyway. And what is the result of that? That the person who tries to sort it out is left with an unresolved issue, feeling really frustrated. The person who has taken off to try and escape

the situation really feels stressed because they know that the issue is unresolved and that they eventually are going to have to face the situation. So it creates stress for everyone.

We would agree that the best method of dealing with parent/adolescent conflicts or any conflicts for that matter, is to sit down and to discuss the issues and tell each other how you feel so that the emotions don't take over and to negotiate a resolution that you are both happy with. And that's great if you belong to the Brady Bunch!! How many families actually do that? In reality you have a whole lot of other things happening.

What happens when families don't find an appropriate way of dealing with conflict, is that it can result in harbouring resentment for one person. If conflict is dealt with appropriately and people are given the chance to be heard and have their say and to be understood, then it can have a positive outcome because they feel heard, they feel respected and it results in changes that are good for everyone. It acknowledges that changes are needed and it finds the best changes for the family. But when it's not dealt with appropriately, some people, particularly young people, feel that they are not heard, no-one is listening, nobody understands them and if this is the situation over a long period of time this then results in their developing a low self-esteem, believing that no-one wants to understand them. It can lead to their feeling quite powerless.

In extreme cases they might really lose faith in themselves. So it's really important that parents and young people do find a way of communicating and that everybody in the family is given equal respect and that they are given a chance to have their say and to confer. Even if the end result, the final decision, isn't what they want, the process of how decisions are made is really important. And that's what mediation is all about. It's about giving people an opportunity to come together and hear each other and to communicate with respect and come up with resolutions.

I'd like now to look at mediation itself, and the principles underlying it. Some of these are:

- Co-operation
- Trust
- Respect
- Self-determination
- Empowerment
- Desire for resolution in a voluntary process
- Full disclosure
- Realistic expectations
- No judgment (as far as that's possible)
- Safe forum
- Neutrality
- Time to concentrate on resolving the conflict
- A chance to listen and be heard.

These are the principles we are promoting in mediation, and these principles need to be reflected in our service in everything from the way we work with individuals to the way we contact Party 2, to our response to people when they contact us. These principles are not just for the mediation sessions. These principles need to guide the establishment of the service from beginning to end.

In Australia we've seen parent/adolescent mediation services really evolve out of other types of mediation services. The community based mediation services themselves have really evolved out of neighbour disputes - neighbour mediation and family law mediation. The Family Mediation Centre discovered that in Colorado they were using this process for parent/adolescent disputes so that they then recruited younger mediators to enable that

process to be applied to parent/adolescent disputes. The other evolution has been mediation coming out of therapeutic approaches. Some people who've come from a family therapy background have picked up on mediation as a form of dispute resolution and made a move towards starting up mediation services.

Community mediation looks at the family controlling the context and the mediator controlling the process. In **therapeutic mediation** the worker combines mediation processes and skills with therapeutic methods and practices.

Community mediation developed out of a community education process. It is based on the principles that in mediation you can show people a better way of dealing with conflict and through that experience they can learn to deal with ongoing conflicts in a more appropriate way. You give them the resources to be able to do that based on an education background. The therapeutic model is based on a healing background. When you look at the adaptation of therapy to mediation, it's really used in major crises to give people a chance to look at that healing process and focus on that. Some practitioners have made the move from that towards an earlier intervention model, but still use the methods and processes of therapy. The main focus of a therapy service is that it starts from that healing base. It's healing first, conflict resolution second. The community mediation model comes from an early intervention model that looks at education first and healing as a result of that process. Basically they have a common concern. In terms of early intervention in a crisis, you need different strategies, different approaches, and I suppose in that respect, therapy does have a role to play. There is a debate as to whether you can actually move from therapy to mediation and still call it mediation.

One of the features of the community mediation models is the selection of a panel of sessional mediators who come from the community so you have a range of backgrounds on your panel, a range of age groups and the balance of gender. In this way, you can match your mediators to your clients as closely as possible. This is really important in parent/adolescent dispute, as it enables you to use a young person with an older mediator. They have an equal role in that mediation session and they are able to role model the co-operative relationship between a younger and older person.

One of the criticisms of the basic community model was that the intake worker often did the intake and then did not go on to mediate the session. So you had people telling a story in intake and then telling the same story again in mediation to totally different people. And then if there was follow up, and it was a face to face follow up or phone call, it went back to the intake worker.

There was a criticism of lack of consistency from one stage to the other and it was thought that there wasn't enough linkage between intake and the mediation.

The mediation or the conflict resolution process doesn't start with the mediation session itself. That's when you get them together to communicate and negotiate but actually the conflict resolution process starts from the first point of contact with that agency and that is what is often referred to as intake. It has two functions: an assessment and a preparation function. You are checking out in intake whether the case is appropriate for mediation and whether the parties are ready for mediation.

In the model that we are adopting out at Werribee, there's more provision for the intake worker to do preparation work with both family members.

With young people especially there needs to be a bit of work on the servicing, to develop the confidence to present their point of view and to look at the implications of that.

With this model there may be one or more preparation sessions with the individual. Then when they are ready, and they can tell us when they're ready, they go into a mediation session which is really the family session. The focus in that structured session is on

communication and negotiation. With our service we have a two and a half hour time limit to the mediation. The reason we have come up with that time is that the concentration span of the young person is less than that of an adult. In any case, mediation is pretty intensive and people can be worn down quickly. There is provision to run a number of sessions if it is necessary in order to cover all the issues, and there is no limit to the number of sessions that they can have. The follow up again is a bit different in that we're looking at individual follow up with each family member so that we can provide them with some resourcing. If there are issues that are still there, (for example, they might take their agreement home and it's not working, something has come up and it is not a happening thing) they may come back to mediation and refine that agreement. Or we can talk to them about what other things they might be able to do.

The one worker works through the whole processing as a constant, rather like the conference manager. Then, at the mediation stage you have a sessional mediator who comes in to work with the intake worker, so we are not losing that role modelling.

You may also have a situation where the other family members don't want to use mediation. In that case you resource them and you refer them. In resourcing them you work with them on conflict resolution options as well.

If it is the young person, you help them to consider questions such as: what can you do at home to help improve the situation? How have you dealt with them in the past? What are your choices, what are your options? In this way you can resource that young person to deal with the situation better at home and maybe to understand why the conflicts are happening. Similarly with the parents, if the young person doesn't want to come in, we can work with the parents and ask in their own case, "What can you do?". The principle is you can't force another person to change, but you can focus on yourself and you can do things differently to improve the situation. So there's provision to do that sort of work.

Accessibility of the service is one of the important principles of mediation. We're setting up a mediation service; we're dealing with young people and with parents. We've got two client groups. If you look at everything about the service it has to be targeted to the needs of those two client groups. The parents and young people have different needs. They see the world differently. So we have to think about that in everything we do and it really duplicates your work because it takes a considerable amount of energy. Take, for example, your promotional material, your pamphlets: do you use pamphlets? Pamphlets work with adults probably but do they work with kids, with young people? What is another way of getting to the young people? Maybe stickers, fridge magnets or things like that that are different, that are novel and that young people will be attracted to. But you try giving a sticker to an adult and see the way they'll look at you. So, in setting up the service you've got to think of your chief client group and work out different ways of making the services accessible to them.

Next, we need to think of a physical location and we want to maintain the perception of neutrality. Where are we going to put the service? Shopping centres? Young people hang out at shopping centres. How will the parents respond? They shop there. So that would be considered of mutual benefit. At Werribee, we have a school and a housing group, both involved in this project, so we could provide mediation at both venues. Let's consider the school situation first of all. When do parents go to school? When there's trouble. So if we set up a mediation at the school and they have been referred to the service from the student welfare coordinator what's going to be the perception of that parent and that young person?

If you're going to provide a service in the school you need a location that allows anonymity to the client. So what I've done out at Werribee is to provide the intake stage, the first point of contact, at the school. It's accessible to young people, it's easier for them to get to the worker. But we've put it in the library so they can get there without everyone else knowing that they're going there, so it's an anonymous type of location. The same thing happens with parents. They can come in and have that intake stage at the school but since

they're coming to the library, it's not as obvious as going to the main office area. But the mediation sessions are a bit more challenging. That's when you get them both together. So what we've opted to do is to actually provide the mediation sessions at a different venue so we're really getting onto neutral ground there.

Another issue is the housing group. We might be dealing with young people who have recently taken off from home and who want to use mediation to re-establish contact with their parents or to negotiate things like getting their belongings out of the house or setting up a time to visit their siblings. But if we provide the mediation at the housing group, the perception of the parents will be that we are supporting the young person. To get around that we need to find neutral venues. As a solution, we've found neighbourhood houses in the area to use as venues for those sessions.

Outcomes of mediations between parents and young people may differ. If the family comes to mediation early, say, within the first week of the young person moving out, it's seen as a temporary thing. Then they are likely to return home. If they have been out of the home for a long period of time and are getting used to living independently, and the family is getting used to having a bit of peace at home, it's harder for them to negotiate that return. A lot of families experience a sense of relief because they may have been fighting all the time, and now things are peaceful, they may say, "We can't go back to that!". You need to try and help them see that they don't have to go back to that chaos, that the young person can return home without the chaos. But its a very emotional issue.

There are three aspects to homelessness. It's not just about having a roof over your head; it's about access to financial support and emotional support as well. Maybe we can't negotiate them back into the house to have a roof over their head, maybe they're relying on the housing service for that, but perhaps we can negotiate access to some form of financial support, and emotional support so that if they do end up in trouble they can pick up the phone and talk to Mum and Dad or to their brothers and sisters. They don't actually have to live in the house with them. Where the Young Homeless Allowance is an option, the parents need to identify that the young person is homeless. The young person may choose to use mediation to talk about that issue; to talk about whether they do go back and if they don't go back how they are going to survive financially.

We don't believe that it is appropriate to use mediation to deal with cases where there's been a history of violence. The power imbalance is just too great. Normally violence will be disclosed at the intake stage and it's dealt with there. In that case, instead of recommending mediation, we work with that individual on that level, offering resources and referrals. If it does come out in mediation, then it doesn't necessarily have to be a crisis at that point. It depends on whether it's an ongoing thing. If the young person says, "I'm afraid to go home because I am going to get belted," then the mediators have a responsibility to step in there and say, "Well, it's our responsibility to make sure everyone is safe. We've said we're providing a safe environment and we'll organise for that young person to go into community care for that night." Associated with the housing group is an adolescent community placement program which involves the young person staying with a family on a short term basis. So the parents can be assured that the young person is going to be with a family, not living independently or on the street and we've got time to check out that safety aspect.

Another aspect of accessibility is the hours of operation of the service, taking into account school hours and work times. It is necessary to provide an after hours service so that no family members have to take time out of school or work.

In order to be used, the service has to have acceptability and respect from the users. Peer relations is the best method of promotion to get to the kids but if they don't like you or if they decide that they are going to hold something against you, basically in a school environment word spreads like wildfire. The intake worker needs to establish a relationship with the young people on another level outside the service so that they can be accepted as a

person. That is a big difference from our traditional neutral third party who hasn't had contact with the client but you're working in a close knit community here. So we are running conflict resolution skills classes in the hope that through those workshops they'll learn about our service, they'll learn some skills in conflict resolution and they'll learn about us.

The title of this workshop was 'Establishing a Youth Mediation Program', but that is somewhat misleading. The implication of calling it 'youth mediation' is that we're only dealing with the young person or that youth is the problem. It raises the point that you have to acknowledge that there are **two** clients, and there is a real danger that if you call the program "youth mediation" you imply that there is something wrong with the young.

Finally, in mediation the voluntary nature is really important and there has to be a desire for resolution. That has implications for the way we contact Party 2. The system that is fairly common is to send a letter off to Party 2 inviting them to contact the service. That is seen as being non-coercive and gives them a choice of coming without putting the pressure on. Some services ring Party 2 to come in. The danger with that is that you're catching them on the hop. You don't know who's around; you don't know if they can talk freely and they may resent your intrusion. I've even known of some services that have actually rolled up to the young person's house after seeing the parent. I have real problems with that. I think if we're serious about sticking to the principles of mediation then we've got to really look at our processes and be careful that we adopt processes that do promote these principles.

Whatever service model is adopted - and there is room for a variety of different models - if it is to be called a mediation service, it has a responsibility to adhere to mediation principles.

Rental Bond Mediations

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(*Note*: This paper, which formed the background to the workshop, was originally published in the *Australian Dispute Resolution Journal*, August 1993)

The ACT office of Rental Bonds was established in August 1991. The legislation provides for the mediation of disputes about rental bonds.

As far as the Conflict Resolution Service (CRS) is aware, the formal use of mediation in relation to rental bond disputes is unique in Australia. NSW has a tenancy advice service which plays a mediation role in relation to ongoing tenancies, but does not handle rental bond disputes. Several overseas countries, including New Zealand, do have tenancy mediation services which deal with a range of tenancy issues including rental bond disputes. CRS has had to develop its own processes for dealing with rental bond disputes, and this is still in the early stages.

PROCEDURES

Where the parties do not agree on the disbursement of the bond at the end of the tenancy, the Office of Rental Bonds refers them to CRS, who then invites them to attend mediation. Letters are sent to both tenants and landlords/agents at the same time. All parties are informed that they may use the Small Claims Court whether or not they decide to use the service. Contact details about where to obtain information about their rights and obligations under the Act is also provided. Some preliminary exchange of information may be required for the parties to make an informed choice about using the service.

If both parties agree to use CRS, assistance may be in the form of transmitting information or requests between the parties ('conciliation'), and/or in the form of a face to face mediation session.

Intake staff may engage in a considerable amount of telephone or written communication before and after arranging a mediation. Information about the dispute, referral for legal or other advice and the exchange of proposals are provided by staff to assist in the resolution of the dispute.

In all cases where the parties have accepted CRS assistance, the service attempts to follow through with negotiations until final Refund of Bond Claim forms are lodged or an application is made to the Small Claims Court.

DISPUTES REFERRED

138 disputes were referred between December 1991 and June 1992. 63% of these involved agents, 37% private landlords.

Amounts in dispute varied from very small amounts up to four figure sums. Frequently other tenancy issues were involved, such as re-letting fees, harassment and informal arrangements regarding use of facilities.

As well as the parties referred, there are often other negotiations taking place such as between tenants (group houses, separated couples, etc), agent and landlord, or principal and property manager. For example, an agent may attend a mediation, but will need to consult with the landlord before making a final decision.

OUTCOMES

56% accepted the assistance of the service, 22% through non face-to-face 'conciliation' and 34% through face-to-face mediation. 28% declined assistance and 16% were pre-resolved. Private landlords were slightly more likely to accept assistance than were agents (58% acceptance vs 47%).

51 mediation sessions were scheduled. In four cases, one party withdrew at late notice and in another four, one party failed to show up. Of those attending for mediation, 70% reached an agreement either verbally or in writing.

Follow-up indicates that for those attending mediation, 65% had formally settled their claims by the end of July 1992. This compares with 43% of conciliated cases and 17% of declined cases. Interestingly, those who failed to reach an agreement at mediation were almost as likely to finalise their claim as those who reached an agreement (62% vs 66%). It seems that many parties resolved their disputes following the mediation even though they were not ready to reach an agreement at the session itself.

As at the end of July, none of the mediated cases had proceeded to a Court hearing. Four disputes had gone to Court for determination. Two of these were 'declined' cases and two were 'conciliated'. It seems that those who attended mediation were nearly four times more likely to reach final agreement than those who declined, regardless of whether agreement was reached at the mediation session.

It is possible that there were some other differences between those who decided to use mediation and those who declined. However, the service has found no major obvious differences between the two groups.

COMPARISON WITH OTHER TYPES OF DISPUTES

Generally rental bond mediations are seen as quicker and less emotional than other types of mediations, but they do have difficulties of their own.

Ideally mediation attempts to find a 'win-win' outcome through principled negotiation. However, negotiations about rental bonds are generally about dividing up a fixed sum of money. They therefore tend to take the form of distributive bargaining ('cutting up the cake') rather than integrative bargaining ('making the cake'). Parties' attempts to intimidate, delay or bargain in bad faith have been a feature of a few mediations. An early stop to the mediation has been required on some occasions.

Many parties approach the mediation without any willingness to compromise or negotiate. Ironically, disputes over smaller amounts can be more difficult to resolve than those involving larger sums. Since the refund of most of the bond has been agreed to and refunded, the residual amount may be quite small. For example, a tenant and an agent were disputing an amount of $15 - one day's rent. As both thought they were in the right, they were determined to pursue the matter in Court as a matter of principle!

Negotiating advantages are more mixed and complex than first expected. While tenants may require funds quickly, they often have more time available to spend in mediation or in Court proceedings. For commercial reasons agents have less time available for mediation. Agents tend to have more information, such as detailed records and past experience, while private landlords tend to be the least informed of all groups. As mediation involves negotiating with the other party rather than persuading the mediators of the correctness of one's position, legal knowledge or detailed record-keeping does not represent a significant advantage. It is important, however, that all parties are informed about their legal rights and obligations.

Bond disputes represent the end of a tenancy rather than the negotiation of future arrangements. Hence there is often little motivation to ensure future goodwill.

The involvement of real estate agents provides a circumstance different to most other mediations. Some agents have trouble defining their role in the negotiation and mediation process. Some see themselves as the 'arbitrator' who decides the correct amount of bond owing to the owner and the tenant. Others see themselves as the 'go between' between tenant and owner, and others as clearly representing the owner's interests. In spite of these difficulties, mediation does seem to play an important role in the resolution of rental bond disputes.

SUMMARY AND RECOMMENDATIONS

While it is too early to draw definite conclusions, the mediation of rental bonds does appear to have a valuable role in helping to resolve disputes. The ability to discuss issues in a neutral and structured setting, and with confidentiality ensured, greatly increases the likelihood of the dispute being resolved at an early stage. This seems to be regardless of whether or not agreement is reached at the mediation itself.

Mediation is not a panacea for all rental bond disputes. it is excellent for some disputes, satisfactory for many, but is quite unsuitable for others. It should therefore continue to be an optional rather than a compulsory step.

Speedy access to arbitration, such as through a Court or a tribunal, is also required for those who are unable to resolve their disputes in other ways. Formal linkages between the different agencies involved in the resolution of rental bond disputes need to be developed further.

Community education for tenants, agents and private landlords is essential. Some clarification on issues such as 'normal wear and tear', termination of lease penalties and other tenancy issues would help to avoid many of the disputes occurring about rental bonds.

The application of mediation to ongoing tenancy disputes, such as repairs, rentals, quiet enjoyment, leasing and sub-leasing disputes should be further developed. Mediation at an earlier stage of some tenancies could prevent later disputes about bond money.

The scheme introduced in the ACT for handling rental bond disputes is a significant innovation. It does not represent a complete response to dealing with landlord/tenant conflicts but is able to play a valuable complementary role to other facilities set up to resolve disputes.

Tenancy Dispute Resolution

Workshop Presenter

David Syme

Conflict Resolution Service, ACT

Workshop Reporter

Margaret Maljkovic

NSW Department of Housing

BACKGROUND ABOUT THE CONFLICT RESOLUTION SERVICE, ACT

The Conflict Resolution Service mediates a variety of disputes. Since the A.C.T. Assembly introduced legislation in 1991 that provides for the mediation of disputes about Rental Bonds, the service has seen an increase in rental bond mediation. Rental bonds are held by the A.C.T. Office of Rental Bonds until both parties agree on their release. If the parties do not agree fully on the release of the bond, they are referred to the Conflict Resolution Service by the Office of Rental Bonds. The parties are not bound to accept mediation, but it must be offered before they are permitted to proceed to the Small Claims Court.

Research done between December 1991 and June 1992, showed the Service had a 56% rate of acceptance of mediation. Of the parties accepting mediation, 70% reached an agreement. The amount in dispute did not appear to have an impact on whether the parties reached an agreement or of the degree of conflict.

CONTENT OF WORKSHOP

David Syme's tenancy dispute experience is primarily rental bond disputes, therefore the workshop focused on the issues arising in these disputes.

There were two role play simulations in the workshop, involving all participants, to generate discussion and analysis of the issues arising for the parties in dispute.

The following issues or observations arose.

Simulation 1

When signing a lease, the tenants are handed a contract whose nature is already fixed. It is a set of conditions imposed on them over which they have no power. Their choice is either to accept it, or not to move in.

Another point raised was that a parent/child relationship often develops between tenant and agent where the agent takes on the authoritative role. The agent may be condescending towards the tenant, because of the power relationship.

Simulation 2

There were two scenarios involving a bond dispute. In Scenario 1, the bond was held by the agents. In Scenario 2, the bond was held by the Rental Bond Board. In both scenarios the tenants and the agents both thought they were entitled to the bond.

Scenario 1: The agents hold the bond

The agents have a lot of power in this situation, because they hold the bond and the tenants have to ask them for it.

- **Tenants' feelings/perceptions**

  When asking the agents for the bond, the tenants felt they had to plead for the bond because of the unequal balance of power.

  They felt vulnerable and conscious of the power imbalance. They felt that the agents had abused the power relationship and the tenants' trust.

- **Agents' feelings/perceptions**

  The agents felt confident and powerful in the situation, because they held the bond. They felt they did not have to compromise.

Scenario 2: Bond held by Office of Rental Bonds

The parties had mediation to resolve the dispute

- **Tenants' feelings/perceptions**

  The tenants felt they had bargaining power and were willing to compromise.

  The tenants were willing to resolve the dispute and wanted to discuss the issues.

- **Agents' feelings/perceptions**

  The agents did not feel as confident and felt they had to 'play up to' the tenant.

  The agents felt annoyed at having to spend time in mediation because:

  - They were not being paid for the time;
  - They were too busy to spend a lot of time.

  The agents preferred to go to the Tribunal, rather than mediation because:

  - A decision could be made, the outcome would not be their responsibility;
  - Mediation was considered 'touchy-feely' and the agents did not want to discuss feelings with the tenants.

  The agents were also concerned about the impact on their contract with the employer, if there was an unfavourable outcome.

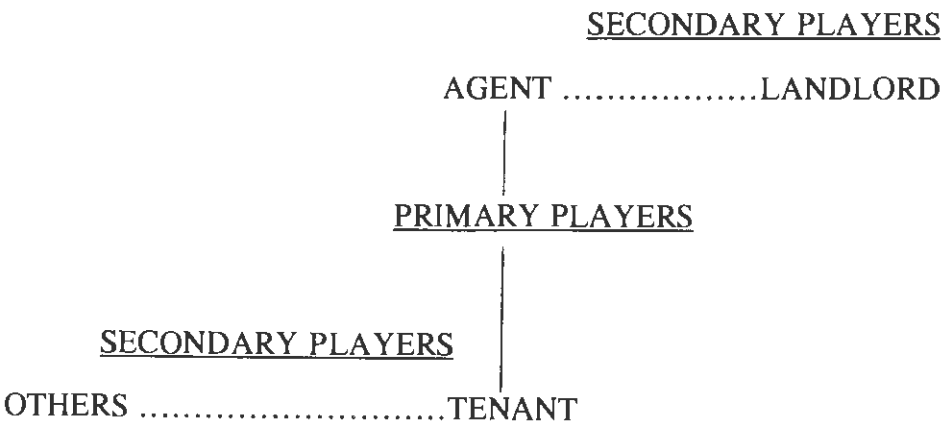
  The tenants have an emotional investment in the situation because the tenancy is their home, whereas the agents see it as a business arrangement.

The role of mediation and the bond being held by a neutral body has the effect of equalising power between agent and tenant.

ISSUES/PROBLEMS THAT ARISE IN MEDIATION

There is a complexity of relationships in mediation, because of secondary players on both parts. On the agent's there is the landlord in the background, while the tenant may have co-tenants or partners, also having an investment in the outcome. When mediating, the secondary players need to be considered.

DIAGRAM OF RELATIONSHIP



The agents have a central role because they act on behalf of the landlord and are advocating for the landlord. The agents also influence the relationship between the tenants and the landlord.

Delays can occur, because the agents may not have the authority to accept an agreement. The agents may deliberately use their limited authority and claim they need to discuss with the landlord as a delay tactic, if the outcome does not favour them.

Some agents see mediation as a way of getting what they want. By being nice to the tenant things are worked out better for them than they may be in Court.

If agents use the Service frequently, they may become familiar with the mediator and demonstrate their familiarity in the session, by asking personal questions, etc. This can lead to the tenant doubting the neutrality of the mediator.

STRATEGIES

- Be aware of the various players operating in the mediation.
- Establish the extent of the agents' authority and to what extent they can accept an agreement on behalf of the landlord, prior to the commencement of mediation.
- Describe the role and process of mediation clearly. Be sure the tenant is clear about it, particularly if the agent has a lot of mediation experience.
- Rotate mediators, to alleviate the problem of familiarity with agents.

The Potential of Dispute Resolution Skills for Landcare and Other Community Conservation Groups to Solve Land Management Problems

Peter Curry

Peter Curry and Associates, WA

BACKGROUND

Environmental action by rural communities to address complex problems in land degradation and its management throughout Australia has been focused by the Landcare movement over the past eight years. Landcare has grown exponentially (1) at a time when most rural sectors experienced unprecedentedly poor terms of trade and equally unprecedented pressures on their social fabric. Early achievements of many Landcare groups have been phenomenal (1,2). In 1992/3 in WA alone, an estimated 3.5 million trees were planted on farms and 13,000 km of fencing erected to protect waterways, degraded areas and remnant bush from grazing.

As local forums in which neighbours share the replanning of local land management practices, they have had most success where communities have few industries, few land uses and common economic interests, such as in the wheat & sheep-farming districts of WA.

Most of the 1400 or so groups Australia-wide are less than 3 years old and remain in what can be regarded as a dependent establishment phase. Some longer-established groups have impressive levels of operational and community infrastructure while remaining substantially funded through Government supports. Others have successfully obtained their main operating funds through support from local business.

The pattern of development for landcare groups nationally has considerable variation between the states, but has been led by state government agencies throughout. In Western Australia, the formation of landcare groups has been achieved with remarkable uniformity through provisions (under the state Soil and Land Conservation Act) for establishing land conservation districts (LCDs)(3). LCD groups require Ministerial approval for their committee membership and continuity, a statutory Commissioner to endorse their operations, and Federal plus some State funding for much of their early activities. Groups which face complex planning and management scenarios (diverse communities, more intensive land use and subdivision, competing non-agricultural land uses and higher levels of public interest) have mainly fared poorly in terms of starting up, securing community support or receiving government assistance.

PATTERNS OF CONFLICT AND GROUP MANAGEMENT

Many established Landcare groups have reported conflicts sufficient to constrain progress or threaten their coherence. In some more closely settled and diversified communities, various types of unaddressed conflict between land users and government departments have been sufficient to prevent group formation (4).

Concerns over perceived controlling and competitive roles of government agencies, and trust issues, have been identified within such conflicts (4,5,6,7). Elsewhere, government-resourced regional catchment projects have addressed complex land and water management problems with great success, through building community participation to meet objective environmental standards. In so doing they have chosen to avoid identifiable government structures and programs based on particular disciplines or industries (5,6).

Groups' abilities to plan from their needs, differences and concerns have often been enhanced by group facilitation techniques (8). In most instances, facilitators have been young land science professionals contracted through Federal funding. They have been trained and directed to work alternately in facilitatory, organisational, technical advisory and leadership roles within the groups, in order to achieve both agency (employer) and group (client) goals. Rejection of the facilitation process has sometimes occurred, particularly when some groups have suspected that the outcomes of the process were not free from agency or technical expectations. In spite of such unpromising circumstances for third party processes, group facilitation has often been reported as being successful, at least to the point of defining aims and bringing out some underlying issues. Professional facilitation training and a community willingness to tolerate unfamiliar processes, particularly when groups were truly ready to devise their own goals and plans, have been vital (1).

Of concern to some is a perception that the basis of community participation in Landcare groups has remained inequitable where broadacre farmer members or other influential participants or industries are seen to have overriding influence in diverse communities. A recent survey also suggests that LCD committees mostly operated with under-representation of women and through stereotyped gender roles (9).

Current controls and allocation mechanisms for public funds and agency programs discourage established groups from seeking incorporation, independence, and permanence. In WA, status other than the LCD is perceived by some as a loss of priority rights to funding opportunities and technical services controlled by the agencies.

FUTURE OPPORTUNITIES

The 'stronger' forms of third party assistance to groups, such as using mediation to resolve valuable deep-rooted internal or external conflicts, have rarely been used. Federal agencies (10) have shown some interest in the potential of mediation in environmental problem-solving. To solve multi-party environmental management problems within diverse communities, it may be advantageous for local groups to adopt more permanent incorporated constitutions which heighten community identity rather than the agency alignment of their technical activities.

Land conservation(=Landcare) groups in mixed broadacre rural, special rural and industrial/residential communities will then be better placed to be either formed initially or, at an opportune time, reconstituted and consequently strengthened, rather than being threatened, by the focus of wider community values. Such independently constituted groups can account and report on their use of any government moneys, while government agencies would be relieved of any need to monitor and assess group behaviour and activities as measures of success for their own programs.

Such independent groups could give useful periodic public feedback on their incremental achievements and give constructive criticism on the value or quality of government agency services they have experienced. They could develop truly innovative goals and programs appropriate to the district. They could seek high levels of co-operation with local government, and generate sponsorship income and local endowments to secure the financial and administrative supports they need, for the long-term nature of their district task in conservation and management.

They could pursue new problem-solving skills, eg. in:-

- problem analysis
- conflict resolution
- mediation
- co-operating through specific agreements (eg. with bordering drainage catchments and their neighbour groups)
- administration of voluntary organisations
- group inputs to rural planning
- community consultation
- team-building
- & multi-cultural involvement (eg. districts with strongly ethnic horticultural communities).

Associated state government agencies operate through policy and executive decision rather than empowered problem-solving, so provide few sources of appropriate skills. Collaborative and uncontrollable decision-making processes generally are a source of conflict within state agencies, whose traditional 'extension' services have been based on a retained technical expertise which delivers management recommendations to individual 'clients' or interest (industry) groups.

Landcare groups which continue investigating and developing independent but radically collaborative approaches, and building community confidence in them, have the capacity to improve their quality of life by co-operatively revitalising their land, water and social environments. They will also be signposting changes required in the nature of the government services they experience and the assumptions about the relationships between communities and governments that underlie them.

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Sustainable Development and 'Landcare': Dispute Resolution for Communities

Workshop Presenter

Peter Curry

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Workshop Reporter

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This well attended workshop got underway with an unusual start: a request that each member of the group state one thing they had heard about Landcare.

Responses included:

'Quite a lot'
'How do you define Landcare?'
'I think I know, I heard a lot'
'Don't know!' (suggested by a Chair of a Landcare group!)
'I heard a bit - because it's very important'
'I came to find out'
'It's community based'
'I've heard about it - it's a fringe activity'
'I know nothing. Is it a generic term?'
'I think I saw an ad of children planting trees'
'It works'
'There seem to be men only in Landcare'
'It addresses degradation in rural areas'
'It's ecological health care'
'I know from Lisa Curry and the Uncle Toby's ads'.

As many of the workshop participants were from quite diverse community mediation areas the comments are perhaps not surprising.

Following these revelations Peter Curry summarised some key points on Landcare:

- It evolved as people increasingly recognised that land degradation problems reached outside the farm gate.