



# Mediation News

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## New Look for Mediation News & Updates

Diana Pittock, VADR President

As you can see *Mediation News* has a new look. At the 4th National Mediation Conference the editors, presidents or their representatives from the three states discussed the need for a clearer focus and a new style in the newsletter's presentation. As can be seen from the masthead on this issue of *Mediation News* we have chosen a new font. We would also like a new name. Consequently we are inviting you to suggest a new name for the newsletter, and there is a gift for the person who suggests the one chosen. (See page 9)

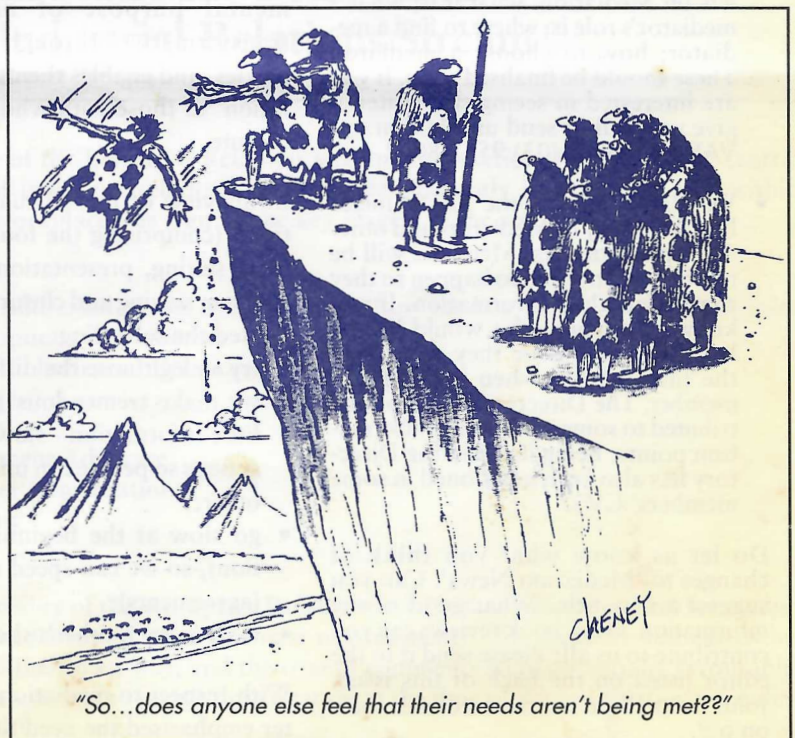
Each issue of the newsletter is to have just one 'letter from the President' and this time it is VADR's turn. This issue of the newsletter focuses on various themes from the 4th National Mediation Conference held in April this year.

- **Conference follow up.** VADR held a May discussion meeting on 'What's Hot in Mediation' to pick up on lively issues raised at the conference. Some of these topics are also commented on below.
- **Peak Body?** Of interest to members of our three organisations is discussion of possibilities and purposes of forming a national mediation/ADR/PDR/DR(!) peak body. At the conference the moves and/or offers of both IINCM and the Institute of Arbitrators and Mediators to assist in the process were considered. Since then IINCM has had difficulties with funding and the IAM may have pursued its direction of formally forming 'Forum', an organisation of both some clients and providers of mediation. In Melbourne a committee has formed planning to continue the meetings which began with IINCM. There is interest in the ADRA initiative of the informal and inclusive 'Lets Talk' network continuing the conversation on a 'peak body'.

- As I write, this week includes national Sorry Day. Obviously it is apology rather than mediation which is uppermost in our minds at this time. As reconciliation is pursued by the community it may establish a climate for mediation to be used more widely and more carefully in areas such as native title disputes.
- A kit to encourage discussion based on a mediation approach has been initiated by Nerida Wallace, Marg O'Donnell and David Bryson and is being finalised at this time. Called 'On Common Ground', the kit outlines steps in a process for discussion and a listing of community organisations who could provide relevant information.
- As a part of increasing our awareness as mediators of cultural difference and knowledge of some Aboriginal cultures we are considering arranging a one day workshop provided by Aborigines. VADR members could let me know if they are interested in such a day.
- The present industrial situation contains areas of conflict which have apparently so far not been appropriate for mediation. Some tentative feelers have been extended by VADR members encouraging people involved to consider mediation when and if appropriate. >

### A Joint Project of...

Australian Dispute Resolution Association Inc. (ADRA)  
South Australian Dispute Resolution Association (SADRA)  
Victorian Association for Dispute Resolution (VADR)



## From the Editor

*The theme of the 4th National Mediation Conference which was held in Melbourne earlier this year was Mediation: Shaping the Future. It seemed appropriate and apt that the newsletter that we send you should also shape up for the future. With this in mind, several patient editors and newsletter committee members met with the Presidents of ADRA, SADRA and VADR during the conference to consider a revamp of the current newsletter. Decisions were made easily, as you would expect with a multitude of mediators. (I'm not certain that I know the collective noun for a group of mediators, so forgive me if multitude doesn't quite fit).*

*The mast head is different, there is a listing of contents, the Presidents' letters have been reduced so that each President will write a letter once a year. The content will be the same, and we promise not to cram in too much text on any page.*

*We are also aware that you need to give us some feedback on what you wish to read about in your newsletter, and we have incorporated a feedback sheet so that you can tell us what you think.*

*This edition focuses on the 4th National Mediation Conference and contains reports from participants. My thanks to all those who wrote articles, you made my life easier!*

Isla Gillespie

VADR President continued from front page

- In promoting mediation, VADR is preparing mediation information leaflets on Mediation: what it is; what a mediator's role is; where to find a mediator; how to choose a mediator. These should be finalised soon. If you are interested in seeing this material give us a call or send us a fax on our VADR number, (03) 9553 8002.
- We plan to update the VADR members Directory of Mediators and other ADR practitioners. Members will be notified when this is to happen so they can update their information. If you know of anyone who would like to be in the next issue they would get the information when becoming a member. The Directory has been distributed to some community information points. Being listed in the Directory has also been mentioned in some members' CV's.

Do let us know what you think of changes to 'Mediation News'. Can you suggest a new title? What good news information, ideas, book reviews can you contribute to us all? Please send it to the editor listed on the back of this issue, John Connell or use the feedback form on p 9.



## 4th National Conference 1998 Environmental Stream

Robin Saunders

The environmental sessions comprised, firstly, a Workshop on Saturday 4 April by Dr Peter Adler, Hawaii Justice Foundation, entitled "Enhancing the craft: Resolving complex, multi-party and public policy cases"

Peter's view of what we, as mediators, strive for is:

- at a minimum, a voluntary decision that ends unproductive conflict and that is at least as fair, efficient, and stable as would occur otherwise.
- preferably, voluntary discussion that explicitly clarifies the nature of future interaction and helps avoid unnecessary entanglements.
- if possible, voluntary agreements that help heal.

We share a theology (a belief system) of conflict:

- conflicts have lots of different meanings. Truth doesn't lie in one place, it gets created with a kaleidoscope of different meanings;
- conflicts are patterned by culture, personality and institutions;
- conflicts generate lots of energy - how do we harness that?;
- conflicts are filled with uncertainties and risks.

This view is particularly interesting in view of Jo Folger's thesis that the fundamental purpose of mediation is transformative, through empowering parties, and enables them to give recognition to those with whom they are in dispute.

In his view of the "Ritual of Negotiation" (comprising the four steps of climate setting, presentation, bargaining/problem solving and closure), Peter highlighted the following:

- try to legitimise the differences;
- we make tremendous judgments on little information - slow down transactions so people can understand each other;
- go slow at the beginning (exploration), so we can speed up at the end (agreements);
- walk in each other's shoes.

With respect to mediation training, Peter emphasised the need to be strategic,

recognising that different processes will be appropriate for different disputes. In mediation, Peter talked about the need for a solid basis of training and experience, and then allowing our intuition to guide us in a particular mediation setting.

On Monday April 6 from 11.15am - 12.45pm we had a concurrent session on Environment. Kerry Willis, Manager Environmental Services, VicRoads presented a paper entitled "VicRoad community participation strategies and guidelines".

A key point in the guidelines was for VicRoads to make the decision making process very clear from the start, particularly when the proposal formed part of a strategic vision of government, and consultation was unlikely to affect the decision on whether or not the proposal would be built.

A second paper was presented by Ebohr Munoz, Case Manager, Australian Commercial Disputes Centre, entitled "Using dispute resolution to resolve planning disputes".

Examples of Councils where mediation approaches are well developed were given. Marrickville Council has employed a full time mediator for two years. Liverpool Council has an assessment panel with independent members, which hears objections and makes recommendations to Council. Newcastle Council holds preliminary meetings to explain the mediation process to all parties. Sutherland Council has a mediation coordinator to manage the engagement of external mediators. Gosford Council refers any matter to which they have objection to a "facilitator" (a member of Council staff) or "mediator" (a person external to Council) where the Council is "too close to the process".

Ebohr concluded his paper with some comments on the role of Council within the mediation process, and the degree to which mediated settlements can be incorporated in Council decision making.

The final paper of the morning session was presented by Sid Spindler, Coordi-

nator Centre Mediations, University of Melbourne, on the subject of “Transformative mediation - a social reform strategy?”.

Sid commenced by reviewing the concept of transformative mediation as set out in “The promise of Mediation” by Bush and Folger. They define transformative mediation as an approach to mediation where the mediator is indifferent to whether a solution to the dispute is found, but is focused on helping the parties to achieve recognition and empowerment. He identified a key argument in the work of Bush and Folger, that it is very difficult to integrate the two approaches of directive (or problem solving) mediation and transformative mediation.

He then related his personal experience as a mediator trained in the community mediation model, where the mediator controls the process, and the parties control the content. In this model, the mediator avoids involvement in directing the parties, or in suggesting options for agreement, but retains control in guiding the parties through a series of steps leading to negotiation and agreement. Sid argues that such an approach, while not being focused on the transformative approach nevertheless leads not infrequently to recognition and empowerment for the parties.

The concurrent session on Environment on the afternoon of Monday April 6, 4.15pm - 5.45pm comprised a session facilitated by Bruce Turner, Department of Infrastructure and Robin Saunders, Consultant, on the theme “Environmental/planning mediation”.

The facilitators presented a list of potential issues to the group, comprising both issues arising from the facilitators’ experience, and issues raised by other speakers during the conference. The groups was invited to add to them. Then each person was requested to allocate three votes to the issues they thought most important. The group agreed to devote their discussion time to the first five priorities, with interest focused on the intake process, negotiation in good faith, protecting the public interest, and coordination with statutory and political decision making. All participants enjoyed the general discussion that followed.



## 4th National Conference 1998 National Peak Body – Considerations

Danny Crossman

### Introduction

The session “National Peak Body, Standards & Accreditation” was held on the last day of the Conference and was attended by approximately 70 participants. The session was expertly chaired by Robin Saunders, with Marg O’Donnell working the whiteboard.

Hilary Astor, Professor of Dispute Resolution at Sydney University, commenced the session by presenting an overview of responses submitted by a range of organisations to a series of key issues relating to the question of whether and how to form a national peak body for dispute resolution in Australia. Submitters included ADRA, IINCM, LEADR, Institute of Arbitrators & Mediators, VADR, NADRAC and Australian Dispute Centre (ADC).

It was acknowledged that not every dispute resolution organisation was represented within these submissions however, they formed a reasonable cross section of views.

Hilary reported that there are a range of current initiatives towards the formation of a national body. ADRA has “A Peak Body Project” which is designed as a consultative facilitation. The ADC has established itself as a national peak body in the commercial, technical and professional areas. The Institute of Arbitrators & Mediators is hosting discussions involving a range of dispute resolution organisations and potential user groups to form an umbrella organisa-

tion and is close to establishing the “Forum for Dispute Resolution in Australia”. And IINCM already provides many of the services that a national peak body might offer.

The submissions covered a range of opinion on the purpose of a national body, including supporting improvements in standards and training, providing accreditation, coordinating advice to government, promoting ADR to the community, industry, the judiciary and government, providing information to ADR practitioners, supporting research and writing on ADR, being a “one stop shop”, facilitating communication and collaboration between ADR organisations nationally and internationally, avoiding duplication of effort and resources and assisting development of an international reputation for Australian ADR.

Hilary noted that opinions on who a peak body might include covered ADR organisations only, individuals only, both organisations and individuals interested in ADR, and practitioners from all areas of ADR.

Three options for funding a peak body were by membership subscription, Government funding and charitable funding.

On the question of whether a peak body should provide quality control through standards and accreditation, opinions ranged from “yes” through to providing input in an advisory capacity only, es-



## 4th National Conference 1998 Industrial Relations Stream

Ernest Treagus

### Theme

The theme of the Industrial Relations stream was a series of views on the central dynamic of industrial relations as it operates presently in a state of flux within Victorian workplaces, as seen by the key players in the scene.

### Key issues

The issues addressed by the speakers were, how the key operators saw their roles and what options they offered:

- Australian Industrial Relations Commission
- Unions
- Lawyers
- Employment Advocate
- Employer Organisations
- Academic

### Questions

Given the reality of the Workplace Relations Act 1996, what role is there for mediation and mediators to offer this new environment? All speakers addressed this question in their own way, and the overall comments were potentially favourable. It will be interesting to revisit this situation at the time of the next National Conference in 2000.

establishing minimum standards, coordination views of all sections of the community, and encouraging and developing best practice.

Most organisations said that a peak body should not replace existing bodies, but noted that if it has individual members it might eventually supersede some existing bodies. State, Territory and local bodies would be important links between the peak and practitioners, with the peak body assisting local organisations to realise their own objectives. There may not yet be sufficient trust that a peak body would represent the interests of all sectors of ADR.

Submitters considered that the process the industry should use to canvass opinion and make decisions would be open, consultative, facilitative, inclusive, communicating effectively with all concerned, sharing information, and based on mutual understanding of the positions and functions of existing groups. The process should not be a turf war, a take over by one or two groups or neglectful of the interests of the community sector.

Additional important questions raised in submissions included how to avoid a national body competing with organisations it represents, how a peak body can fairly represent those who operate in diverse arenas, how do we avoid a peak body being dominated by one or more groups and how would a peak body generate the trust of participant bodies and individuals?

As to the next steps for advancing towards a peak body, opinions included using a neutral body such as NADRAC as a facilitator, forming a representative working group, adapting one of the existing or joining the Forum for Dispute Resolution in Australia.

#### Discussion

Following Hilary's summary of organisations' written responses, Robin opened

the session up for discussion, commencing with the question: "Why would we have a peak mediation body?" A key feature of this discussion was the broad range of opinions provided by participants to the issues involved.

There was a belief that as mediators we should be able to model how to deal with these contentious issues, being very open ended about our process and agenda and avoiding competing with each other. Being problem solvers, we shouldn't jump to conclusions about the need for a peak body.

It was noted that the peak body topic has been on the agenda for the last three conferences. Lack of resources has been one blocker to previous attempts to make progress, particularly in how to include providers from across Australia within discussions. Some mediators are trying to respond to current issues, such as Wik, where the existence of a peak body would make this much easier.

Concern was expressed that a number of organisations are trying to create peak bodies. It was felt that we're not sitting down together to look at whether we need one and what for. We are seeing turf wars between self interested groups, which is leading to lack of trust. There is a danger that individuals are being left out of the process.

Several speakers wanted to go back a step and reframe the peak body question to "What are the issues that we need to have met?" and gain commitment to a process to explore such a question. Who should be doing this work? What is the process for continuing this work with the existing bodies?

Others felt that there is a danger of losing momentum, given that the debate has been going a long time, and that some organisations are now taking actions. The problem is that we have not been

sufficiently inclusive.

The chairman, summarising that there was interest in moving forward with a focus on a peak body, proposed that participants now consider: The future - where to from here?

Doubt was raised that these issues have been discussed by mediators at a grass roots level; we need to make a joint commitment to first consult with our constituents.

It was noted that if we are going to move forward, we need to recognise the level of mistrust that exists. We should avoid proposals to join someone else's forum or process, but rather participate in a forum which doesn't have proprietary ownership by one or more organisations.

Leigh Cunningham of the Institute of Arbitrators and Mediators explained that their focus has been on creating an environment where people interested in ADR are brought together. The Institute is just one voice amongst interested groups on the Forum for Dispute Resolution in Australia, which is likely to have membership of both provider and user organisations. Others commented that the Forum already has major ADR groups involved and is a long way down the track, providing an opportunity for it to be opened up to all.

It was noted that this Conference discussion group session is composed of a mixture of individuals with no authority. Whatever happens here, some groups will go ahead with what they want to do. Could a group like NADRAC take responsibility for monitoring developments and circulate these to others so at least we were informed? Or perhaps IINCM?

Melissa Conley-Tyler said that IINCM would be happy to facilitate this as it has no ambition to take over, it doesn't provide services, but it does want to promote the field of dispute resolution.

The chairman conducted a vote of participants to assess support for either IINCM or the Forum being the vehicle for Participants felt that through such discussions we should work with all bodies including the Forum even though this may be difficult as it is so far down the track.

The chairman sought and received support for IINCM playing a facilitative role, as a mechanism for exchanging views, proposing models and moving forwards, using its database to draw people together.

At the conclusion of the session, general consensus was reached to explore an inclusive process to discuss a wide range of issues which may lead towards development of a national peak body; with IINCM contacting a broad range of organisations and government bodies, and convening a follow up discussion.





## 4th National Conference 1998 Peer Mediation

Pat Marshall

In his keynote address at the opening of the conference, Peter Adler referred to five areas in which the evolving 'negotiatory alchemy' we call mediation is finding its maturity; community mediation; business; ADR by executive order; the courts; legislative sponsorship and peer mediation.

At last, I thought, peer mediation has gained ADR respectability; it's up there with the 'big guys' of commercial and court-annexed mediation. There is, of course, a compelling logic as to why it is one of the platforms of the ADR movement. If we do not convince kids of the value of mediation and related processes, our philosophising about self determination and empowerment is mere whistling into the conflict wind, and, furthermore, our potential markets will not materialise! Funny how the old competitive nerves still respond to touch.

Peer Mediation Workshop 5 was held the day before the main conference. The day brought together international, national, state-wide, community and individual perspectives on mediation, including its ten year old history at one Tasmanian school. The workshop confirmed much of what we know about mediation, but also challenged some preconceptions and practices.

### Confirmation

1) It is essential that kids be taught micro skills of conflict resolution in a school environment where these skills are envisioned by the leaders, encouraged by example, and taught developmentally:

- understanding myself and my emotions
- listening to others
- appropriate assertiveness in the telling of my "story" and my concerns and interests
- exploration of options
- empathy and thoughtfulness

2) It is important that mediation be seen as one option among other related processes, for example Pikas' method of 'shared concern', particularly as it applies to bullying, and the process of community conferencing where 'offenders' hear the impact of their ac-

tions on others, and share in the responsibility of deciding what's to be done about the situation.

### Challenges

1) To encourage a 'whole school' approach to mediation where students, parents and teachers are educated in the management of conflict, and peer mediation is seen as a 'natural' strategy for resolving specific disputes.

Training students and parents to skill their peers is yet another adjunct to peer mediation, one that is not yet being utilised.

2) To tailor peer mediation training and strategies to the appropriate stages of the moral and social development of young people.

For example, boys are more likely to see empathy as an example of sookiness rather than strength. As well, some secondary school students see peer mediation as OK for primary school kids but not for them (Dracon project, South Australia).

Not tailoring mediation to these stages of growth explains why some student mediators get sucked in to the 'option syndrome' alluded to by Folger, where they assume that the kids in dispute have to 'make-up, apologise and not do it again' - a nice model, perhaps of reconciliation and

repentance, but hardly suitable for all disputes.

3) To encourage kids to see conflict as the 'place where people can find their way to compassion and strength.' (Folger) this is probably our greatest challenge, and in order to meet it, we have to listen far more to what kids are telling us about their experience of conflict and their preferred ways of handling it.

A cultural shift, as implied by Folger, will not start in the courts or in business or legislation; if it happens, it will start in the home and school, particularly if it is reinforced by media support. At the moment, however, mediation in schools is in danger of being seen, even among mediators, as belonging to the 'private' domain of home family, while the 'real' stuff gets done in the public arena of commerce and courts. Such a view is myopic, antiethical to the ideology of self determination, and, on a purely pragmatic level, counter productive to the business of developing 'markets' for mediation.

As indicated by Adler, mediation in schools is already in the mainstream of the ADR movement. For this reason, I would like to see it in the mainstream of the National Mediation Conference whenever it is next held. After all, I would hate to disappoint Peter Adler.

## 1998 ADRA

# Student Essay Competition



The topic:  
**Seeking Resolutions:  
Exploring ADR Options for  
Native Title Disputes**



# 4th National Conference 1998 Cross Cultural Issues

Isla MacLeod

The speakers at this session of the conference were: Reg Blow (Aboriginal Community Elder Services); Joanna Kolowski (National Native Tribunal); Margarita Frederico; Brian Cooper and Cliff Picton of La Trobe University.

Whether mediation is successful in cross cultural situations depends on many things.

In an urban indigenous situation a mediator needs to be aware of: the differences between indigenous urban values and non indigenous values; the understanding that the values of urban indigenous people are a mixture of the two worlds; and the importance to indigenous people of determining their own future.

Prior to the introduction of a dominant alien culture and value system the way in which indigenous people resolved differences was by consensus. All people involved would go down a track and if one disagreed all the others would go along the same track until the one person changed their mind or all the others changed their minds to agree with one standing against them.

With indigenous people the process of conflict resolution was always regarded as important as the outcome.

Now, urban indigenous communities hold AGMs and if there are some in opposition, consensus is rarely used to resolve matters. This way of working has changed mainly due to indigenous communities having a change their ways of working in order to receive Government funding.

Unfortunately, Governments keep changing the rules. Non-indigenous people are used to this and can work with it or around it, but for indigenous people, who are now in a subservient position with laws that actually discriminate against indigenous people and continue the process of dispossession, this leads to stress, depression and can lead to conflict.

Stake holders in traditional indigenous disputes are sometimes numerous and if one is a Government Agency, although they appear to act, they sometimes have an interest in seeing the mediation process fail.

However, mediation is the traditional situation is of potential benefit to all for

it is a more culturally appropriate process with emphasis on preserving relationships, improves communication, allows greater indigenous participation and has flexibility of location.

Mediators have to adjust the process to fit the situation.

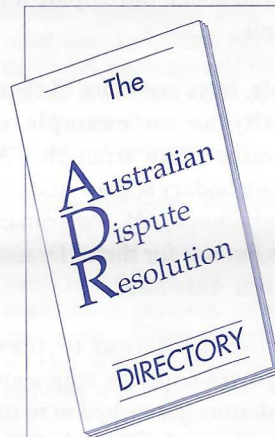
Mediation in the Native Title Tribunal has had some difficulties. Some stakeholders are not negotiating in good faith, others have unrealistic expectations of the process and there is a lack of Tribunal expertise in resolving disputes between traditional owners. There is also the difficulty of long term management, post mediation.

In a cross cultural situation a mediator

must lower the level of threat and raise the level of support.

Notions of fairness may differ cross culturally. Most mediators try to give each party equal length of time when speaking, but some people may need more time than others to speak, or some may need to speak first, even if the process suggests the opposite. Or a party may be unused to expressing their difficulties to outside sources and a Private Session may be necessary to ensure the party is really quiet or is the process silencing them. Issues such as shame, losing face, must be taken into account.

This is just a sample of the interesting talks given by these speakers and it left the audience wanting to hear more.



## The Australian Dispute Resolution Directory

A national guide to professional providers of  
dispute resolution services

Cost: \$29.50 plus \$5 postage and handling

Please send me *The Australian Dispute Resolution Directory*  
I have enclosed a payment of \$29.50 plus \$5.00 for postage and handling.

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## 4th National Conference 1998 Sailing with the Santa Monica - Conferencing the Great Unknown

Peter Condliffe

The Santa Maria was the little flagship of Columbus on his epic voyage of discovery to the new world. The conferencing 'movement' (for want of a better word) is like Christopher Columbus – setting out for somewhere – he doesn't know quite where, and when he gets there he doesn't know quite what it is, and when he returns he is not sure where he has been! Conferencing is largely the end result of years of practice by practitioners engaged in victim offender mediation programs. Lately academics and others are trying both to name what is happening within and as a consequence of the process. The "new world" is forming slowly.....

Carmel Benjamin, M McMahon and myself explored various aspects of conferencing and victim offender mediation. Conferencing is a process through which the communities affected by a criminal act can come together to discuss and respond to what has happened. It has generated enormous interest throughout Australia. What struck me about my fellow presenters papers was that the issues these types of programs present for both policy makers and those who have to implement them are in many ways still unexplored territory.

There are still many unanswered questions for victims, offenders and those who would implement and evaluate these programs. Questions such as the role of the victim and what "satisfaction" means to them. Other questions like the likely impact on such programs on recidivism, net widening and the very idea of "punishment". As well, there are issues related to the interaction between criminal justice bureaucracies and these type of community based programs and community alienation. As Maxwell and Morris the most prolific empirical researchers on conferencing, state,

"Overall, as a system of restorative justice, family group conferences are not always successful. However, it would be unrealistic to expect that remorse for the harm caused and the healing of victims can always be achieved. That positive and constructive outcomes occur at all can be construed as a considerable achievement in contrast to the failure of criminal courts to achieve restorative goals."

The Santa Maria was unfortunately shipwrecked and didn't make it back but its legacy is still with us.



## Why the need for a guide to assist with the resolution of local native title issues?

Vanessa Richardson

Australia has one of the best dispute resolution industries in the world. This expertise has been harnessed by a group of Melbourne mediators who are developing and promoting an innovative users guide entitled "Towards Common Ground: A Guide for Resolving Local Native Title Issues". It is aimed at assisting with the development of positive outcomes for all parties involved in Wik negotiations about native title matters.

The idea arose from three people in particular: Ms Marg O'Donnell, Mr David Bryson and Ms Nerida Wallace. There has also been consultation and input from indigenous and non indigenous mediators nationally. Each member shares the convictions based on experience and professional skill that mediation processes can practically assist Australians involved in local native title issues.

The development of this Guide has had a 'magical' beginning. People and resources have been forthcoming with surprising levels of enthusiasm and timeliness. For example, the assistant co-ordinator for this program Ms Klara Balzevic had previous experience in this field and was available to work voluntarily as part of her Post

Graduate studies in Alternative Dispute Resolution at La Trobe University.

The purpose of "Towards Common Ground : a Guide for Resolving Local Native Title Issues" is to

Develop a readily accessible guide by harnessing the technical expertise of the mediation and conciliation profession

Publicise the usefulness of mediation for the resolution of these disputes

Raise support for the dissemination of the Guide to interested parties throughout Australia

Direct people to a list of free service centres and resources offered Australia wide

Copies of the guide will be distributed by mail to libraries, local councils, church bodies and interested individuals throughout Australia.

For further information contact the "Towards Common Ground" website at

<http://lexsun.law.uts.edu.au/iincm> or phone Klara Blazevic on 03 9642 4022 after 11am EST.

## New Mediation Training Tapes John Haynes in Australia

Produced by the Research  
Group for Mediation Studies  
University of South Australia

*Surfacing Domestic Violence*  
\$120

(2 sessions - married couple)

*The Wrong Culprit*  
\$90

(Parent complaint against  
police)

*Splitting Emotions from  
Economics*  
\$90

(Defacto property settlement)

*Old & New Values*  
\$90

(Correctional Services  
Officers' Dispute)

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*The Best Interests of Children*  
\$90

(WorkCover dispute)

*Dobbing at School*  
\$90

(Dispute between students at  
school)

**Full set \$600**

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## The Dynamic Relationship between Law and ADR

Robin Saunders

Dr Moira McConnell (Professor of Law, Dalhousie Law School, Halifax, Nova Scotia, Canada) visited Melbourne in early July 1998. Dr McConnell spent five years as the Director of the Canadian Law Reform Commission. She presented a paper entitled "The Dynamic Relationship Between Law and 'ADR'" at the International Conflict Resolution Centre at Melbourne University on 7 July, under the joint auspices of ICRC and the Victorian Association of Dispute Resolution, which is summarised below.

Dr McConnell drew on the work of Leon Petrazhitsky, a Russian-Polish legal philosopher writing in the first quarter of this century, for a model through which to better understand the relationship between law and ADR. Petrazhitsky advanced the idea that law has some purpose beyond settling or silencing conflict and maintaining order. The purpose that he identified is that of a universal desire to create a society based on rational love through the dynamic relationship between law as it exists in the psyche and the official articulation of law ("law in the books"). He argued that law as a psychological experience arose from social behaviours and practices. He foresaw that as populations grew and attempts to alter the communal experience resulted in legislative activity which at times outpaced social experience, the "law" (positive law) would lose its connection with the human experience of the law (intuitive law).

Dr McConnell drew out the current view that what we might hope for from the courts is 'justice', while what we want from ADR is 'resolution'. She suggested that the two describe the same psychological experience, a transformation of the problem that leaves the situation more or less 'sorted out'. "This is the promise of ADR and its focus on human experiences and interests. ADR is often seen in opposition to the legal process which has legal 'rights' as the starting point. This polarised view tends to ignore the fact that our ideas about rights are not simply imposed on us but reflect human values and ideas derived from social

experience. The two are not as separable as suggested in this dichotomy—our rights are also an aspect of our interests."

The view that ADR enables people to tell their stories, in a way that is often denied by the courts, can be seen as one differentiation between the law and ADR. And yet, Dr McConnell pointed out, as a contract law teacher, she sees the courts of equity developing from the sense of justice and fairness that come from the telling of individual stories.

*The view that ADR enables people to tell their stories, in a way that is often denied by the courts, can be seen as one differentiation between the law and ADR.*

The present disenchantment with the traditional legal system has seen the rise of court annexed ADR processes. Is this the "legalisation of ADR" (a much feared state of affairs with a pernickety, rule-laden process) or the "ADRisation of the courts"? Petrazhitsky foresaw the inevitable breakdown of society as the discrepancies between the positive and intuitive expressions of the law cause cognitive dissonance. In contrast, Dr McConnell advanced the view that the "law" and ADR can interact and influence each other, since positive law may educate and thereby change intuitive law.

The traditional view is that dispute resolution processes occupy a continuum from high control over process and substance by disputants to no control over either. Dr McConnell suggests that a better model may be one with a third dimension, which portrays the constant inter-play between the law courts, personal interactions and environmental factors. The idea of negotiating "in the shadow of the law" conjures the image of the "law" delivering an arbitrary result that may be far from either justice or the parties' interests. Yet law or litigation often remains the parties preferred method of dispute resolution, reflecting perhaps the hope that the law will still deliver what is sought from it.

Petrazhitsky posited an evolutionary process of adaptation by individuals in relationship with each other and the world around them. The tendency he observed was that of a human need for "order and predictable interactions which allow the fixing of otherwise fluid social reality into symbols, rules, habits and rituals". Intuitive law is not necessarily better or more progressive than positive law. Indeed "it may be irrational or pathological or discriminate against women or children or disabled or aged." He concluded, however, that the positive law does not necessarily satisfy the needs of some members of the community, and the more heterogeneous the population, the greater the collision between positive and intuitive law. Petrazhitsky's analysis provides a model for examining the relationship between our visceral experience and the functioning of this abstract thing we call the law. Dr McConnell remarked that "When I look within myself, I still find a sense of fairness, a belief in justice, compassion, empathy, and anger *as though things could be altered or could be improved*. I see the current democratisation of law-making, interest in ADR and expansion of administrative agencies and self-regulation as part of an attempt to reconnect with the intuitive law or sense of justice and wish for resolution: a reclaiming of human experience."





## Courses & Training

The Accord Group  
Level 2, 370 Pitt Street, Sydney  
Contact:

David Newton or Nina Harding  
Ph: (02) 9264 9506

Fax: (02) 9264 8268

Commercial Mediation Training- 4 Day Course

Cost \$1400

Also runs in - house courses:

conflict resolution and negotiation skills.

Alternative Dispute Resolution Branch-

Department of Justice, Qld

GPO Box 149

Brisbane Qld 4001

Contact: Peter Johnstone (Training Coordinator)

Phone: (07) 3239 6277

Fax: (07) 3239 6284

Mediation Skills Course:

5 Days (Introductory Course developed for people wishing to gain basic understanding of mediation process and essential skills)

Cost: \$1195 (catering included)

Brisbane: 14 - 18 Sept 1998

Australian Commercial Disputes Centre

Level 6, 50 Park St,

Sydney NSW 2000

Contact:

Margaret McLelland or Sofie Hernandez

Ph: (02) 9267-1000

Fax: (02) 9267-3125

All courses held in Sydney

Commercial Mediation Course

3 Day Course and optional evaluation day

Cost \$1345 (3 days), \$395 (1 day evaluation day)

Workplace Grievance Mediation Course

2 Day Course and optional evaluation day Cost \$1100 (3 days) \$395 (evaluation day)

Building and Development Application Mediation (BA/DA)

3 Day Course and optional evaluation day Cost \$1025 (3 days), \$396 (evaluation day)

Complaints Handling course – 1 Day course Cost \$275

Barwon Parent & Youth Mediation Service

Geelong, Victoria

Contact: Chris Halls

Ph: (03) 5223 2966

Fax: (03) 5229 0102

Professional Mediation Training – 3 Day Course

30 Sept, 1, 2 Oct 1998 Cost \$160

Mediation available for parent/adolescent at no cost.

Peer mediation available to Schools.

Conflict Resolution Network:

Community Based Projects

PO Box 195

Chatswood NSW 2057

Contact: Robyn Gaspari

Ph: (02) 9419 8012

Fax: (02) 9419 4305

Mediation and Group Facilitation

Covers workplace mediation and

grievance handling, community consultation and alternate dispute resolution: 4 days  
December 2-5 Cost: \$180

Council of Adult Education, Community Programs Department

256 Flinders Street

Melbourne, Victoria 3000

Contact: Margaret Jones or Muriel Sutton

Ph: (03) 9652 0629

Contact for course information

Ph: (03) 9652 0799

Mediation - An Introduction - 12 Hour Course

Introductory course for people in management roles and human services field.

Dealing with conflict - 5 weeknight course  
Improvement in skills and confidence regarding conflict management.

Dealing with anger and communicating across cultures in workplace courses also available.

Family Mediation Centre

Noble Park, Victoria

Contact

Marie Garric

Ph: (03) 9547 6466

Mediation Training

Level 1 and Level 2 both 3 day courses.

Training in the theory and skills of mediation useful in a broad range of settings but particular emphasis given to parent/adolescent and family law dispute.

Cost: \$450 each

Level 1 Braining - course in Ballarat

Level 2 Training

re Parent Adolescent

Effective Grievance Management Training

22, 23 & 24 October

Understanding the nature of work place grievance and their effects on organisations and individuals. Learn how to design effective approaches to the management of grievance.

Cost \$450 ring for details of courses in 1998.

International Conflict Resolution Centre

University of Melbourne

Carlton Campus

Contact: Margaret Clark

Ph: (03) 9344 7035

Fax: (03) 9347 6618

Mediation in Schools - 30 Hour Course  
January 1999

For primary and secondary school teachers, and counsellors.

Contact: Pat Marshall

Ph: (0359) 685 414

Mediation Short Course - 40 Hour, 13 Week Course

Practical and theoretical training for professionals: lawyers, managers, teachers, social workers and community workers.

Contact for course information Diana Pittock  
ph: (03) 9592 1907

Managing Conflict In Planning

Dispute resolution and facilitation skills for planners (including local government)

Contact for course information

Robin Saunders (03) 9853 7510

La Trobe University

School of Law & Legal Studies

Bundoora, Vic 3083

Contact: Tom Fisher, Course Convenor

Ph: (03) 9479 2755 (Administration)  
(03) 9479 2423 (Direct Line)

Fax: (03) 9479 1607

e-mail: T.Fisher@latrobe.edu.au

Family Law for Mediators

36 hours (block teaching out of normal working hours) 5 required subjects. First 4 are equivalent of semester units. Last subject covers 2 semesters.

Legal studies: dispute resolution negotiating and mediation education: negotiating solutions: mediating for conflict

Legal Studies: Family law for mediators.

Legal Studies: Family mediation

placement

Total fees approx. \$6,000

Cost: approximately \$1,000 per subject  
This subject forms part of the Graduate diploma in Family Law mediation but is open to practising mediators and others needing a grounding in relevant issues of family law

LEADR

National Dispute Centre

Level 4, 233 Macquarie Street, Sydney  
NSW 2000

Ph: (02) 9233 2255

Fax: (02) 9232 3024

Mediation Workshops – 4 Day Course  
Teaches mediation skills and philosophy  
Workshop – Issues and Techniques in Family Mediation and Interpersonal disputes

Details to be advised

Mediate Today

Contact Lorraine Djurican

Ph: (02) 9223 2255

Fax: (02) 9223 6058

Professor Arnold Zack, Harvard

University \$1650

Professor Laurence Boulle  
\$1650

Melbourne: Ring for details.

Relationships Australia – NSW

5 Sera Street

Lane Cove NSW 2066

Contact:

Linda Fisher/Valetta Turner

Ph: (02) 9418 8800

Fax: (02)9418 8726

Family Mediation Training Program

6 days - \$1250

Course in Mediation

6 weeks course includes 20 hr placement

Cost - \$2250

Advanced Mediation Training Program

Cost - \$500

Continuing Education:

Assessing Effectively + Terminating

Gracefully \$35

Cross Cultural + Aboriginal Issues \$70

Mediator Burnout \$35

Children in Mediation \$35

Transformative Mediation \$70

Mediation Supervision Training Program

\$550. Also Formal Mediation

Supervision

Supervised Medication through Co-

Mediation.

Coaching or on-going mediation practice.



## Courses & Training

Alternative Dispute Resolution Branch –  
Department of Justice, Qld  
GPO Box 149, Brisbane Qld 4001  
Contact: Peter Johnstone  
Phone: (07) 3239 6277  
Fax: (07) 3239 6284  
Mediation Skills Course:  
5 Days (Introductory Course developed for  
people wishing to gain basic understanding of  
mediation process and essential skills)  
Cost: \$1195 (catering included)  
Relationships Australia Qld  
PO Box 595, Spring Hill Qld 4004  
Contact: Mike Brandon  
Ph: (07) 3831 2005 Fax: (07) 3839 4194  
Advanced Family Mediation – 28 hour course  
Cost \$700  
Relationships Australia - Victoria  
Venue: 46 Princes Street, Kew Victoria  
Contact: Ena Shaw  
(03) 9484 9775  
Intermediate Mediation course – 3 Day Course  
Including cultural issues and intake procedures  
Cost: \$695  
Introductory Mediation course – 2 day Course  
Including the separation process and the  
effects of separation on children Cost: \$595  
Unifam  
PO Box 3156, Parramatta 2124  
Contact: Sue Fraser  
Ph: (02) 9891 1628  
Practical workshop – 4 Day Course  
Includes negotiation, breaking impasses, value  
conflict etc  
Cost: \$750 (Early Bird discount \$695)  
Advanced practice skills for mediators 1 day  
course cost: \$150  
Short Courses 1 day  
Finding new ways of working with men and  
boys 2 July 1988 \$95  
Child alone in the family context  
11 September 1998 \$150  
Working with Men  
4 September 1998 \$150  
Supervision service available on request

### University Certificates, Diplomas & Degrees

Southern Cross University  
Lismore and Coffs Harbour Campuses and  
External Study  
Contact:  
Marilyn Ryan  
Ph: (066) 203 133  
Bachelor of Social Science with Counselling and  
Mediation Studies Major  
3 Years full time, 6 Years part time.  
Bachelor of Legal Studies  
Dispute Resolution Major  
Contact: Anne Maree Sharkey  
Ph: (066) 203 107  
University of Western Sydney  
Macarthur, Sydney  
Contact: Linda Fisher  
Ph: (02) 9418 8800  
Graduate Certificate of Mediation  
1 Year part time  
Graduate Diploma in Mediation Practice  
2 Years part time  
Charles Sturt University  
PO Box 588, Wagga Wagga NSW 2678  
Contact: Course Coordination  
Ph: (069) 33 2513  
Fax: (069) 33 2790

Graduate Certificate in Commercial Dispute  
Resolution  
1 Year part-time course by distance education.  
University of Technology  
Faculty of Law  
Post Graduate studies  
Level 3, 645 Harris Street, Ultimo 2007  
Contact: Marilyn Scott - Course Coordinator  
Ph: (02) 281 2699  
Fax: (02) 281 2127  
Graduate Certificate in Dispute Resolution  
1 Year part-time Cost: \$3200  
Master of Dispute Resolution  
2.5 Years part-time Cost: \$7200  
Macquarie University  
Macquarie Graduate School of Management  
NSW 2109  
Contact: Anne-Marie Hodson - Marketing  
Coordinator  
Ph: (02) 9850 9027  
Fax: (02) 9850 9022  
Postgraduate Diploma in Conflict  
Management  
School of Law  
Contact: Frank Astill Ph: (02) 9850 7076  
Dispute Management and Resolution  
4th Year unit in LLB program.  
Available to internal and external students -  
13 weeks. Possible as a single non-award  
unit.  
Environmental Litigation and Mediation  
Post-graduate unit available to graduates in  
law and environment-related areas, as part of  
a Masters degree or Diploma course.  
Internal/external - 1 semester.  
La Trobe University  
School of Law & Legal Studies  
Bundoora, Vic 3083  
Contact: Tom Fisher, Course Convenor or  
Ted Osborne, Course Administrator  
Ph: (03) 9479 2755 (Administration)  
(03) 9479 2423 (Tom Fisher)  
Fax: (03) 9479 1607  
e-mail: T.Fisher@latrobe.edu.au

Graduate Diploma in Conflict Resolution  
1 Year full-time, 2 years part-time  
Cost: \$6,000  
Graduate Diploma in Family Law Mediation  
2 Years part-time Cost: \$6,000  
Graduate Certificate in Conflict Resolution 1  
Year part-time Cost: \$3,000  
Graduate Certificate in Conciliation and  
Ombuds Studies (pending approval)  
1 Year part-time Cost: \$3,000  
University of South Australia

The following three courses are in a nested  
arrangement, give credit for prior study in  
the area, and offer a wide choice of subjects.  
Graduate Certificate in Mediation (Family) –  
established since 1993  
One year part-time – three five-day blocks  
Graduate Diploma in Conflict Management –  
new in 1998  
One year full-time or 2 years part-time

Inquiries about these courses can be directed  
to the Faculty of Humanities and Social  
Sciences, University of South Australia, Magill  
Campus – telephone: (08) 8302 4424, fax:  
(08) 8302 4395 or email:  
humanities@magill.unisa.edu.au

Master of Conflict Management by  
coursework – new in 1998  
1 1/2 years full-time, 3 years part-time:  
Optional research component

### Mediation Training Manuals

Oz Problem Solver - Written and Compiled by  
Fed Stern  
For Secondary Schools - end of year 9 and up  
Australian based manual for teaching students  
basic mediation skills. Can be used with peer  
mediation programs.  
Cost of manual: \$20  
Barwon Youth Accommodation Service  
Ph: (03) 5223 2966  
Fax: (03) 5229 0102  
Alternative Dispute Resolution Branch –  
Department of Justice, Qld  
GPO Box 149  
Brisbane Qld 4001  
Contact: Peter Johnstone (Training  
Coordinator)  
Phone: (07) 3239 6277  
Fax: (07) 3239 6284  
Mediation Skills Training Manual  
As used in conjunction with ADR Branch  
Mediation Training. Contains information  
regarding conflict and conflict management,  
the philosophy of mediation and a step by  
step introduction to the skills required of  
mediators and the 12 Step process used by the  
ADRB  
Cost: \$20  
Group Facilitation Training Manual  
As used in conjunction with the ADR  
Branch's Facilitation Course. The manual  
contains information regarding processes that  
can be used by third parties to assist groups  
achieve their goals. Includes information  
regarding the role of facilitators, the  
facilitation process and group dynamics.  
Cost \$20  
Mediation Skills Training Video  
The simulated mediation contained on this  
video displays (with the assistance of graphics  
and voiceovers) the essential skills required of  
mediators. Includes written material  
regarding the twelve step process used by the  
ADR Branch.  
Cost: \$20  
Family Law Mediation Symposium Video  
A video presentation of recent Family Law  
Symposium conducted by the ADR Branch.  
Speakers from the Family Court of Australia,  
Relationships Australia (Qld) and the ADR  
Branch provide valuable information  
regarding recent changes to Family Law in the  
context of Family Mediations.  
Cost: \$45 (Two Video Set)

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### Deadline for Articles for Next Issue of Mediation News

The deadline for articles for the next issue of Mediation News is 30 September 1998.

Please send articles, letters, news items, book reviews to:

Mediation News, John Connell, 50 Torrens St, COLLEGE PARK SA 5069

# MediationNews

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# MediationNews

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