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Introducing abbmmed

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Ashley Eastall and Peter Condliffe

Introducing abbmmed

Abbreviated mediation, or 'abbmmed', started in the Queensland Department of Justice and Attorney General's Wide Bay Dispute Resolution Centre (DRC) in September 1997. Originally the process was developed for mediators attending court on Small Debt/Small Claim hearing days. The mediators would advise of their services, provide information and conduct mediations for disputing parties waiting for court.

The principal differences between abbmmed and normal mediation as practiced by the DRCs in Queensland are:

- only one mediator is required;
- there may be no formal intake process;
- time is limited, usually from 30 to 60 minutes;
- mediators need to be familiar with court processes; and
- very often the mediation process is direct and to the point.

Similarities that remain are:

- the mediators remain neutral and impartial;
- mediators do not give advice, make judgments or provide solutions; and
- the abbmmed process continues to be voluntary and confidential (the process is privileged and therefore the discussions or offers of settlement do not affect any court process).

Abbmmed procedure

Abbmmed begins and ends with the court process. This is because the disputing parties have already approached the court to seek advice or commence litigation. The registry staff may at that time refer the party to the DRC. The party may accept or may refuse and continue with the litigation process. If court action has been commenced, but the party agrees to a mediation session, this will need to be raised as an agenda item in the mediation.

The abbmmed process gives the defendant/respondent two opportunities to mediate; on receipt of the Notice of Hearing, or at the abbmmed process if offered on attendance at Court. Normally the parties are aware of the service by the time the hearing date arrives. Occasionally a party will telephone indicating an impending date of hearing and requesting mediation. After suitability has been assessed, an abbmmed can be arranged at short notice. Frequently parties proceeding to court have never had the opportunity to communicate prior to the court appearance. Abbmmed provides the first opportunity for communication to be opened.

Not all abbmmeds are performed on court days. During normal intake of cases in the Wide Bay DRC, suitable disputes are selected for abbmmed in preference to full mediation. Certain criteria are taken into consideration at this time. Normal mediation is preferred but if the criteria are met, abbmmed can provide a cost effective and efficient dispute management procedure.

Early evaluations

In the trial of the process the Wide Bay DRC conducted a total of 139 mediations. Of these 41 were abbmmeds. A further 54 court cases were diverted to ordinary mediation as part of the litigation process. This was the result of a preliminary letter being sent to parties. On the hearing days when abbmmed was available, approximately 25 per cent of all potential cases were diverted from the court.

The lower agreement rate of abbmmed (approximately 60 per cent) compared to those cases diverted to an ordinary mediation (approximately 87 per cent) is attributed to the relative commitment of parties to settle on the eve of their court appearance and the shorter time given to the process.

Questionnaires are posted to parties ➤

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➤ immediately after their abmed session. Feedback from successful parties is generally positive, with several comments to the effect that the process should be mandatory. Unsuccessful parties have indicated that the process helped them to obtain a better understanding of the dispute.

The process remains voluntary in that the parties are provided with an opportunity to mediate their dispute while waiting for the court. Only when both parties agree does abmed proceed. Often after one party accepts an invitation to mediate the other party will respond positively. The abmed process utilises a single mediator model. Most mediators accustomed to a peer-mediation model have quickly become comfortable with the process. The mediator plays an important role in keeping the parties focused and agreement oriented.

Generally abmed works best in commercial disputes where there is no ongoing relationship between the parties (although they may know each other as part of the same community). Very often it comes down to: what will it take to avoid court?

Consequences of abmed

The *Small Claims Act 1973* (Qld) states that the referee may, at the request of the claimant, make any order to which the parties have agreed. Therefore any agreement can usually be easily formalised. It is usually preferable for agreements to be put in the form of an order when a periodic payment is agreed. This protects the plaintiffs from defendants who make an agreement when they are ambivalent about repayment. In Wide Bay there have been numerous cases where money has changed hands or actions have been withdrawn during the abmed, thus making a court appearance unnecessary. In other cases periodic repayments have been agreed and these have been formalised by the Court. Another choice is to arrange an adjournment, either:

- 'to the registry' — this means the file lies dormant unless revived by either party; or

- 'to a specific court hearing date' — to a future hearing date where the court process may proceed if the agreement has broken down. Alternatively, the proceedings can be withdrawn because the agreement has worked.

In either case the parties agree to adjourn the court process so the terms of the agreement may be carried out.

The abmed process has been an ongoing practical experiment in adapting the mediation process to a setting where parties are otherwise often denied options to deal with their disputes in non-adversarial ways. It has also provided a number of Magistrates and Court Administrators with choices previously unavailable to them. ●

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This article is extracted from the paper 'Abbreviated Mediation — The Trial of a New Mediation Process' prepared by Ashley Eastall, Co-ordinator, Wide Bay DRC and Peter Condliffe, Executive Manager, ADR Branch and Director, Dispute Resolution Centres, Department of Justice and Attorney-General, Queensland, 1998.

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