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Survey evidence on ADR

What people think about mediators

Tom Altobelli

A recent survey into mediation provides some interesting data about how the participants in the mediation perceived the mediator. There is also a perhaps surprising observation about the role of mediators.

In April 1999, the writer submitted to the Rural Assistance Authority of NSW a report of research conducted on behalf of the Authority into the operation of the *Farm Debt Mediation Act 1994* (NSW). This legislation mandates mediation of farm debt disputes between lenders and farmers.

Between 12 February 1995 and 31 January 1999, at least 642 mediations under the legislation had taken place. All the participants in mediation — the farmers, their representatives, the lenders and the mediators — were surveyed. One important aspect of the research concerned the perceptions of the participants in relation to mediation and the mediators.

Farm debt mediation involves the parties choosing their own mediator from a panel established for this purpose by the Rural Assistance Authority of NSW. Farmers, lenders and their representatives are provided with a document setting out the names, cost and brief biographical details of all mediators on the panel. Farmers and lenders must agree on who their mediator will be.

Farmers stated that they selected mediators on the basis of recommendation (53 per cent) and experience (33 per cent), with reputation (19 per cent) and cost (17 per cent) featuring quite low in the list of factors influencing choice. Mediators should therefore note that 'word of mouth' appears to be the most effective means of generating mediation referrals.

While the mediator's experience was also shown to be important, consumers of mediation services such as farmers were not significantly influenced by the cost of the mediator. Of course it must be acknowledged that the mediator's costs were almost invariably shared between the farmer and the lender, thus perhaps minimising the potential

significance of cost factors. Nonetheless, a counter-balancing consideration is the fact that farm debt mediation arises in the context of severe financial distress for most farmers, thus suggesting cost might have had a more prominent place in the selection process.

Most farmers felt that the mediator was impartial (72 per cent), helped them to reach agreement (58 per cent), and handled the mediation skillfully and professionally (77 per cent). Farmers reported that mediators were aware of their needs and concerns (69 per cent) and knew enough about farming (57 per cent). Comparable high levels of satisfaction with farm debt mediators were expressed by both the representatives and the lenders.

One possibly surprising result of the surveys is that most farmers (53.5 per cent) and their representatives (71 per cent), and half the lenders, indicated that they found it helpful for mediators to suggest possible options for settlement. Some models of mediation indicate that mediators should never suggest options for settlement. Other models concede that a mediator should only suggest an option as a last resort. Other dispute resolution processes, such as conciliation, actually encourage and facilitate the provision of options for settlement. The model of mediation used in the legislation is broad enough to permit the mediator to suggest possible options for settlement.

The significance of this finding is that it suggests that the marketplace may well welcome the appropriately proactive mediator; that is, one whose interventions may proceed beyond the realms of the procedural to the substantive content of the dispute. ❖

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