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Designing appropriate ADR

Mediation approaches involving larger groups

Bruce Argyle & Kerry Williamson

Over the past 10 years, Regional Extended Family Services (REFS) staff have worked with a diversity of families, schools, communities and workplaces experiencing varying degrees of conflict. Conflicts which involve a larger group of participants are particularly challenging. REFS' approach recognises and respects these participants' ability to take responsibility for finding solutions to their own issues. REFS works at developing communication and problem solving skills and strengthening relationships through mediation.

Over its short history there have been instances where REFS staff have mediated situations with a large number of participants. These have included larger groups in workplace conflicts, school gangs and extended families.

REFS has recognised the increased complexity faced by mediators in these larger group situations and has adopted a number of strategies and approaches to achieve positive outcomes.

The significant challenges presented to mediators assisting in disputes involving any two parties are further compounded when faced with conflicts involving larger groups. Other considerations then come into play that necessitate careful attention by the organisation and the mediator(s) to achieve successful resolution.

The interplay between conflicting parties becomes more complex and the management of the mediation process requires the consideration of variables such as confidentiality, differing levels of commitment, determination of session participants, management of group dynamics, discipline issues, time required and setting of the agenda.

The nature of the dispute and the persons involved determine larger group mediation parameters. Included in our experience are larger group experiences within the

following contexts, each of which brings different considerations:

- workplace settings, both large and small;
- accommodation/shared households;
- schools, including gangs;
- extended family; and
- cross-cultural conflicts.

At the outset a referral to mediation for a larger group may be requested on a number of different levels. In a workplace, it could come from a committee of management or a supervisor or a single employee. The conflict(s) may or may not involve supervisory/management staff but in any case, key questions include the following.

- Is mediation the appropriate intervention?
- Who will be involved in the process?
- What will it cost? Who will pay?
- Who will receive information/report /copies of agreements?
- How much time will be involved?

Factors precluding large group mediation include:

- lack of consent by one or more participants;
- existing threats or violence;
- impaired cognitive ability;
- lack of consensus regarding form of confidentiality; and
- lack of suitable venue.

There are a number of key factors that need to be considered during the intake process with large groups. It is preferable to speak with each individual prior to commencement, which may be difficult in some settings. If it is not possible for the mediation service to provide this then commitment to proceed and a comprehensive explanation of the process need to be provided by the organiser.

In most cases it is our experience that the mediation process is initiated by either a manager or by a board or committee of management. In either case there is a ➤

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➤ high level of desire to resolve the conflict(s) that are typically causing work stress, loss of output and job dissatisfaction.

In those cases where the referral is from a board or committee, there is often a level of caution displayed by the manager or supervisor who fears a loss of authority or control, possible blame for the conflict situation or a level of discomfort when faced with a group of his or her employees.

As with all mediation processes, the mandate to mediate is essential and a commitment is required from all parties. This requires a clear outline from the intake team as to process and parameters, including the non-blaming nature of mediation and neutrality of mediator(s).

The determination of the exact meaning of confidentiality in a particular context often becomes essential prior to parties being prepared to speak 'freely' in a session. It frequently requires that mediators assist groups to determine in detail what will be said or reported and in what form, and by or to whom contact will be made following the session(s) — for example, will comments made by participants be reported formally or informally to a committee of management? Agreement on this may be a time consuming process but is paramount before any frank dialogue or discussion between parties.

The key difference being addressed in mediating with larger groups is the size of the group itself. Any group typically includes people with differing levels of commitment to the mediation process, a range of understanding as to the parameters and aims and an uneven number of disputants on each 'side' of the conflict.

The additional group numbers present require mediators to consider space and layout arrangements, facilitation skills used, extra time commitment (either in length of session(s) and/or a longer time frame) and most importantly, the power imbalances associated with the sizes of sub-groups. For example, how does a mediation team best manage a situation where the conflict sees, say, a four or nine against one scenario?

Situations where one party is either outnumbered or feeling significantly disempowered in the face of the larger opposing group have been addressed in

practice by REFS adapting the mediation process to engage all parties. Examples are provided later in this article.

When talking about power differentials, Davis and Salem¹ state that mediation should be terminated when a party lacks the ability to identify his or her interests and to weigh the consequences of the agreements.

School

In instances where the school is seeking to address victimisation or gang conflicts, sometimes as part of a re-integration or re-admission process following suspension or other disciplinary process, staff have used a variety of mediation approaches.

The use of a key support person to 'be there' for a victim during the process has been advantageous. This participation and the extent of their involvement is agreed on prior to commencement. This support person is typically a friend or neutral classmate. This was the key factor in bringing together four girls who had physically attacked another girl resulting in suspensions from school. The school then required that mediation be undertaken as part of their return to school. Agreements reached centred around letting go of the past and avoiding future conflicts.

Occasionally an 'outside' student may be voluntarily invited to make a statement during the process to clarify or corroborate a set of circumstances.

Adaptation of the mediation process to cater for groups of up to 29 has been undertaken, necessitating strong group management and facilitation skills, ensuring ownership, participation by all parties and a respectful process.

In one situation where REFS undertook mediation with a group of 15 Year 10 boys, three mediators were used and the group split into three selected mixed groups of five, each with a mediator, at both the statements and negotiation stages to advance discussions in a non-threatening environment.

The group was brought together for identification of the key issues and to reach agreements.

Workplace

Workplace mediations involving larger groups, ranging from four to 24 ➤

➤ persons, have included childcare centres, hospitals, and small and large businesses. An early issue to address has typically been around the role and status of a manager or supervisor involved directly in the conflict. This person needs to feel supported and unthreatened by the process and have a willingness to implement workplace changes agreed as a result of mediation. This flexibility has been demonstrated to be a key variable to successful resolution of disputes. At the same time mediators have been required to be quite assertive in managing the process, ensuring rules are enforced and that the process does not simply become a 'slamming' of the manager or other party where others are in conflict with this person or their practices.

A useful adaptation where there are much larger numbers on one 'side' has seen the splitting of the group into smaller groups in a deliberate way. In one instance this involved the group selecting two representatives who then undertook the mediation process with the manager and two mediators. At the conclusion the agreements were presented to the larger group for comment and feedback prior to implementation. In these situations, groups are asked to select persons who they feel would best represent their needs and interests.

On another occasion, where faced with a conflict between 15 staff 'on one side' and a supervisor on the other, after an introduction and setting out of the ground rules, the process began with splitting the group into pairs who were asked to identify:

- issues, concerns or problems; and
- changes for workplace improvement.

Each pair was then directed to join with another pair and combine their results. The process was repeated for two groups of eight persons with a mediator in each group. A designated reporter from each group then shared with all parties, and the mediators identified key neutral issues prior to a facilitated negotiation process as a large group. From time to time, over three sessions, small groups were again used to increase participation and to make the process more comfortable.

Extended family

Some of the most challenging mediation processes for our agency have involved working with extended families and others, typically involving young people, friends, parents, grandparents, uncles or aunts, community representatives or support workers. In some cases this has included the use of an interpreter, either in person (preferably) or by telephone.

In managing these larger groups we are usually faced with a level of emotional attachment by all or most parties and often issues around authority. In some situations mediators need to have some understanding of cultural issues and accept different approaches to conflict resolution favoured and understood by the family. A major challenge for the mediator continues to be the need to spell out parties' expectations from the process, enforce rules, and to assist parties to ensure agreements are what they want and to minimise the likelihood that they are reneged upon later.

Adaptations of the process to include persons with mild intellectual disabilities can occur, but this needs to allow for more skillful, extensive and time consuming intake, orientation and coaching procedures.²

Significant work using family conferencing models such as those developed in New Zealand instituted under the *Children, Young Persons and their Families Act 1989* has also been effectively undertaken by a number of agencies.

Additional factors that need to be addressed in successfully undertaking mediation with larger groups include:

- who exactly will/should participate, and how this is to be decided;
- having different persons present at each session and the need to inform new participants and maintain involvement of non-attendees;
- the possibility of different levels of emotional content or commitment to the mediation process;
- increased amount of time needed for larger groups;
- the need to be very specific and accurate with the wording of agreements where there is no shared or understood language;

- other simultaneous processes that may be involving one or more of the participants, such as disciplinary processes, appraisals, counselling; and
- whether the process is to be undertaken in work time or participants' own time.

Mediators need to be well acquainted with additional resources relevant to any other needs that may become apparent — for example, specialised services like advocacy, legal, financial and individual counselling. ●

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Endnotes

1. Davis A M and Salem R A 'Dealing with power imbalances in the mediation of interpersonal disputes' in Lemmon J A (ed) *Procedures for Guiding the Divorce Mediation Process* Jessey-Bass, San Francisco 1984.

2. Coy P G and Hedeem T M 'Disabilities and mediation readiness in court-referred cases' (1998) 16 (2) *Mediation Quarterly* 113.

Recommended reading

Charlton R and Dewdney M *The Mediator's Handbook* Law Book Company, Sydney 1995.

Macken J J and Gregory G *Mediation of Industrial Disputes* The Federation Press, Leichardt NSW 1995.

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