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Developing ADR standards through training

Competency based training for family and child mediators

Mieke Brandon

'The process for the development of standards involves consultation between practitioners and other stakeholders to identify occupational roles and functions, and analysis of attributes (skills, knowledge and attitudes) which deem an individual's performance as "competent".'

Cultural values about the outcomes of training and the development of a competent workforce have changed significantly, affecting the training of mediators. This article addresses:

- the context in which the national vocational training agenda has influenced local training;
- the competency based assessment system; and
- the complexities of designing learning outcomes and assessment criteria for introductory and advanced mediation training.

The change to competency based training (CBT) and assessment for mediation has benefits and problems, both of which will be discussed here.

The Australian National Training Board (established in 1989) was a response to the Australian Government Ministers (Vocational Education and Training) Agreement to improve the productivity and international competitiveness of our workforce. A system of national competency standards is in development. The process for the development of standards involves consultation between practitioners and other stakeholders to identify occupational roles and functions, and analysis of attributes (skills, knowledge and attitudes) which deem an individual's performance as 'competent'.

National standards are also seen as a way of identifying transferable skills within an occupation and between related occupations. The premise is that transferability creates greater career flexibility.

The competency based approach to education and training reform began in Australia within the vocational sector. The emphasis is placed on demonstrated outcomes and it is presumed that the quality, quantity and relevance of training is improved.¹

Training for mediation relied heavily on

the wisdom of authors such as Moore, Folberg, Haynes, Johnson and Kelly and training offered by CDR Associates (Colorado). In order to become nationally recognised in the late 1990s, Relationships Australia Queensland (RAQ) modified relationships counselling, supervision, group skills and mediation courses to CBT format (including CBT language) giving certificates, diplomas and then advanced diplomas to deem trainees 'competent' in the prescribed course learning outcomes.

At that time there were no mediation regulatory bodies. To help legitimise the RAQ mediation course structure, the design of the learning outcomes and assessment criteria, an extensive consultation process took place involving academics, social scientists and legal experts in the mediation industry. There is ongoing debate among professionals as to whether mediation can be described as an industry or a profession.² For the purpose of this article, family and child mediation within the ADR community will be seen as having a shared functionality.

Implementation of competency based training

RAQ has a 'step' process for training standards for all their service providers. The final step of this training allows a trainee to work within an agency under supervision and receive accreditation with the agency. Provisional accreditation may be given to qualified outsiders to enable them to work at RAQ prior to completion of all steps. Implementing CBT for family and child mediators included: assessing performance at an acceptable level of skills, knowledge and attitudes; fulfilling the role according to agency policies and practice guidelines, as well as legislative requirements; developing transferable competencies; and managing oneself appropriately in familiar and unfamiliar situations. ➤



➤ Measurement of performance outcomes is not a new concept. Establishing competency standards creates benchmarks. As training offers access to real clients, RAQ protects clients by providing 'competent' service providers. Benchmarks assist trainees to know what is expected.

Objectives for family and child mediation

NADRAC states that 'the objectives of separation and divorce mediation are often much broader than just dispute resolution'.³ It states that in such a complex and changing context, standards may require additional or special knowledge, skills and ethical behaviour. The broader objectives include:

- the restructuring of family relationships arising out of separation and divorce of a couple;
- facilitation of the necessary decision-making in relation to a range of practical issues such as how and when separation will occur, future parenting responsibilities and plans, division and allocation of responsibility for all property and debts, and ongoing financial support for each parent and child; and
- the resolution or management of any conflict occurring within family relationships and of particular disputes on any of the issues.

Following the identified objectives the NADRAC report states:

In addition, family conflict and interaction during the process of separation and divorce is often emotionally intense and complex and may include violence, fear and severe power imbalance between family members.⁴

The objectives listed above were already reflected in the design of the RAQ Advanced Diploma in Mediation. In addition, it considers potential future needs more specifically. The focus is not only to help resolve the current issues but also to acknowledge that parents have an ongoing relationship as parents and may need some education for solving differences. It assumes that most parents could create stepfamilies in the future if they are not in a stepfamily situation already.

In designing the Advanced Diploma it was considered that trainee mediators were

best trained in an approach that could be applied across a range of disputes, before embarking on the complexities of family and child mediation. The curriculum design acknowledges the balance between the generic and the specific, and addresses competence as a complex combination of attributes in an attempt to bring together knowledge, attitude, values and skills. Competence is seen as 'relational', so the mediator can function within a particular situation and develop 'higher order' skills such as problem solving, entrepreneurial skills and critical thinking. The structure of the course incorporates students' progress from observing practice to contributing as co-mediator before 'flying solo'. This provides mediators with the opportunity to see the 'real world' of mediation practice and understand the theories that explain the experience within it.

Task and criterion based standards which recognise that students have varying degrees of competence within an area of professional activity set out to construct and make explicit a 'scale of increasing competence'. One of the major questions facing trainers and organisations is 'how frequently should we measure this performance?'. There is no guarantee that the trainee's competency level is maintained after the initial assessment.

Competency based assessment system

Assessment in a competency based system is the process of collecting evidence and making judgments on the nature and extent of progress towards the performance requirements set out in a standard, or a learning outcome, and at an appropriate point, making the judgment as to whether competency has been achieved.⁵

Evidence of the trainee's competence is collected through the following methods:

- direct evidence (observable performance);
- indirect evidence (simulating work situations, video demonstration, project work, essay, proficiency tests); and
- supplementary evidence (oral or written, supervisory reports, references, testing).

Evidence needs to be valid, reliable, authentic and sufficient to establish competence. Differing learning styles must also be taken into account.

The methods of assessment include

recognition of prior learning (RPL) and formative and summative assessment. The total of this evidence is compared with performance criteria to assess whether the student has met the requirements for competence. In CBT a range of assessments is most appropriate, ideally in a practical setting. CBT is individualised and non-competitive. The assessment of 'competent' or 'not yet competent' involves five stages: design of units of learning outcomes; set criteria for assessment; assessing students; recording student progress; managing the assessment process; and providing feedback to students.⁶

Complexities of designing learning outcomes and assessment criteria

1. Ensuring effective preparation

As RAQ had already identified levels of competence that were generic across program delivery for internal accreditation, it was important to reflect these in the design of CBT for mediators, including how to assess aspects such as communication skills at each step. In our experience, the most effective way of assessing practical skills is to assess a work and skills sample; that is, performance of the actual job and knowledge in relation to delivering a product using the appropriate process. The assessment form for attitudinal assessment would include observation, supervisor's reports and questioning of knowledge and opinions, and could include a roleplay or case study.

It is necessary to integrate the assessment of attitudes in conjunction with skills. The assessment combines observable behaviour with knowledge and information, together with interest and opinions. One example of assessing attitude development or status is through the case study method.

2. Designing learning outcomes for different levels

The language of CBT differs from previous training jargon, and differs between the beginner and advanced levels. The verbs become increasingly sophisticated to convey the standard of performance expected. This also helps to distinguish minimum, desirable ➤



➤ and optimal levels of performance at each level.

Learning outcomes are described by action verbs. In the area of application, for example, words such as apply, choose, classify, compare, compute, correct, demonstrate, design, devise, employ, extend, extrapolate, interpolate, investigate, organise, produce, relate, resolve, restructure, solve, transfer and unravel are suggested.⁷ To describe synthesis, words such as combine, debate, design, formulate, modify, originate, plan, propose, relate, specify and transmit are appropriate to use. Words to describe consistent behaviour include: act, discriminate, display, influence, listen, modify, perform, practice, qualify, question, revise, serve, solve, use, and verify.

3. Consideration of organisational context

In designing assessment strategies the context of the workplace and its values and priorities are likely to be reflected in the assessment. It is important that these values are made explicit. An assessment system for a particular industry or occupation may require extensive research to identify the scope of the assessment and any particular workplace characteristics that may inhibit or facilitate access to assessment.⁸ An example of the organisational context is the content description that reflects generic principles for all service providers at RAQ.⁹

4. Relevance to mediation

In the mediation literature Gold¹⁰ describes mediator 'presence', meaning the relationship between client and mediator and the influences on this relationship. The quality of the relationship¹¹ will influence how much trust is given to the mediator, resulting in a level of confidence in the mediation process itself.¹² The Advanced Diploma of Mediation considers the importance of use of self, supervision and coaching by having established separate modules to address the competencies in these areas.

5. Trainee consent and readiness

In organising CBT and assessment it is important that students are fully aware of the expectations of the training and assessment.

Students should be provided with an overview and explanation of assessments with explicit benchmarks. This way the student can often self-assess to determine readiness for formal assessment.

6. Selection of assessors

The choice of nominating assessors may include peers and/or a panel of 'experts' or an immediate supervisor, trainer and/or manager, or a combination including an external 'expert'. Assessors should be ethical, maintain confidentiality and ensure security of information.

7. Administration of the process

Documentation and results should be anonymous and stored securely, and access should remain restricted to those with authority to administer training information. Data should be kept for a future review and a record kept of whether the candidate has been informed of the results and any ensuing discussions detailed.

The analysis of evidence conducted by specially trained assessors helps both the student and the assessor to be clear regarding the process and content of the assessment. The assessor makes judgments, interprets learning outcomes and assessment criteria, exhibits no prejudice, bias, favouritism or nepotism, and demonstrates flexibility in a collaborative approach with trainees.

8. Feedback loop

It can be difficult to provide a trainee with feedback of being 'not yet competent'. The skill of facilitating discussion and coaching a trainee is an art. Some trainees may find it difficult to change their mindset from the 'old way' of being judged as having 'passed' or 'failed'. Ideally, all mediators in their training become 'assessors' of their own performance through not only formal debriefing and/or supervision but through their capacity to become reflective practitioners and remain lifelong learners. A feedback loop allows for investigation into trainees' satisfaction with the overall assessment process and their results, and how future assessment methods could be improved. ➤

'The skill of facilitating discussion and coaching a trainee is an art. Some trainees may find it difficult to change their mindset from the "old way" of being judged as having "passed" or "failed".'



9. Review

➤ The RAO Advanced Diploma in Mediation includes the units of competency required for areas of relevant service delivery; that is, these competencies reflect a standard that the industry has agreed is essential if a person is to be accepted as competent at a particular level.¹³ A regular review system provides the opportunity to evaluate consistency and to determine possible errors in the CBT as a whole, or in the outcome standards specifically. When evaluating any assessment method the validity of the method needs to be questioned.

The challenges of implementing CBT in the area of mediation

Human performance is complex. Performance criteria may either be too specific or too broad. Where there is a severe power imbalance in a mediation setting — for example, where domestic violence has occurred — the ability of the mediator to transfer their skills may need to be assessed repeatedly.

On the basis of 'demonstrated competence' it is assumed that the mediator has the necessary skills to deal with complex ethical dilemmas. This may not be the case, as one training course cannot possibly cover all situations, some of which may include serious matters such as child abuse or illegal activities.

While the practical component has at least 60 per cent face to face contact with actual clients, there is no control over what that client group may bring to the mediation session. Situations in which the mediator's duty of care comes into question may need ongoing supervision, support and training. This type of training addresses ethics and, in my opinion, must include forms of value clarification so candidates can examine their biases in a supportive and safe environment.

The danger of allowing incompetent mediators to provide service while rejecting competent ones is not necessarily avoided by setting standards. Minimum standards are identified by words such as 'appropriately', 'effectively' or 'adequately', which cannot be defined by assessors with 100 per cent objectivity

and are therefore open to professional interpretation.¹⁴

Organisations often have limited capacity to provide training due to resource constraints. When planning assessment this need to be considered seriously.

CBT is labour intensive, as a variety of training personnel need to be available for the range of aspects of assessment. Establishing recognition of prior learning, for example, can be a lengthy process.

Advantages of CBT include the provision of the basis for initial and continuing professional development and the potential to maintain professional standards to enhance efficiency, equity and career prospects. Other advantages are that competency based standards are useful for training course design — not only for the practical skills but also to create elements of simulation to explore relevant attributes such as knowledge, abilities, skills and attitudes.

Efficiency in the labor market through competency based standards may enhance national and international recognition.

Learning in competency based training is usually self-paced. This may be an advantage for the busy professional who wants to add mediation skills to their repertoire.

It is said that the documents of competency based training and assessment have the training institution 'covered' in case of a complaint, dispute or lawsuit. The organisation can demonstrate that its teaching and testing is accountable to a standard.¹⁵

Conclusion

The ADR community continues to debate the relative merits of having national standards in the area of mediation, such as NADRAC's publication of *A Framework for ADR Standards* (2001) which, after a process for identification, promotes and provides guidance for standards for ADR in Australia.¹⁶

At an organisational level, the articulation of competencies has benefited the inhouse accreditation process by making expectations of competency levels much more defined and less open to misinterpretation by providing a supportive and collaborative assessment system which reflects adult learners' interests and provides certification of mediators that is nationally recognised.

The identification of competencies promotes discussion of professional practice within the profession. Drawing attention to the complexity and richness of professional knowledge has the potential to encourage excellence and boost morale.¹⁷ The Advanced Diploma in Mediation has made a start in articulating these competencies — not only for family and child mediators employed at RAO but also for general mediation practice. The course content and process provides a balance between the theory and practice of mediation by acknowledging the complexities of designing learning outcomes and assessment criteria for mediators.

The benefit of the provision of a practical component, with simulated and live practice, offers exposure to a large range of complex issues found in family and child mediation. Competency based training protects clients from being 'experimental subjects', as each trainee has to achieve a beginning standard of competence before working with clients.

In summary, it provides a balance between on the job and off the job training, which is fairly unique for mediation training in this country.

Maintaining competence remains a challenge, as this cannot be guaranteed by a competency based assessment system. In Australia there is no coverage of the ADR industry by a national association.

The ADR community is not a cohesive industry. ADR practitioners value diversity of the community and favor flexibility over uniformity.¹⁸

This in itself may make an agreement on national standards and maintenance of professional standards challenging.

Whatever the outcome of the national 'operational definition of competence', the Australian story has obviously not ended here. It is fascinating for family and child mediators to be part of an emerging profession and meet the challenges on both local and national level. ●

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➤ This article is an adapted and updated version of a paper first published in the AFM Conference procedures, Salt Lake City, 2000.

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