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Online ADR comes to Australia

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Dealing with 'mediation block' distress calls

Online ADR comes to Australia

Margot McKay and Bernadette Murray

All experienced mediators have been in the situation where an agreement is in sight, but neither of the parties wanted to be the first to make their offer or demand. If you have ever conducted a mediation and couldn't get the parties to agree on a settlement amount and wondered if there was a better alternative, then the answer has arrived.

A new and innovative online financial claims settlement service, which is available on or off the internet, has been introduced into the Australian mediation market.

Settlement Online System (SOS) was developed by two lawyers and mediators, Margot McKay and Bernadette Murray. Our interest in devising the process stemmed from our involvement in mediation and alternative dispute resolution and a desire to find a more efficient and cost effective way of resolving financial disputes.

A tool for mediators

We regard SOS as a mediation tool which can form an important part of a mediator's toolkit aimed at achieving successful outcomes. SOS can also broaden a mediator's skill base and enhance a mediator's reputation for resourcefulness and innovation.

The SOS service offers a confidential, automated negotiating process that encourages both parties to a financial dispute to reach a fast, cost effective final settlement.

If settlement is reached, it is legally binding. If settlement is not reached, the status quo reverts to the prenegotiating position, and both parties can have confidence that their prior rights are intact as neither party ever sees what the other party has offered or demanded.

What are the benefits?

SOS has been developed to avoid the protracted and frustrating processes of financial settlement that can occur within the context of both mediation and litigation. Its developers believe, based on the use of similar systems overseas, that this online alternative financial resolution process will save time, money and sanity for mediators and the parties to a mediation.

In the spirit of ADR, SOS offers a process of resolving financial disputes by consensus rather than confrontation. SOS speeds up the crucial negotiating process that is frequently the main sticking point to a mediated settlement. It takes the subjective, confrontational and entrenched positioning elements out of the equation.

In mediated insurance claims, SOS has been used by mediators who have hailed it as an inexpensive and easy to access process that has saved time, administration and associated cost overheads for both the insurer and the claimant.

How it works

Disputing parties register through the SOS website at <www.settlementonlinesystems.com.au> and, after verification of their details, can submit their confidential 'blind' demands and offers. Each offer ►

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or demand has up to five days to expire, allowing both parties time to think things through. One series, consisting of three rounds, can take from a few minutes to a maximum of a month, depending on how quickly the parties reach settlement.

The SOS system carries an inbuilt process for calculating a confidential settlement amount once both parties reach a 'zone of settlement' — that is, when an offer equals two thirds or more of the demand. After the offers and demands reach this 'zone of settlement', the SOS system calculates the average of the offer and demand, and this becomes the settlement figure.

The tables below illustrate some examples.

The parties are kept informed of the progress of their case at every stage in the process, by email if they are on the net, or through a case manager if they don't have access to a computer.

Neither side can be tricked or led into offering more than they want to pay, or accepting less than they wish to settle for. The system calculates for each party, in each round, what the amount is that they need to offer so as not to exceed the maximum amount they are prepared to pay in that round. In the same way, it works out what the plaintiff or demanding party need to demand so that, if the case settles, they cannot receive less than they are prepared to.

SOS is a 24 hour, seven day real time system, so clients can see the status of their case at any time of the day or night, seven days a week, from anywhere in the world, by simply logging on to the site at <www.settlementonlinesystems.com.au>. If parties prefer to use the system offline, they can call the SOS call centre at any time during working hours on 61 2 9233 6030 and speak to their case manager.

Applications of SOS

SOS can be successfully applied in any dispute where the parties seek a resolution involving quantum. It has been successfully used in a wide range of dispute situations including:

- e-commerce disputes arising from internet transactions;
- insurance claims of all types;
- contractual disputes;
- workplace and employment related disputes;
- franchise and landlord / tenant related disputes;
- consumer complaints; and
- family law and relationship disputes involving money .

Family law

While SOS can be successfully used in any type of mediation where the

Situation where no settlement is reached as offer and demand did not come within settlement zone:

Demand*	Offer*	Outcome
$100,000	$40,000	No settlement
$90,000	$45,000	No settlement
$80,000	$50,000	No settlement

Situation in round 3 where offer and demand are within one third of each other:

Demand*	Offer*	Outcome
$50,000	$10,000	No settlement
$40,000	$20,000	No settlement
$30,000	$25,000	Settle for $27,500

Situation where offer and demand are the same:

Demand	Offer	Outcome
$100,000	$100,000	Settle for $100,000

Situation where offer is higher than the demand:

Demand	Offer	Outcome
$50,000	$60,000	Settle for $50,000

parties seek a financial settlement, SOS can be particularly helpful in the context of family law mediations. The SOS process allows the mediator to assist the parties to view their dispute with greater objectivity, while giving them control over the financial outcome of their negotiations.

SOS offers these advantages as well as providing a much less stressful, less confrontational and less intimidating alternative to litigation, with its ensuing legal costs in the event that the mediation fails.

Trial offer for mediators

SOS has received strong support from high profile mediators and mediation groups. The Litigation Law and Practice Committee of the Law Society of New South Wales has supported the introduction of an online settlement process into the claims resolution system in Australia.

Mediators and other ADR practitioners are invited to trial the SOS process free of charge by running a hypothetical online test case. For information on trialling the service or for any other information on SOS send an email to customerservice@settlementonlinesystems.com.au or visit the SOS website at <www.settlementonlinesystems.com.au>.

Mediateonline panel

Mediators are invited to join the Mediator Panel at Mediateonline which, along with Settlement Online Systems, is a part of the ADRonline Network. For more information you can go to <www.adronline.com.au>. ●

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