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Terminology in ADR

Is everything old new again?

David Syme

Is consistency needed in how we describe and define ADR processes? What does 'ADR' actually mean? What do we mean by 'dispute'? Is an ADR practitioner a 'neutral third party'? Do we need to maintain the distinction between 'mediation' and 'conciliation'? How will ADR terminology change to reflect new challenges? What terms are being used to describe new ADR practices?

These are just some of the recurring questions that arise in discussions on ADR processes, practices and policies. They are not merely academic issues, but underpin consideration of ADR standards, referral practices, marketing and legislative reform.

Pioneers of the ADR movement in Australia will recall that these questions were hotly debated in the late 1980s and early 1990s. Perhaps everything old is new again.

In June this year in Perth the Federal Attorney General launched *ADR Terminology: a discussion paper*, prepared by the National Alternative Dispute Resolution Advisory Council (NADRAC). The paper aims to promote discussion about definitions and descriptions of terms used within the discipline of ADR. It canvasses arguments for and against common terminology, identifies current issues about particular ADR terms and suggests possible approaches for the future.

The discussion paper builds on previous work by NADRAC. In 1997 it produced a set of ADR definitions for its own use. In 2002 it released a brochure on ADR terms based on these original definitions.

While NADRAC's definitions have been widely used in the ADR

community, there is no universal consensus on what terms actually mean in practice. This diversity may be welcomed since it reflects the flexibility and innovation associated with ADR. Inconsistency, however, may create risks for clients, practitioners and ADR organisations. Finding appropriate ways to define and describe ADR processes is central to finding a balance between diversity and consistency in ADR.

Some of the issues raised in the discussion paper are:

- how the term 'mediation' is used and understood by clients, referrers and practitioners;
- practical difficulties arising out of confusion in ADR terminology;
- whether common definitions or descriptions are needed;
- what those common definitions and descriptions ought to be;
- where definitions of descriptions of ADR processes should be located;
- the way forward for ADR terminology; and
- new ADR practices and the terminology that is used for them.

NADRAC welcomes responses to the paper from a wide variety of groups. It is also interested in hearing about new ADR practices and the terminology used for them.

The deadline for responses is 31 December 2002. For further information see the NADRAC website at <www.nadrac.gov.au>. ●

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