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# Current developments in ADR

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## The world of ADR

# Current developments in ADR

Nicola Collingwood

### Federal magistrates' service: quicker, cheaper, less formal?

Donna Cooper, Associate Lecturer, Queensland University of Technology, critically assesses the Federal Magistrates Service (FMS) in Queensland in its early stages in her article featured in Vol 13, Number 2 of the *Australian Dispute Resolution Journal*. The title of the feature poses the question 'Quicker, Cheaper, Less Formal?' Does the federal magistrates' service mantra conflict with an emphasis on dispute resolution? In unequivocal affirmation Cooper analyses the findings of empirical research into Queensland practitioners' experience of the FMS conducted throughout 2001. The research was based on interviews with 25 practitioners including barristers and solicitors throughout Queensland, most of whom are accredited family law specialists. As part of the study, judicial and other staff from the Family Court and FMS were also interviewed.

The primary purpose of the study was to ascertain whether the FMS had achieved the objects outlined by the Commonwealth Attorney-General, Daryl Williams. The article reports that one of those goals was that 'the service will promote the use of alternative dispute resolution, complementing the Government's initiatives to encourage people to resolve disputes away from the courts particularly in family court matters'.

The research findings revealed that matters were less likely to go through a formal dispute resolution process in the FMS than in the Family Court; however, practitioners were positive about the service in that it afforded their clients speedier resolution. Inconsistencies were observed between Brisbane and regional registries in respect of the incidence of referral of matters to conciliation conferences. This was attributed to lack of Family Court resources in regional areas. Finally, the docket system used by the FMS was found to be more conducive to informal dispute resolution processes than the case management

system used in the Family Court. The success of the docket system was found to be largely due to the fact that one judicial officer retained responsibility for a particular matter from allocation to conclusion.

Cooper concludes that there is not yet clear evidence that the FMS has fulfilled its objectives and notes further the tension between 'achieving a focus on dispute resolution rather than a court ordered outcome while maintaining file velocity and a shorter time for a final hearing'. ●

### Resolve provides mediation training for East Timorese public servants

UNTAET (UN Transitional Administration in East Timor) is responsible for the management of land tenure and land use difficulties and disputes in East Timor. In 2000 UNTAET requested Anglicare Top End to train its East Timorese staff members in mediation and dispute resolution, through its Resolve mediation service.

In his article titled 'Mediation Training for East Timorese Public Servants', published in the latest edition of *Mediation News*, Resolve co-ordinator Tony Fitzgerald reports that former NT Chief Magistrate Ian Gray (as head of UNTAET) approached Resolve to discuss the possibility of Resolve eventually becoming the 'Titles Office' of East Timor. Prior to the establishment of a new titles registry many land disputes must be resolved.

Fitzgerald notes that land tenure in East Timor is governed by an 'unmanageable hybrid of traditional (customary) law, Portuguese law (the Portuguese came for sandalwood and departed after 400 years), Indonesian law (25 years of Indonesian occupation) and UN law'. The Indonesians destroyed the Titles Office and Registry, together with all records on exiting East Timor. Fitzgerald states that Timor has an agrarian based economy, and stable management of its land is essential to

the peace and wellbeing of its society and its people. UNTAET realised that in the absence of a dispute resolution system to deal effectively with land disputes there was a risk of social disharmony and potential violence.

In December 2000 eight trainees arrived for mediation training in Darwin. Indigenous Timorese were targeted for the program because of their ability to address local and cultural issues and because of 'their demonstrated interest in assisting their compatriots to resolve their own land disputes'. Fitzgerald describes the young men as 'a most impressive and spirited group of indigenous East Timorese men ... all were committed to the advancement of their nation, but under no illusion as to the daunting nature of their brief'.

The training of the young mediators consisted of formal instruction, role plays, and court and mediation observations. The course was developed and administered by members of the Law Society's ADR Committee Tony Fitzgerald and Pat McIntyre (mediator and barrister) through Indonesian interpreters. The cost of the project was borne by Anglicare and UNTAET. Fitzgerald notes the enthusiasm with which the trainees were received by the Darwin Timorese community, members of which catered for and attended the graduation ceremony and training venue. ●

### DuPont legal model: a web resource offered by DuPont legal

The relationship between inhouse counsel and the law firms they hire has never been easy. DuPont offer an online model to manage the inherent difficulties experienced in these relationships. Since 1992 the DuPont Legal Model has provided DuPont with a framework for 'applying "business discipline" to legal practice ... focus(ing) on strategic partnering, information technology, metrics, diversity and other initiatives'. The DuPont Legal Model aims to



promote effective relationships between inhouse and external counsel in deal making and conflict management.

For inhouse counsel and the law firms they retain, the DuPont Legal Model provides 'instructive principles and processes' that can improve the practice of inhouse corporate law.

The DuPont Legal Model began as a cost cutting method and since the implementation of various initiatives, such as cutting the number of externally engaged law firms from 350 to 39, has evolved such that it is said to increase productivity, improve the quality of services and solidify relationships among staff members. 'The Model relies on Early Case Assessment (ECA), which shifts the focus from processing a lawsuit to resolving the business problem. ECA redefines what constitutes a favourable resolution, and charts an appropriate strategy that meets both business and litigation objectives.'

The website outlines the DuPont Legal Model in full and offers additional online resources. See <[www.dupontlegalmode.com](http://www.dupontlegalmode.com)>. ●

### Dealing with the 'hired gun' phenomenon

The problem of the 'hired gun' expert witness has bedevilled the adversarial litigation system for a long time and

various suggestions have been made for dealing with it. A report in Brisbane's *The Courier-Mail* of 23 July 2002 indicates Queensland courts will shortly institute a scheme in which judges will call expert witnesses and rely less on those called by lawyers. The rules committee of the three levels of State courts, chaired by Chief Justice Paul de Jersey, is considering limiting the number of experts who can testify and restricting the expert to the one called by the judge. While judges in some courts already have these powers, the Chief Justice is reported as saying that they will be used more regularly in the future. The rules committee is also considering requiring experts to disclose any association they have with a party to the litigation.

These modest changes to common law litigation will inevitably be given the yellow card by some interest groups and be regarded as an alien 'inquisitorial' invasion of the 'adversarial' common law system. However, they are also likely to receive strong support from those intent on modernising the ancient 'trial by ordeal' to which civil litigation sometimes deteriorates. ●

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