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Editorial

ADR in Western Australia

Margaret Halsmith

ADR in WA is thriving. Just as sophistication in the practice of biotechnology is setting the agenda for community discussion, so the diversity of practice of ADR is setting the pace for the formalities which will eventually confirm its acceptance. Seventy ADR practitioners attended the NADRAC consultative forum in Perth in June, a very high number for the size of the city.

Following a Nyungar welcome to the forum and an opening address by the Hon Daryl Williams AM QC MP, the Hon Chief Justice David Malcolm AC described and elaborated on the evolving use and perception of ADR in the Supreme Court of WA in a paper published in this issue. NADRAC outlined its major priority areas for the coming year and sought comments on these and other priorities and issues affecting ADR. Representatives from a diverse range of state and federal tribunals and government departments, law firms and private practitioners, together with members of the 24 professional, academic and practitioner organisations which form WADRA (Western Australian Dispute Resolution Association), engaged in lively discussion to provide feedback on NADRAC priority areas and to identify issues on which NADRAC could provide some guidance.

NADRAC's priority areas include:

- effective use of ADR by courts and tribunals;
- promoting the appropriate use of ADR;
- enhancing quality and consistency in ADR;
- supporting diversity and innovation in ADR; and
- improving ADR research and evaluation.

These priority areas were reframed during a plenary session as concerns regarding the lack of definition of terms, the need for earlier intervention in disputes, the importance of lawyers' understanding of their role in ADR, the appropriateness and scope of ADR, the limited public awareness of ADR, the

need for an ADR regulatory body and the diversity of ADR training.

These concerns of Perth ADR practitioners in 2002 can be analysed by the CBAM (Concerns Based Adoption Model) developed at the University of Texas, Austin. CBAM describes a developmental sequence of concerns in which the focus shifts from 'self' to 'task' to 'impact on clients'.

Within 'self' concerns the CBAM describes three stages. Predictably, at the forum there were no 'awareness' concerns which indicate little concern with or involvement in mediation. Nor were there 'informational' concerns in which people are troubled about themselves in relation to mediation. The feedback of those attending showed that less than 10 per cent of the concerns were 'personal', the nature of which includes decision making and consideration of potential conflicts with existing practice or personal commitments. Status and financial implications may also be reflected.

The CBAM elaborates on 'task' concerns as 'management' concerns. Over half the concerns expressed at the forum were about management, in which attention is focused on the process and tasks of using mediation and the best use of information and resources. Issues relating to efficiency and organisation are paramount. Lawyers' understanding of their role in ADR and the need for earlier intervention are management concerns.

CBAM 'impact' concerns include three stages: consequence, collaboration and refocusing concerns. The 10 per cent of Perth ADR practitioner 'consequence' concerns demonstrates issues with the effect of mediation on clients, interests in evaluating that effect and the changes necessary to improve client outcomes. Both public awareness of ADR and the appropriateness and scope of ADR are consequence concerns.

'Collaboration' concerns, where the focus is on co-ordination and co-operation among mediators, comprised the majority of forum

evaluation comments, as well as being mentioned in slightly more than 10 per cent of the issues raised. The need for an ADR regulatory body together with issues regarding the diversity of ADR training are collaboration concerns.

Fifteen per cent of participants' issues met 'refocusing' criteria in which the concerns relate to an exploration of the universal benefits of mediation, including the possibility of major changes or replacement with a more suitable alternative to the extent that definite alternatives are proposed.

In this issue of the Bulletin, WA authors elaborate on their concerns in articles ranging from those which primarily address CBAM consequence concerns to those for which the relevance and impact of ADR on clients in various sectors is explored. The Chief Justice evaluates mediation in the Supreme Court of WA and Archie Zariski describes the outcome for school students, teachers and others of their involvement in the SCRAM program. The article by Rae Kean and Joe Kuypers exemplifies feedback from the forum which almost unanimously called for more opportunities for collaboration. Two articles, at first glance, have quite different origins. Peter Curry reflects on a recent federal call for improved access to dispute resolution for separating families in the wheatbelt of WA. Robyn Carroll explores the need for a Mediation Act in WA. Both question the status quo and hypothesise regarding the need for major changes, encouraging readers to 'refocus' their horizons for ADR.

In CBAM terminology, the articles in this issue challenge ADR practitioners to shift their concerns to those of consequences of ADR for clients, collaboration with colleagues and the potential of ADR, while continuing to refine and expand opportunities for ADR in human interaction across its spectrum. ●

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