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Shuttle ADR by telephone

Residential Tenancies Authority's dispute resolution service: a shuttle telephone negotiation success story¹

Nicola Doumany

The Residential Tenancies Authority's (RTA) Dispute Resolution Service (the Service) commenced in 1997 providing a unique telephone conciliation service to resolve residential tenancy disputes in Queensland. The RTA has met the challenge of conciliating over the telephone in a high volume environment, achieving effective and lawful outcomes for parties. The success of the Service is an example of adapting process and utilising technology to develop a free and effective ADR process for tenancy disputes in Queensland. The same strategies utilised by the RTA in adapting its services for telephone conciliation can be applied to further developing the dispute resolution model. The RTA has recognised the need to explore online dispute resolution (ODR) as part of its e-services development, offering multi-channelled services to clients.

The unique nature of the service requires tailored training for conciliators and a strong process to deal with the challenges of shuttle telephone negotiation and the time constraints of a high case load. This article provides an overview of the success of the Service, why we chose conciliation and why we chose the telephone to resolve disputes.

About the RTA and the dispute resolution service

The RTA was established under the *Residential Tenancies Act 1994* (Qld) and is responsible to the Minister for Public Works, Housing and Racing. It is a self-funding statutory authority,

operating on income generated from interest earned on the bonds it holds as custodian.

The Act applies to people renting flats, houses, caravans, units, townhouses, mobile homes and houseboats in private, public and community-managed rental accommodation. The RTA also administers the *Residential Services (Accommodation) Act 2002* which looks after the rights and responsibilities for residents and service providers of supported accommodation, such as hostels, aged care rentals and boarding houses.

The RTA's Dispute Resolution Service offers a range of services free of charge to assist people to resolve disputes

receives in excess of 300 disputes per week. By necessity, the RTA developed its telephone conciliation model and systems to support dealing with the high volume of requests for dispute resolution.

Over one third of Queenslanders rent their homes and the high volume and cyclical demands on the Service require robust support systems to ensure effective service delivery, including:

- a comprehensive performance management framework consisting of daily, weekly and monthly reporting against key performance measures,
- resource planning for peak periods,
- electronic production of key notices, and
- informed and skilled conciliators

The RTA has met the challenge of conciliating over the telephone in a high volume environment, achieving effective and lawful outcomes for parties.

quickly and without the need for further legal action in the Small Claims Tribunal (SCT). In most circumstances, tenancy legislation requires the parties to attempt conciliation through the RTA as part of a two-step dispute resolution model set by the Acts.

The Service receives a high volume of dispute resolution requests, in excess of 14,000 per year. During peak periods of the year (February – April) the Service

trained in the provisions of tenancy legislation and able to utilise a range of micro skills over the telephone to identify interests and move the parties to resolution.

Reasons for disputes

Disputes are categorised into three groups based on the primary reasons for a dispute:

- Disputes over the distribution of



rental *bonds* held by the RTA at the end of a tenancy

- Disputes over *compensation* where there is no bond or the amount claimed exceeds the amount of the bond (many of these cases are considered unsuitable for conciliation), and
- Disputes involving ongoing *tenancies*. These cases are generally given the highest priority and are often more complex in nature.

The Service aims to assist parties to resolve disputes by providing information on rights and responsibilities under relevant legislation, actively generating options for resolution, and ensuring clear and lawful outcomes.

The Service has experienced a growth in disputes involving ongoing tenancies as a proportion of the total number of disputes received. In 1999/00 tenancy disputes accounted for 31.1 per cent of all finalised disputes. Currently, they account for around 40.4 per cent of disputes processed. This growth indicates that tenants, lessors and their agents are trying conciliation to fix problems during their tenancy and support the tenancy relationship into the future. Disputes involving bonds account for around 40 per cent of disputes and disputes involving compensation in excess of the bond held make up the remaining 20 per cent of matters.

The conciliation model

The conciliation model is part of a two-step process under legislation. It provides disputing parties with relevant information on the law and assists them in making informed discussions about options for resolution. The RTA's Service offers a broad range of services to parties in dispute, including:

- Information about the Act and its impact on particular disputes
- A telephone shuttle negotiation service

- Conciliation conferences between the parties either face-to-face or over the telephone, and
- Appropriate referral to the Small Claims Tribunal.

The Service aims to assist parties to resolve disputes by providing information on rights and responsibilities under relevant legislation, actively generating options for resolution, and ensuring clear and lawful outcomes. The Service assists parties to enter into written

agreements in settlement of disputes. All tenancy related agreements must be consistent with the relevant legislation. These agreements become a term of the tenancy agreement. If the parties reach agreement about the distribution of a rental bond, the conciliator will get all the relevant parties to sign a Refund of Rental Bond to enable the RTA to pay the bond accordingly.

While the model is flexible enough to provide a conference for parties where this is more suited to resolving the dispute, the vast majority of RTA clients choose the convenience of the telephone to attempt resolution of their tenancy disputes.

The Acts specify that in most circumstances the parties must attempt conciliation before lodging a claim with the SCT. However, participation in the Service is voluntary. In urgent matters specified under legislation, the parties can apply directly to the SCT without first attempting conciliation.

Development of the model

Amendments to the *Residential Tenancies Act 1994* in 1998 replaced mediation with conciliation as the process for resolving tenancy disputes in Queensland. Prior to the amendments, the RTA organised mediation conferences for parties in dispute. The RTA's use of a structured model of mediation conferences to deal with a broad range of tenancy disputes received a degree of criticism from RTA stakeholders and clients during a review of the Act conducted in 1997. The concerns expressed by clients, community groups and industry included that information concerning

the Act was not provided to the parties as part of the mediation process, it took too long to complete the mediation process, the process was not always suited to the type of dispute and the model did not encourage the use of active strategies to help parties to resolve disputes.

While in most cases the disputes referred to mediation were resolved, a large number of RTA clients chose not to participate in the process. In the case of bond disputes, there is no continuing relationship between the parties, the issues in dispute are usually over set sums of money for cleaning or repairs and there was little incentive for the parties to set aside two hours for a mediation conference to resolve the matter. During the intake process for organising mediation conferences, it became clear that in around one third of cases the RTA intake officer was able to assist the parties resolve disputes without the need for a conference.

The development of the RTA's telephone conciliation model sought to build on the strengths of the RTA's mediation model while instigating strategies to deal with concerns raised during the review of the Act.

The RTA is very pleased that participation rates in dispute resolution have steadily climbed since the introduction of the telephone conciliation service in 1997. Figure 1 below shows that the participation rate increased from around 60 per cent in 1998/99 and 1999/00 to 72.2 per cent in 2001/02. The rate dropped slightly in 2002/03 to 71.5 per cent. In 2003/04

Table 1. Analysis of DRRs finalised 2002-03

Sum of DRRs DRR outcome	SCT claim		Grand total
	No	Yes	
Resolved	6,481	57	6,538
Unresolved	4,254	2,131	6,385
Withdrawn	1,127	36	1,163
Grand total	11,862	2,224	14,086

Sum of DRRs DRR outcome	SCT claim		Grand total
	No	Yes	
Resolved	99.1%	0.9%	100.0%
Unresolved	66.6%	33.4%	100.0%
Withdrawn	96.9%	3.1%	100.0%
Grand total	84.2%	15.8%	100.0%

parties participated in the conciliation process in 73.2 per cent of cases.

The achievements of the Service are driven by a flexible process suited to the type of dispute and underpinned by systems to deal with high volume.

Outcomes of finalised disputes

In 2003/04 the Service exceeded its target of resolving 65 per cent of disputes through participation in conciliation, achieving 67.1 per cent in 2003/04. The RTA monitors the activity of finalised disputes through an electronic data interchange set up with the SCT in 2000. Reports provided by the RTA's data interchange indicate that only 15 per cent of disputes finalised by the service in 2003 had a related SCT application. This supports the important gate-keeping role played by the RTA's Service in minimising cases proceeding

to the SCT unnecessarily.

Unresolved disputes involving bonds were most likely to proceed to the SCT. Of the 2,224 finalised disputes with related tribunal applications, 58.9 per cent involved bonds, 29.8 per cent involved compensation being sought in excess of the bond and 11.3 per cent involved ongoing tenancies. Disputes involving compensation being sought in excess of the bond are generally considered not suitable for conciliation by the RTA.

Only 33.4 per cent of all unresolved disputes had a related SCT application. The large number of disputes that do not proceed to the SCT despite being issued with a notice enabling them to proceed requires further exploration. It may be the case that the RTA was able to partially resolve the matter or provide the parties with sufficient information for them to choose not to proceed to the SCT for a hearing.

Figures 2 and 3 below provide a breakdown of SCT cases with related RTA disputes by type of dispute. Figure 2 illustrates that the number of SCT applications has remained relatively steady over the last three years.

The vast majority of resolved matters do not have a related SCT application. Only 57 matters out of 6,481 resolved disputes had a related SCT application, indicating that resolutions made in conciliation stick. Table 1 above provides a breakdown of finalised Dispute Resolution Requests (DRRs) which appear to have an SCT application, according to the outcome of the dispute.

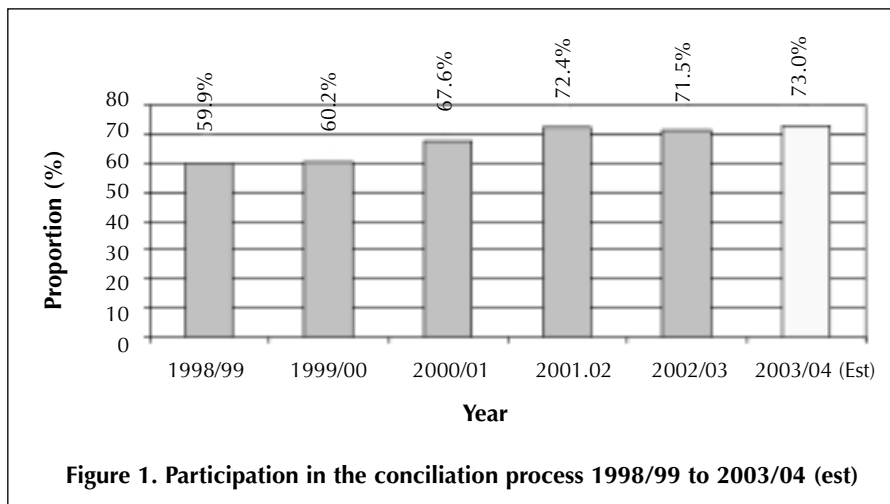


Figure 1. Participation in the conciliation process 1998/99 to 2003/04 (est)

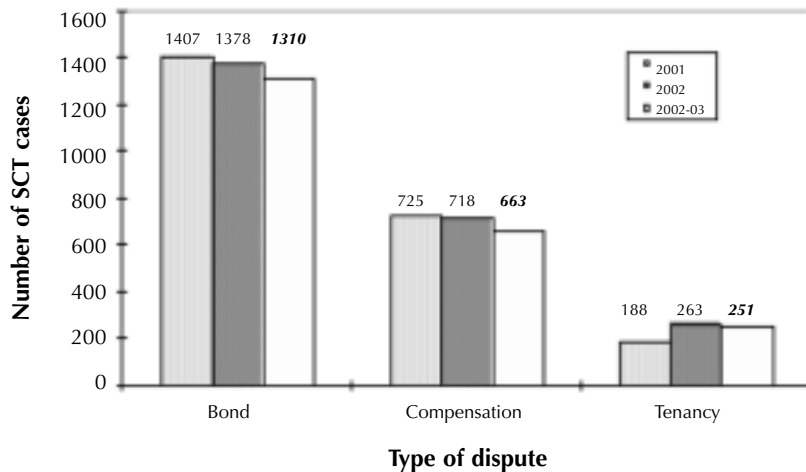


Figure 2. SCT cases with related RTA disputes by type of dispute (based on disputes finalised in 2001, 2002 and 2002-03)

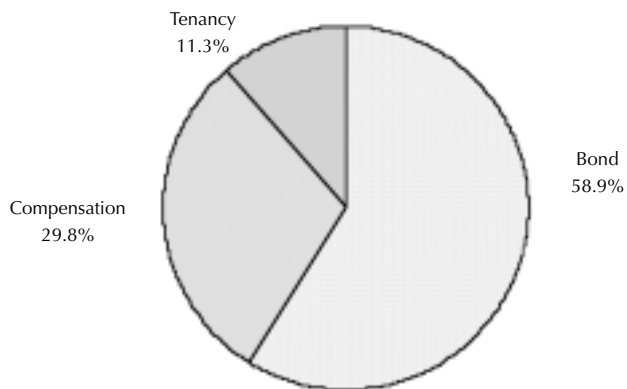


Figure 3. SCT cases with related RTA disputes by type of dispute (based on disputes finalised in 2002-03)

Client satisfaction with telephone conciliation

Client feedback has played a major role in the development of the conciliation model, particularly during the review of the *Residential Tenancies Act 1994* in 1997.

Since 2002 the RTA has commissioned a comprehensive Client Satisfaction Survey to understand clients' expectations and perceptions of the services it offers. The RTA conducted a second survey in 2004 to compare levels of satisfaction with those established in the 2002 survey.

Overall satisfaction with the Dispute Resolution Service was similar to the level of satisfaction in 2002, with approximately 7 in 10 clients reporting a satisfaction of 7 or higher out of 10. Not surprisingly, overall satisfaction was lowest among those clients who

did not settle their dispute through the RTA and subsequently did not go to the SCT. Satisfaction was highest among property managers, those clients who had used at least two key service areas of the RTA and those who resolved their last issue through conciliation. Key attributes driving satisfaction were:

- having staff who can talk to the parties and recommend how the dispute could be resolved; and
- having knowledgeable staff with a thorough understanding of the issues.

This reinforces the importance for RTA clients of providing information on the application of tenancy legislation as part of the dispute resolution process.

The survey also reinforced the challenge of providing a timely service in a high volume environment, with

high expectations from RTA clients for immediate action on disputes once they are lodged.

Clients of the service were satisfied with the methodology with the majority of clients using the shuttle negotiation process indicating that they would use it again and the majority of clients indicating that they would prefer conciliation via the telephone over a face-to-face conference.

Efficiency and effectiveness of the dispute resolution model

In terms of the efficiency of the model, the two-step dispute resolution model utilised in Queensland may entail in some instances longer waiting times for an SCT hearing if a matter is not resolved in conciliation. However, the majority of matters dealt with by conciliation at the RTA do not proceed to the SCT.

While the majority of disputes are resolved within 28 days of receipt, the Service has struggled to meet its 2003/04 target of finalising 70 per cent of disputes within 28 days of receipt (achieving 56 per cent). The high volume nature of the service provides a challenge in prioritising disputes requiring immediate action while maintaining strong resolution rates and appropriate case-loads for RTA conciliators. The process used by the service is very efficient, with 74 per cent of disputes finalised within 14 days of action being taken on the matter by an RTA conciliator.

Outcomes in dispute resolution are certainly effective, with the vast majority of resolved matters not requiring further action in the SCT.

Accessibility of the model and dispute prevention

One of the strengths of the Queensland model is the role of conciliation in proactively preventing disputes from proceeding to the SCT and supporting fair rental outcomes for the future. The model can assist parties to prepare for SCT processes in circumstances where conciliation has

failed to resolve the dispute and educate them on their rights and responsibilities to prevent future disputes.

The model is also flexible and responsive to the needs of a diverse client group, many of whom have limited access to more formal adjudication. This has become particularly evident in the implementation of residential services legislation covering boarding house and supported accommodation, where the RTA has been able to assist in achieving satisfactory and lawful

competency based training program aimed at supporting conciliators in their work and assisting their skill development in the role.

The RTA is reviewing its case management system to support greater efficiency and improved timeframes for actioning disputes. Utilising technology for resolving disputes is a future focus for the Service as the RTA develops its capability for transacting electronically with its clients. While not all disputes are suited to ODR, a number of disputes dealt with by the RTA could be resolved online by the parties,

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outcomes for a broad range of clients, many of whom do not have the money, inclination or the ability to proceed to a tribunal to conduct a case.

Telephone shuttle negotiation is easily accessible to the majority of RTA clients who find using the telephone a convenient way to attempt conciliation. However, the RTA also offers face-to-face conciliation processes where this is the most appropriate method for resolving the dispute.

Future development

By paying attention to its model and building on the strengths of the shuttle conciliation process, the RTA has developed a unique ADR service for dealing with tenancy disputes.

The unique nature of the service provides challenges in the training and development of conciliators. The Service recently completed competency profiles for conciliators and senior conciliators which have formed the basis of a comprehensive three year

which has the potential of allowing the Service to spend more time on complex disputes requiring a conciliator's intervention.

The success of the RTA's Dispute Resolution Service demonstrates that quality outcomes and strong client satisfaction can be achieved in a high volume ADR environment over the telephone and the RTA looks forward to further developing its model. ●

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Endnote

1. Nicola Doumany is responsible for introducing the model described in this article. Thanks go to Carolyn Mason, General Manager of the Residential Tenancies Authority, for her support in the preparation of the article.