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Survey report on native title mediators

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Getting to know mediators and mediation

Survey report on native title mediators

A recent survey of mediators working in the native title context provides another valuable level of empirical knowledge about aspects of mediation practice. The results are contained in Report No 3 of the Indigenous Facilitation and Mediation Project.[1] The study and report were undertaken by Rhiân Williams, a leading researcher in the field.

Questionnaires were sent to 68 native title mediation practitioners and there was a response rate of 54 per cent. On average, the respondents had worked for 10.9 years as a mediator, and around 36 per cent of their time was taken up with native title mediation. Close to half (45 per cent) of the respondents identified intra-indigenous disputes as the most common type of dispute dealt with, and 36 per cent identified that their practice involved cultural heritage management matters.

General

- 66 per cent of respondents described their process as 'interest based'
- 45 per cent of those surveyed emphasised the importance of preparation or pre-mediation in the native title context
- 92 per cent of respondents stated that they either 'always' or 'sometimes' used a co-mediation approach.

However, co-mediation was understood differently by respondents. One group saw co-mediation as requiring both mediators to work together throughout the process. Another group saw co-mediation as allowing mediators to either be used interchangeably throughout the process, or to split the workload and separately meet with parties.

Principles of mediation

- 75.7 per cent of respondents saw mediator neutrality as very important or essential.
- 67.5 per cent of respondents saw confidentiality as binding on both mediators and parties
- 54.1 per cent of those surveyed saw the voluntary nature of mediation as either very important or essential
- 66 per cent saw it as either very important or essential that the mediator has no decision making power in relation to the dispute
- 35.1 per cent of respondents saw it as either very important or essential that the mediator was highly knowledgeable about the content of the dispute
- 24.3 per cent of respondents saw it as either very important or essential that the mediator is highly familiar with the history of, and is known to, the indigenous stakeholders.

> Patience and the ability to clarify positions were listed by 89.2 per cent of respondents as important qualities.

Attributes and capacities of effective mediators

- 92 per cent of the respondents saw having excellent communication skills as the main attribute or capacity of mediator or facilitator
- Patience and the ability to clarify positions were listed by 89.2 per cent of respondents as important qualities.

Issues impacting on native title mediation processes

- 55 per cent of respondents saw lawyers taking highly adversarial stances in mediation as one of the top three negative impacts on their process, with 22.2 per cent of respondents seeing this as the primary negative impact
- 55.5 per cent of respondents saw parties taking highly adversarial stances as one of the top three negative impacts on their process, with 14.8 per cent of respondents identifying this as having the most adverse impact on their process
- 18.5 per cent of respondents saw the lack of proper decision making and representational structures with stakeholder groups as the most negative impact on their process, and 40.7 per cent ranked it in the top three
- 18.5 per cent saw media reporting leading to an escalation of the dispute as either second or third in its impact on their process.

Legislation and national standards

- 51.4 per cent of respondents were covered by legislation as a mediator; 35.1 per cent were not
- 45.9 per cent of respondents thought mediators required some form of legislative protection; 37.8 per cent did not see the need for legislative protection
- 73 per cent of respondents were supportive of some form of national standards to regulate the practice of mediators; 16.2 per cent of respondents were not. ❖

Endnote

1. Rhiân Williams, Native Title Mediation Practice: The Commonalities, the Challenges, the Contradictions, A Survey of Native Title Mediators, Report No 3 (2005). To obtain a copy of the report contact the Australian Institute of Aboriginal and Torres Strait Islander Studies, Indigenous Facilitation and Mediation Project, GPO Box 553, Canberra, ACT, 2601.

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diary and happenings

- The **World Mediation Forum V Conference**, jointly hosted by the **Institut Universitaire Kurt Bösch** and **World Mediation Forum**, is being held on 9-11 September 2005 at the Congress Centre 'Le Regent', Crans Montana, Switzerland. The Conference, entitled 'Mediation: A New Culture of Change', will bring together mediators, academics, lawyers, psychologists and all who support mediation to resolve conflicts, including former Eastern Europe, Asia-Pacific countries, Africa and South America. The English language program is available in PDF format at www.mediate.com/world/flyer+grand+anglais20041125c.pdf. For additional information and online registration, see mediation.qualilearning.org and www.mediate.com/world.
- **Mediation and Training Alternatives** is holding **The International Advanced Mediator Training Course** on 25 September–1 October 2005 at San Pietro in Valle, Umbria, Italy. The course is designed to develop and deepen the skills of mediators who already have experience in mediating commercial disputes. The programme includes analysis of cross-cultural and complex cases, mediator dilemmas and challenges, and the development of bespoke processes. Visit www.mata.org.uk or email david@mata.org.uk to register or for more information.
- The **Bond University Dispute Resolution Centre** in conjunction with **AIFLAM** is conducting an **Advanced Mediation Course** on 22–25 September 2005 at the Sheraton Noosa Resort. The Advanced Mediation Course is designed for those who have received prior training in mediation and who are experienced mediators, and will provide skills training and deal with topical issues in the theory, principles, applications and organisation of mediation. Email DRC@bond.edu.au or call 07 5595 2039 for more information and registration details.
- The **Trillium Group** is conducting **4-day ADR Certificate Workshops** and **Advanced ADR Certificate Workshops** in Sydney, Melbourne, Canberra and Townsville throughout 2005. For more information call 1 800 636 869 toll free or 02 9036 0333 or visit www.thetrilliumgroup.com.au.
- **CMA** in association with **Monash University** is conducting workshops on negotiation, mediation and managing workplace conflict. **Getting to Yes** is a two-day negotiation skills workshop being held in Melbourne on 21–22 November 2005, Brisbane on 5–6 September, and Sydney on 20–21 October 2005. **Getting it Resolved** is a two-day highly interactive mediation skills workshop being held in Melbourne on 10–11 October 2005. **Breaking the Deadlock** is a two-day advanced negotiation skills program being held in Melbourne on 29–30 August 2005. Prior attendance at the two-day 'Getting to Yes' workshop is required for the 'Getting it Resolved' and 'Breaking the Deadlock' workshops. The standard registration fee is $1195 per person (excluding GST). For more information on any of the workshops, or to register, visit www.cmaservices.com.au, email info@cmaservices.com.au or call 03 9614 0333.
- **LEADR** is conducting **4 Day Introduction to Mediation** training workshops in Adelaide on 14–17 September 2005, Brisbane on 5–8 October 2005, Perth on 19–22 October 2005, Sydney on 9-12 November 2005, Melbourne on 16–19 November 2005, and Canberra on 23–26 November 2005. For more information or to register visit www.leadr.com.au, email leadr@leadr.com.au, or call 02 9251 3366 or 1800 651 650.
- A Mediation Law and Practice workshop will also be held in Cairns in November (dates to be advised). **Training in Arbitration Law and Practice** will be held at the Law Society House, Brisbane on 7–9 November 2005. This is a three day intensive course includes three modules: 1. Domestic Arbitration Law and Practice, 2. International Commercial Arbitration and Practice, and 3. The Environment of Foreign Arbitral Awards. Upon successful completion of this program, participants will be eligible to apply for Associate Membership of the Chartered Institute of Arbitrators, London (ACIArb). Visit www.qls.com.au, email dmc@qls.com.au or call 07 3842 5824 for further information or for registration details.

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