Editorial

Weighing the evidence

Two recent developments in Australian mediation, both covered by articles in the *ADR Bulletin*, highlight the pressures which are pushing and pulling mediation, sometimes in opposite directions.

The first is the emergence of the National Mediator Accreditation System reported in an article by Tania Sourdin at (2009) 11(1) *ADR Bulletin* 6. As is well-known the system introduces an optional system of national accreditation involving both Approval Standards and Practice Standards operating on a devolved system of self-regulation by the mediation profession.

The second is the most recent Australian survey study of mediation practice, conducted in the Supreme and County Courts in Victoria and involving 500 court-connected mediations, summarised by an article in this issue of the Bulletin by Tania Sourdin and Nikola Balvin.

Readers will be able to access from this article the seminal findings of the comprehensive survey. They challenge many of the assumptions of facilitative mediation and constitute a challenge to the national standards. The inconsistencies are reflected in the Table.

There are several qualifications to be made in relation to the survey findings shown in the Table. The cases were all connected to court systems, they were highly legalised and were conducted in a strong shadow of the law, and there were significant numbers of personal injury cases which have always had their own mediation culture.

Nonetheless they suggest a tension between the aspirational values of the new systems of standards and accreditation and a significant area of mediation practice.

There are three logical ways in which the tensions could be played out:

- There will continue to be a discrepancy between standards theory and practice reality, as occurs in many professional and occupational practices, with a developing disconnect between the two.
- The realities of practice will require adaptations to the recognition and practice standards in acknowledgment of the settlement and evaluative models which are predominating in many areas.
- The normative strength of the standards will bend mediation practice back towards a facilitative model in which effectiveness is measured in terms of the skills and techniques of mediators and client satisfaction and not in terms of economic efficiency.

Readers are invited to comment on the likelihood of the above scenarios eventuating in the next phase of Australian mediation development. An article by Geoff Sharp in the next issue of the *ADR Bulletin*, though unrelated to the survey findings, suggests reasons for bending mediation practice back to the theory of joint sessions as opposed to shuttle in separate sessions.

In the interim the science of muddle-through must prevail. What is clear, however, is that some of the kinds of mediator conduct reflected in the survey would not pass muster in relation to the National Mediator Accreditation System, neither in respect of the recognition standards nor the practice standards. ●

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Table: National Mediator Standards (Australia 2008) and Survey of Court-connected mediations in Victoria (2009)

Quality or Principle	Approval or Practice Standard	Empirical Survey Evidence
Role of the parties	Maximise participant decision-making	Limited role for participants
Role of representatives	Party-controlled system, representatives in support	Lawyer-dominated system
Focus of negotiations	Interest-based focus	Rights-based focus
Measures of effectiveness	Enhanced party satisfaction in dispute processes	Efficiency in case management
Function of mediators	Non-advisory role for mediators	Mediators tend towards evaluative interventions
Model of mediation	Facilitative model of mediation	Settlement and evaluative models