

# ***National Alternative Dispute Resolution Advisory Council***

## **Second National ADR Research Forum University of South Australia, Adelaide 25 and 26 February 2005**

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### **Notes from ADR Research Forum**

The second national ADR research forum was convened by the National Alternative Dispute Resolution Advisory Council (NADRAC) in Adelaide on 25 and 26 February 2005. The aim of the forum was to optimise research in ADR by promoting information sharing and collaborative effort among those involved in conducting or commissioning ADR research or evaluation. Thirty-nine participants and speakers took part in the forum over the two days.

### **25 February 2005**

#### **Opening by Professor Denise Bradley AO, Vice Chancellor, University of South Australia**

After an introduction by Associate Professor Dale Bagshaw, Professor Denise Bradley welcomed guests to Brookman Hall and the forum. Prof Bradley discussed conflict in various settings and emphasised the importance of research into non-violent dispute resolution in building understanding and peace.

#### **Welcome by Justice Murray Kellam NADRAC Chair**

Justice Kellam thanked Professor Bradley and the University of South Australia. He then referred to the NADRAC Charter and NADRAC's role in providing advice on ADR to the Commonwealth Attorney-General. Justice Kellam mentioned the Attorney-General's interest in data about ADR which demonstrates its benefit and value. This type of information is also important when seeking funding for ADR activities. Justice Kellam hoped that the research forum would give participants the opportunity to meet people, talk about the issues and form networks.

#### **Comparing ADR research methodologies Chaired by Professor Tania Sourdin, NADRAC member**

Prof Sourdin noted the difficulties experienced by those interested in ADR research to meet and form meaningful networks. Prof Sourdin hoped that the forum would give participants the opportunity to develop those networks and explore research opportunities.

Prof Sourdin asked participants about the reasons they pursued ADR research. Responses covered the following:

- post-graduate study

- personal interest
- grants or commissioned research

Participants also discussed problems with publishing research, for example, a lack of scope for longer articles and difficulties in reaching a practitioner audience.

Prof Sourdin asked participants about the methodology they used. The following methodologies were represented:

- theoretical
- qualitative
- quantitative
- action-based

Prof Sourdin noted that the methodology used may correspond with the researchers' home discipline. Participants discussed the multi-disciplinary nature of ADR and the difficulties in choosing an acceptable methodology. It was noted that the methodology chosen is driven by the research question and that it will evolve as the research continues. A need to share approaches to ADR research was identified. The benefit of working in a team which may provide a cross-section of approaches was also discussed. Each approach is valid and ADR researchers are increasingly being asked to do things in a particular way depending on the aim of the research.

Prof Sourdin asked participants to summarise their current research interests. Areas of interest included:

- family law disputes
- victim/offender mediation
- conflict in the workplace
- children's participation in mediation and child inclusive practice
- Indigenous dispute resolution
- interactions in mediation
- cross-cultural issues
- comparative and international developments
- theoretical issues and relationship to practice
- interaction between law and mediation
- relationships between actors in pre-trial ADR (lawyers, parties, judge, 3<sup>rd</sup> parties)
- neutrality of mediator
- role of lawyers
- relationship between court processes and ADR
- native title dispute resolution
- experience of parties and mediator
- narrative mediation
- mental health issues in ADR
- peace and conflict resolution
- technology and on-line dispute resolution
- competency and standards for ADR practitioners
- research methodology
- system design

## **Small group discussion – issues in ADR research**

Participants broke into small groups to further discuss issues raised. Groups reported on their discussions after the session on Commissioning Research. The issues reported by groups are summarised here.

### *Group one*

- different processes are being used for dispute resolution
- it is difficult to know what is actually going on during a session of ADR
- while there is a need to find out what is happening, there is a danger that people asked about the process may tell you what they think you want to hear or what they feel they should have been doing

### *Group two*

- standards in ADR research would assist in making research stand up
- standards would also demonstrate the robustness of research to policy-makers
- there is a difficulty in knowing how to evaluate research, this will depend on the audience and the question needing to be answered.
- it was noted that outcomes are the primary concern, at least for government agencies

### *Group three*

- it is impossible to be truly neutral in the social and cultural context of dispute resolution, there may also be external constraints (especially in a court-connected process)
- need to ask who the right mediator is (including consideration of cultural issues and qualifications)
- research oriented questions include the meaning and impact of neutrality, the need for more case studies, stories and creative approaches, the need for research on client notions of power and the relationship between knowledge, process and content

## **Panel discussion – commissioning ADR research Chaired by Assoc Prof Dale Bagshaw**

### *Mr Warwick Soden*

*CEO and Registrar, Federal Court of Australia and NADRAC member*

Mr Soden noted that he has never received a proposal from a researcher on his/her own motion. The courts are generally interested in focussed research which will answer a compelling question or effect the bottom line. Researchers should focus on what courts might want to find out and then approach the courts with an attractive proposal.

### *Ms Serena Beresford-Wylie*

*Principal Legal Officer, Policy, Research and Online Support Section,  
Family Pathways Branch, Attorney-General's Department*

Ms Beresford-Wylie noted that the Attorney-General's Department has a small amount of funding that can be used for research relating to the development of the Family Relationship Services Program. Research proposals are assessed on the basis

of development of the program. Current research includes understanding contact disputes and child-inclusive mediation. Limited, ad hoc funding may also be available for research through other areas of the Attorney-General's Department including the Legal Aid Program and the Community Legal Services Program.

*Mr Robert Lindsay*

*Director, South Australian Magistrates Court*

Mr Lindsay noted that the Magistrates Court has a high volume of litigation and that there are opportunities for reform of the system. In the past, resourcing for ADR within the court has been 'by stealth', that is resources have been identified and transferred without the benefits of ADR being backed up by research. The courts are now seeking funds from very limited resources for research and evaluation but have been slow to pick up on the rigour that needs to be behind successful evaluation. There is a growing recognition of the importance of research in making sure services are efficient and effective for users. Mr Lindsay reported an evaluation of the Court's civil claim pre-lodgement program which involves the lodgement of an on-line pre-claim with free mediation offered to resolve disputes. The success rate for the program is 70%. Mr Lindsay would be happy to hear about relevant research proposals.

*Mr Jim MacDonald*

*Manager, Mediation Unit, South Australian Magistrates Court*

Mr MacDonald explained processes for the referral of disputes to ADR in the South Australian Magistrates Court and reviewed statistics on the number of disputes which were mediated rather than proceeding to trial. Questions which may benefit from research scrutiny include the impact of mediation on a matter that does not settle and how to increase the number of matters that go to mediation.

Group discussion on commissioning research included the following issues:

- sources of research funding (for example, from courts and the Australian Research Council)
- the limited availability of some data, particularly that which is kept by the courts but not analysed
- the need for outside suggestions for the courts to determine valuable areas of research
- Mr Soden noted that courts are generally not concerned with what happens in individual matters but with broader issues of output, research that supports resources for court services will also be of value
- Ms Beresford-Wylie noted that the Government is very interested in long-term research, for example, models of dispute resolution, the stages where they are useful and the clients for whom they are appropriate
- the Family Court is also interested in more than though-put, context is just as important as what happens in the courtroom and there is a need to think about the direction of the court and to consider and test views
- the need to develop a dialogue between those who conduct and those who commission research so that there is understanding of what is needed, NADRAC may have a role in this dialogue
- evaluative research may be too close if done from within a government agency
- Ms Beresford-Wylie noted that there few areas in the public service that have the resources to be able to focus on research and regularly liaise with the research

- community so it is important for researchers who are looking for funding or want to make their research known to government to be proactive about making contact
- court dispute resolution committees may be useful fora for discussion with researchers
  - the need to broaden the concept of ADR and to look across borders and institutions
  - issues in court-based research also extend to industry, for example, lack of access to data and limited communication between service providers and researchers, timeframes for research may also be extended, particularly when dealing with process issues or outcomes/satisfaction
  - links need to be established between researchers, courts/government and industry/service providers
  - there is a subtle growth in inquisitorial-type approaches in the courts, for example, communication between judges and children in family law cases
  - ADR is definitely impacting on developments in the court, including the use of more common law techniques, this will in turn have an impact on ADR

### **Moving research forward** **Chaired by Professor Tania Sourdin**

Prof Sourdin asked participants to think about what impedes research, that is, what prevents it from happening, progressing, being published or being used in a meaningful way or what prevents the commissioning of research. Participants recorded their responses on coloured cards. These cards were discussed on the second day of the forum.

## **Saturday 26 February 2005**

### **Achieving research goals** **Chaired by Prof Nadja Alexander**

Prof Alexander asked participants to think about what it would feel like to achieve their research goals. Responses were recorded on a large sheet and are represented by the following:

- Better placed to teach and assist others
- Verifiable Conclusions
- MONEY
- Happy ☺
- NEW IDEAS
- EMPOWERMENT ☺
- Creativity rather than Reactivity
- Satisfied
- Ready to write a novel!
- more plays!
- Make a Difference
- FULFILMENT
- ☺ RELIEVED ECSTATIC
- COMPLETION. CONTRIBUTION.

- More understanding of the power of conflict
- PRACTICAL APPLICATION/IMPACT
- It's not just in my head.
- Career Path
- BETTER COMMUNICATION SKILLS
- RETIREMENT + BOOKS
- NEW WAYS of being in the world
- SATISFACTION COMPLETENESS
- Gathering stories
- SATISFIED!
- MANIC
- skills  $\triangle$  knowledge  $\triangle$  reflection
- More credibility for our area of ADR work
- EXCITED
- A national centre for public policy and conflict management and research associated with a Uni and combining practice, research & advocacy (for CR alternatives)
- on the track  $\rightarrow \rightarrow$



Prof Alexander ran a group exercise using the large sheet which involved co-operation to work within the rules, listening, experience and thinking outside the square. The exercise demonstrated the need to communicate and form networks.

### **Overcoming research impediments Chaired by Prof Tania Sourdin**

Prof Sourdin reviewed the research impediments identified by participants on the first day of the forum and invited participants to add to those impediments. These are listed at the end of this document.

The impediments were grouped in four different areas, each to be discussed by small groups moving around the room. These were:

- Network
  - isolation
  - supervision
- Methodology
  - skill levels
  - sharing
  - understanding different disciplinary approaches
- Time
  - funding
  - funding partners
  - ARC
- Data
  - access

Each group reported on one of the impediments identified above.

#### *Data/access*

- design
- types of data or alternative data
- opening access to data (competition also recognised)
- relationship building
- educating

#### *Time/funding*

- saying no/prioritising/down-time/time management
- procrastination
- delegation
- promotion/appreciation
- external issues
- need to get together, possible solutions include a centre for research or ADR research council

#### *Network*

- electronic as well as face-to-face contact
- release of information about tenders
- representation on ARC
- formation of networks between organisations and universities and locally and nationally
- ethical sharing
- national conference on research, including different research streams

#### *Methodology*

- skills acquisition
- types of methodologies
  - multi-disciplinary and multi-skilling
  - working outside the standard
  - recognising range
- funding and alternatives to ARC funding, for example, an ADR research council with funds
- sharing and teamwork

### **Forum outcomes**

#### **Chaired by Prof Tania Sourdin**

NADRAC will send an email to forum participants which seeks information about their current research interests and methodology used. This information may then be circulated to those interested in conducting or commissioning ADR research, including forum participants. NADRAC will also circulate notes from the forum including the research impediments identified by participants.

In two years, NADRAC will consider a two day conference on ADR research. One day could be on methodology with the other dedicated to case studies or presentations on current research. There may be an opportunity for a published research paper, for example a book on the case studies or papers presented.

### **Closing remarks**

#### **Justice Murray Kellam, NADRAC Chair**

Justice Kellam thanked the University of South Australia and Assoc Prof Dale Bagshaw for their assistance with the forum. Justice Kellam also thanked Prof Nadja Alexander, Prof Tania Sourdin and Ms Heather Prostimio (NADRAC Secretariat) for their contributions to the forum. Finally, Justice Kellam thanked participants for attending.

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### **Research impediments**

Impediments identified by participants were:

- commitment to meet timelines
- policy of university departments: what is better research
- isolation (lack of networks to exchange ideas/resources)
- lack of input/expertise about methodology
- inadequate access to what has been done before
- balance between practice and research
- adequate understanding of methodologies
- need more occasions to talk and people who are interested in the same things
- time
- lack of motivation
- time/space, funding
- inadequate knowledge of needs
- exhausted passion
- opportunity for data
- lack of perceived math to economic return
- inconsistency in research approaches and standards
- political considerations, resources
- time, money, collegial support
- lack of enough time
- non-believers (pessimists)
- accurate data, clear recommendations, executive summaries
- narrow research proposals
- openness to see the relevance of it/want it!
- knowing where to start
- libraries or web, and so hard to tell what is already known and what new research is needed and what would be an original contribution
- lack of recognition of internal agency research
- time

- demarcation, disputes between disciplines
- appropriate research question
- isolation from similar folk
- judges (religious/moral etc)
- imperative to self-fund as academics
- lack of (unwillingness of some to collect) basic demographic data, that is, who uses services
- priorities
- user friendly, value for money, timely
- lack of available quantitative and social science skills (and experience)
- lack of understanding in funding providers that this is important
- not very many people working in public policy conflict and they're not well networked
- personal procrastination
- great mentorship (supervisors)
- time
- good supervision
- time
- time
- recognition of value of practice-based in research environment
- isolation
- conservative views about what constitutes 'good' research
- investment required to apply for ARC grants
- research partner slow to perform their side of agreement
- choosing between potential projects
- time
- time priorities
- all parties overworked
- waiting for funding approval
- confidence
- lack of confidence and experience
- confidence in relevance/need of the research
- keeping the excitement going
- too much research which is hard to access
- lack of clarity from funding body on their desired outcomes but interference nonetheless
- dedicating the resources
- resources
- funding
- opportunities for publishing and presentation
- lack of time, therefore time spent on teaching and administration!
- time pressures, access to data
- teaching, family, money
- time, funding, collegial team work (academic)
- knowing who to talk to, who is doing what
- choosing the area
- difficulty in winning funding for large projects

- access to data
- need to earn an income otherwise
- methodology
- access to people with expertise, a register?
- reference group on methodology, a research register via website?
- understanding of disciplinary approaches
- access to ACSPRI methodology courses
- teach social science research methodology to law students, commerce students etc
- NADRAC co-ordinate seminar on ADR research methodology
- selection and maintenance of the aim (who for, why etc)
- multidisciplinary workshop – law, psychology, social sciences (including education, anthropology, sociology)
- methodology – skill levels
- insist on opportunity to explain qualitative analysis as well as quantitative
- convincing funders to the importance of qualitative data
- qualitative, quantitative, literature, personal experience
- sharing – between practitioners and researchers
- sharing, literature, overviews
- moving outside disciplinary boundaries
- form an Australian ADR research council (with funds)?
- hearing researchers talk through their methodology and why
- next conference/workshop on research skills (basic)
- one base (team) sharing experience and approaches
- ensure outcomes answer the funders' questions
- find out what people need
- explore possibilities/alternative funding sources
- understanding and acceptance of philosophical references, for example, positivist/modernist vs post modernist
- people are bluffed – hijacking of research
- time management skills training
- managing time
- don't need to feel stressed, busy doesn't mean that you're not occupied
- making choices about time and personal commitment
- prioritise
- delegating
- saying no!
- be realistic – both academics and funders
- stop procrastinating
- promoting research culture
- organisation to value research
- market ADR as legitimate research area – increase time and resources
- the need for quiet time
- structured 'dreaming' time
- getting the timing right
- explore research funding opportunities with business and government partnerships
- more human resources (people)

- national centre/council for ADR research
- get funding
- explore the lateral options
  - within and outside Australia
  - multiple range of funds
  - not just ARC!!
- persistence, keep
  - explaining
  - exploring
  - making applications to ARC
  - building relationships
- ARC ADR funding category
- structural incentive
- in government, insist when you commission new activities that there is research and evaluation
- data
- open up channels, no closed deals
- work in cooperation with agency (joint agendas)
- developing atmosphere of trust
- building relationships with courts/agencies to foster data collection
- partner with organisations to facilitate data access
- regional people and limited access
  - Indigenous groups
  - proactive sharing from data holders
- make sure people with data understand your question (once you do!)
- educating organisational gatekeepers
- external and internal representatives on ethics committees
- finding the right person to ask
- develop a register of research contact people in organisation
- proactive, sharing, informal networks to region
- ethical and confidentiality issues, be specific about exactly what you want to get approval
- educate university ethic committees
- no use of unexplained acronyms
- develop the process after asking the question, at beginning with supervisors
- collection and consistency of demographic data
- seek funding to catalogue what ADR data is being collected (ANU social science data organisation)
- quality of input in databases
- alternative sources, not just written
  - oral
  - video
  - visits
- encourage Productivity Commission to collect ADR data
- no blanket MOUs
- time limitation for MOUs, transparent process
- professional doctorates, workplace based research
- creative data presentation

- network
- ethical sharing
- values, where did idea come from?
- research advisory methodology group (via NADRAC)
- research stream at conferences, NADRAC support
- research conference
- yahoo groups/listserv (run or moderated by NADRAC)
- electronic posting of work when appropriate
- ADR research website
- list of post-graduate students and topics
- include PhD students in networks and advertise their research
- formalise this network – names and email contacts
- encourage greater co-operation between LEADR, IAMA and other groups
- inform this group of members' publications, research topics and reports
- IAMA, LEADR, state-based associations (WADRA, SADRA, VADR etc)
- reapply to ARC (Tania, Nadja, Dale) for ADR network funding
- NADRAC people on ARC 'approval' board
- tenders/briefs posted through NADRAC
- NADRAC could provide information about 'sympathetic' people in agencies, lists of websites
- networks between universities and between LEADR, IAMA etc
- networks of sympathetic people within agencies, 'go to' people who really know
- more opportunities for face-to-face contact
  - local
  - national (like this)
  - especially for regional