A Short History of Alternative Dispute Resolution in Australia: 1975 - 2000*

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Abstract

Alternative dispute resolution (ADR) has become one of the most significant institutional and social phenomenon of recent times. Australians from all sectors of society have embraced the new processes, and their implicit values, with increasing enthusiasm and ingenuity. The issues outlined in this article that these developments raise for the country are not yet fully understood or debated but will continue to have a greater and more significant impact upon the ways in which we perceive and manage conflict.

Since Europeans arrived in Australia our history has been enthused with notions of individualism and battling the harsh climate and landscape of the frontier. We revel in the imagery of competitive sports and of a nation bonded through war. Yet we also have a strong and rich tradition of communal sharing and fellowship which has lent itself to the adoption of new alternative dispute resolution (ADR) processes not only during the last three decades, but earlier as well. Our indigenous people have also had a rich history that encompasses a range of processes we now identify as ADR innovations. As Astor and Chinkin point out in their groundbreaking book titled *Dispute Resolution in Australia* indigenous communities in Australia have used a range of methods to deal with conflict (for example shaming, exclusion, compensation, initiation and training based upon a system of kinship based law) for thousands of years.[1]

Where Does ADR Come From?

The ADR movement draws heavily upon our history of collective dispute management especially in the industrial relations system. A study of Australian history since European settlement reveals that non-litigious forms of dispute management have been practiced in Australia since colonial times through arbitration provisions inherited from English law and the establishment of informal tribunal and ombudsmen systems. As well, the Federal government, at a very early stage, developed a conciliation and arbitration system to manage the labor market; although this progressively developed into a rather formal litigious system.

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[1] Astor, H and Chinkin C (1992) Dispute Resolution in Australia, Sydney: Butterworths.

These early developments were rather piecemeal and it was not until the late 1960s and 70's that significant interest began to focus upon informal dispute resolution (the early focus was upon tribunal systems and arbitration). In 1975 the fusion of common interests in the building and construction industry to better manage often costly and ruinous conflicts led to the formation of The Institute of Arbitrators.

However, it was not until the late 1970s that interest in mediation-based approaches began. Most arbitration, ombudsmen and tribunal systems provide alternatives to traditional litigation but do not necessarily provide for the self-determination of the disputant parties, which is central to mediation programs. It was this emphasis which tied mediation into the rise of communitarian and consumer rights ideals and projects of the time and which marks the beginning of the modern ADR movement.

The beginning of the government funded Community Justice Centres Pilot in 1980 (NSW) provided the initial impetus, followed by similar establishments in Victoria (1987) and Queensland (1990). They were modelled on community based mediation services, which had begun to spring up in great profusion in the United States of America. These services, institutionalised within government bureaucracies, aimed at providing services to a long neglected and ill used sector of conflict - community disputes.[2] They also pioneered the use of mediation in public issue disputes, victim offender mediation (sometimes called "conferencing") and family mediation.

The legal profession quickly followed these developments and established a specially constituted forum, Lawyers Engaged in ADR (LEADR), to develop and lobby for the use of mediation within the legal system. Many law schools now offer ADR or mediation courses. Other professions have been slower to embrace these new approaches but this is rapidly changing; especially in the environmental planning and human service fields.

Courts, banking, insurance, and other large institutionalised systems have now embraced mediation, in varying degrees, as part of their conflict management strategies. One significant indicator of this growth has been the proliferation of ADR related legislation that has emerged to deal with the increasing array of services. Tom Altobelli, a Sydney lawyer and academic specialising in ADR, has noted that since 1990 when there was a mere handful of Australian statutes referring to mediation there are now approximately one hundred and four.[3] This figure does not include legislation that includes references to other processes like conciliation, arbitration and case appraisal. In Queensland, for example, there are now over thirty pieces of legislation that specifically provide for the provision of mediation services alone.

A listing of some of the key moments in the development of ADR services is provided on the following page.

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[2] See Condliffe, P., *Conflict Management: A Practical Guide*, TAFE/RMIT, Melbourne 1991,117.

[3] Altobelli, T., Mediation in the Nineties: The Promise of the Past, Unpublished Paper, 5th National Mediation Conference, Brisbane, May 2000.

Some Key Developments in Australian ADR

1892	*Courts of Conciliation Act* (Qld.)
1904	Arbitration and Conciliation Court (Cw.) provides for informal conferences.
1929	*Conciliation Act* (SA) provides for pre-trial interviews.
1931	*Courts of Conciliation Act* (Qld.) amended to streamline procedures.
1974	Consumer Claims Tribunal (NSW) adopted neutral third party referees.
1975	*Family Law Act* (Cw.) provides for counselling and conferences.
1975	Establishment of Institute of Arbitrators in Canberra.
1977	*Anti-discrimination Act* (NSW) provides for conciliation.
1979	Land and Environment Court (NSW) provides for conferences.
1980	Community Justice Centres (NSW Pilot Project) Act (1979).
1983	*Community Justice Centres Act* (NSW) provides for community based services.
1984	Norwood (South Australia) Community Mediation Service established.
1985	Noble Park (Vic.) Family Mediation Centre established.
1985	Australian Commercial Dispute Centre (ACDC) established.
1987	Neighbourhood Mediation Centres established by Legal Aid Dept.(Vic.)
1988	ACT Conflict Resolution Service established.
1990	*Dispute Resolution Centres Act* proclaimed (Qld.) establishing Community Justice Program now known as Dispute Resolution Centres.
1991	*Courts (Mediation and Arbitration) Act* (Cth) introduces voluntary (since 1997 mandatory as well) mediation to the Federal Court
1991	Canberra Mediation Service established.
1993	Administrative Appeals Tribunal (Cth) introduced mediation conferences.
1994	*Farm Debt Mediation Act* (NSW) gives farmers the opportunity to go to mediation in enforcement actions under a farm mortgage.
1995	*Family Law Reform Act* (Cth) establishing centrality of "Primary Dispute Resolution."
1996	*Native Title Act* (Cth) amendments gave increased emphasis to mediation before the Native Title Tribunal.
1996	*Workplace Relations Act* (Cth) referred to mediation for the first time in Industrial disputes.

Like many broad based social movements ADR has not had many "Napoleons" to lead the way forward but it has had many "champions" who, through their dogged persistence and patience, have achieved remarkable things. Their efforts have been mostly unheralded or known only in their own State or locality. Often the advances have necessarily been incremental and therefore without the drama of "the big announcement" so beloved of our political figures. However, even a cursory review of the above list, which includes only the salient points, provides an insight into the remarkable range and depth of the services now provided.

For example, it is difficult to conceive of the progress and growth of the Community Justice Centres in New South Wales without the leadership provided by their first Director, Wendy Faulkes. Wendy was a Churchill Fellowship holder which had enabled her to study, in some depth, ADR developments in the United States. She indominatably and persistently maintained the integrity of a process of community mediation using sessional mediators in the face of some fierce resistance and pressures. Her long period in this pivotal position - she retired in 1999 - ensured stability and continuity. She managed a model, much copied, which pronounced and strictly implemented the impartiality of the process (and mediators) and the primacy of the parties' own stated interests. The strength of the model she adopted and made into a unique Australian amalgam of community mediation overlaid with government funding and administrative support was copied first in Victoria and then in Queensland.

One could also include the leadership and inspiration provided by Sir Laurence Street (Sydney) or John Steele (Adelaide) in the legal and commercial spheres or of the persistence of Dianna Pittock (Melbourne) in academia and that of Dale Bagshaw (Adelaide).

One of the largest, fastest growing and innovative areas of ADR practice is in the family law area. Whilst the *Family Law Act* has always emphasised the management of disputes by ADR processes, the 1995 *Family Law Reform Act* reaffirmed the centrality of these alternative processes by designating them "Primary Dispute Resolution". The related Family Law Regulations contain very comprehensive statutary mediation protocols dealing with such issues as accreditation, standards, duties and obligations. The funding of outsourced community based services by the Commonwealth based on this scheme (mainly to Relationships Australia and Centacare) has provided the impetus for the development of new and innovative processes, supervision and research. Much of this work was however pioneered by the work of the Noble Park Mediation Centre in Victoria.

Another, and more recent area of dynamic development, has been the industry wide adoption of ADR schemes based on legislative schemes.[4] These have included retail and residential leases, aged care services and farming relating to lender

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[4] See Altobelli, op.cit. p23.

practices. Other industries have enacted management systems that attempt to regulate their internal and external disputing. Examples include the Telecommunications Industry Ombudsman, the Life Insurance Complaints Scheme, The General Insurance Enquiries and Complaints Scheme, the Australian Banking Industry Ombudsman, the Franchising Industry Code, the Oil Code, the National Electricity code and the Credit Unions Dispute Resolution Service. The Department of Industry, Science and Tourism and the Australian Competition and Consumer Commission have even provided a set of benchmarks for such schemes.[5]

An analysis of these developments indicates three pivotal developments around which the modern ADR movement has grown. These were:

1. The establishment of the Family Law Court in 1975 with its intended emphasis upon informality, disputant empowerment and pre-trial processes such as counselling and conferences. Although criticised as not fulfiling its potential in these areas the Court was an early and powerful symbol which contributed significantly to the rise of the ADR movement.

2. The establishment of the Community Justice Centres in New South Wales pioneered the use of specially trained panels of community mediators to settle the largest areas of disputes in our community - household and neighbourhood disputes. This service was backed by legislative protections and administrative resources which enabled them to provide coordinated services across large sections of the community. This development was a catalyst that other States copied and which spurred other interest groups, principally the legal profession, to respond to. The real heroes of these services are the several thousand community mediators who have provided excellent and cost effective mediation services and just as importantly spread the idea throughout their communities.

3. In 1986 the Australian Commercial Disputes government Centre was established to manage major commercial disputes and to divert them from courts. It was established as a company with government assistance, (since phased out) and provided a model which the legal and business communities could relate to and foster as an approach to these types of conflict. It showed the potential of mediation, in particular, as a useful conflict management mechanism and modelled processes which could be readily adapted and understood by lawyers. This development, coupled with the foundation of such bodies as Lawyers Engaged in Alternative Dispute Resolution (LEADR) in the 1980's and the Institute of Arbitrators earlier in 1975 has provided a focal point upon which the legal profession has developed a creditable ADR response to the emerging movement and kept it at the forefront of developments.

[5] Dept. of Industry Science and Tourism, "Benchmarks for Industry-based Consumer Dispute Resolution Schemes" 1997; Aust. Competition and Consumer Commission, "Benchmarks for Dispute Avoidance and Resolution", 1997.

Why ADR?

The development of these new initiatives, during the last two decades, has occurred against a backdrop of widespread concern, both in the community and in the legal profession, about the Australian justice system.[6] Even such an august figure as the then Chief Justice of the High Court of Australia, Sir Gerard Brennan, has commented that "the system of administering justice is in crisis." Emphasising the depth of this concern he states:

> "Consider the present position. The courts are overburdened, litigation is financially beyond the reach of practically everybody but the affluent, the corporate or the legally-aided litigant; governments are anxious to restrict expenditure on legal aid and the administration of justice. It is not an overstatement to say that the system of administering justice is in crisis".[7]

In the same vein Justice Davies, of the Queensland Supreme Court, a frequent critic of the present system, complains that it is costly and slow but unfair as well because only certain privileged interests can regularly access it.[8]

These perceived problems within the justice system have been exacerbated by the complexity and number of cases coming before the courts and have been linked to the increasing level of government regulation designed to control business activity, protect consumer rights, citizens rights and to better manage the environment. The types of cases the courts have been called upon to adjudicate over the last half-century have moved from being predominantly business, property and criminal matters to a broad range including motor car and industrial accidents, product liability, family and a range of government regulatory actions.

The way in which these problems have and are being addressed is central to an understanding of the rise of ADR as a significant social movement. There are four broad trends. First, the last three decades have seen the development of a number of specialised courts and tribunals as both the means to provide inexpensive mechanisms for dispute resolution as well as to deal with an increasing volume of litigation in the community. These bodies have been prepared or required to use more flexible responses to dispute management. Second, a number of courts including the High Court and the Federal Courts have been made self governing making them responsible for their own workloads and resources. This has sensitised these bodies to the cost pressures not only upon themselves as organisations but to their clientele

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[6] One does not have to go far to find evidence for this. See for example: Senate Standing Committee 1993; Access to Justice Advisory Committee 1994; Australian Law Reform Commission 1995, 1997.

[7] Brennan, G Sir (1997) *Key Issues In Judical Adminstration* 6 *JJA* 138, at 139 (a revised version of a paper delivered to 15th Annual AIJA Conference, Wellington, New Zealand, 20 September 1996).

[8] Davies. G.L., The Honourable Justice (1997) *Fairness in a Predominantly Adversarial System* a paper delivered at the conference Beyond the Adversarial System, Brisbane July 10-11 1997.

who must use them. Third, case management has been embraced in varying degrees and forms by Australian courts often as a response to a crisis in their lists but also in a more general sense to deal with the apparent and perceived inadequacies in their processes. The progression of cases through the system is no longer, in many instances, the preserve only of the parties[9]. Finally, there has been the related use of various ADR processes so as to make their procedures more accountable, client centred and efficient.

ADR has emerged as a powerful idea not only because of the perceived inadequacies of existing systems. It provides a range of procedural advantages in its own right. These include:

- greater user choice;
- flexibility;
- the potential for fairer outcomes;
- a non-confrontational process;
- the ability of participants to be 'heard' and to participate in developing the outcomes; and
- user ownership and control of the process.

Greater disputant choice, control and participation within the framework of a more flexible process empowers many disputants, particularly members of minority groups.[10] Process flexibility can also lead to accommodation of non-legal principles which is often categorised as a distinct advantage of ADR. For example, issues that are considered legally or commercially irrelevant may be swept aside by professionals engaged to manage a matter but which are nevertheless very important to the other persons concerned. Flexibility of the process allows adaptation of the process to the needs and culture of the disputants. Participants can agree to apply their own values to the dispute. Potentially this flexibility can lead to greater freedom from any substantive systemic bias of the dominant culture.

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[9] Most of these developments have occurred in the civil sphere but there has also been interest within the criminal justice system as well. This can be seen through the development of conferencing processes, especially in the juvenile jurisdiction, which have emerged after some years of experimentation by practitioners. The expansion of this process throughout the criminal justice system (including pre-trial and corrections) can be anticipated.

[10] There is some evidence that people from non-English speaking backgrounds in the Australian Capital Territory are making use of ADR in greater numbers than demographic figures would suggest (Petrogiannis, 1994).

[11] A good example of this is the Alternative Dispute Resolution Branch's (Department of Justice and Attorney-General, Qld.) in applying process flexibility to Aboriginal and Torres Strait Islander Outreach Program where it employs innovative and culturally appropriate techniques to the management of conflict in indigenous communities. Another process adaption developed by the ADRB include the ABBMED (Abbreviated Mediation) Procedure in an attempt to meet the needs of small claims' disputants.

The ability to match processes to user needs is basic to the ADR approach.[11] Rather than simply applying the same process template over a range of disputes ADR practitioners have been innovative in developing a range of processes that meet the particular needs of disputants.

The non-confrontational nature of ADR process also leads to an important benefit for both private and commercial users: maintenance of on-going relationships between the parties.

The Australian Law Reform Commission reports a survey of company directors in Australia which found that they perceived that ownership and control of the conflict management process was lost during litigation and there was wide agreement that conflict could be better resolved using a mechanism other than litigation.[12] They felt that the important issues in disputes are often lost to procedural complexities, delay and cost. Also, the chance to keep intact pre-existing relationships and customers is considerably lessened in the traditional processes.

While these process factors may create the conditions for more durable outcomes, this still depends on one party not defaulting on the agreement. However, there is now some persuasive research which has concluded that mediation has a comparatively high rate of compliance.[13]

There are substantive costs savings to parties who use ADR processes.[14] One of the major benefits of the new processes is the increased capacity to deal with cases for the many clients who appear to have reasonable claims but who are unable to afford legal proceedings and who do not qualify for legal aid.[15]

As the National Alternative Dispute Resolution Advisory Committee (NADRAC), an advisory panel to the Commonwealth Attorney-General, points out, ADR is only cheaper and quicker (within the court context) if it is successful.[16] However, even if

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[12] ALRC, op.cit., 1997.

[13] Australian Law Reform Commission (1998b) *Issues Paper No. 25 Review Of The Adversarial System Of Litigation: ADR - Its Role In Federal Dispute Resolution*, June, Sydney

[14] An evaluation of a mediation trial in the Adelaide Civil Registry in which lawyer interviewees contended that while in small claims there were no significant cost savings, clients saved substantial costs where settlement had been achieved through mediation in general claims (Cannon, 1997). An evaluation of the ADR Centre of the Ontario Court (General Division) in which 70 per cent of lawyers whose cases settled at the Centre responded that cases would otherwise have terminated at a greater cost to the client. A smaller number, but still a majority of lawyers whose cases did not settle at the Centre, responded that the referral nonetheless resulted in a saving on final costs: See Macfarlane, J. (1995) *Court-Based Mediation Of Civil Cases: An Evaluation Of The Ontario Court* (General Division) ADR Centre.

[15] This suggested by the ALRC, op. cit. 1998b; Black, M.E.J. The Honourable Chief Justice of the Federal Court of Australia (1995) *The Courts Tribunals And A Black*, M.E.J. *DR* The Fourth International Conference in Australasia on Alternative Dispute Resolution, 1995.

[16] Op.cit. 1997.

[17] Black, op.cit. 1995.

ADR is not successful in resolving the dispute completely, it may narrow the issues, reduce the need for interlocutory hearings or pre-trial processes, or contribute to shorter hearings, thus indirectly reducing costs. For example, Black reports that 54 per cent of ADR users thought that mediation brought settlement forward even though they also indicated the matter would probably have settled anyway.[17]

Future Issues

The ADR movement has begun to have a major impact on the way in which individuals, organisations and communities perceive and manage conflict. Despite the fact that many of its core processes have been practiced by communities since time immemorial, the ADR movement, in Australia and other Western countries, is still in its beginning stages. Theory and practice, in most instances, are still being trialled and advanced in incremental and ad hoc ways as the field expands and embraces the new approaches and techniques. There are a number of issues which can be perceived as providing the source for some interesting and further debate. These are outlined below.

Many disputants still prefer the relative legal safety and rigor of the legal system. For example, a survey of small business commissioned by the Commonwealth Attorney-General's Department found that only 5% of this sectors disputes were managed by mediation or like processes.[18]

Critics sometimes argue that the new processes fail to provide the necessary safeguards. They argue that the closed and confidential nature of many facilitative dispute resolution processes is contrary to notions of transparency and fairness.[19] Clients may waive their legal rights often simply to end the fighting.[20] To counter this Rogers suggests that it is important that people are made aware of their legal rights before they come to mediation and encourages them to seek legal advice before entering an agreement.[21]

The review of the Victoria based Portals Pilot Program, a program set up to divert cases from court, showed that despite the availability of the free mediation service offered by the Dispute Settlement Centre of Victoria, in 93 per cent of cases, the litigants and their legal advisers chose Pre-Hearing Conferences where in some cases the parties may have incurred up to $590 in legal fees.[22] Disputants still do not go to mediations necessarily by first choice which suggests that by the time a conflict is

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[18] "Survey of Small Business Attitudes and Experience in disputes and their Resolution: Results, Implications and Directions", 1999, par. 40-44.

[19] See ALRC 1998b, op.cit.

[20] Ibid. 35.

[21] Rogers, B. (1994) *Lawyers and ADR: A Clash of Cultures?*, Queensland ADR Review, November.

[22] See Street, L. The Honourable Sir Laurence Street AC KCMG (1997) *Mediation and Judical Institution*, The Australian Law Journal, October.

[23] See Cannon, op. cit., 1997.

serious enough to warrant outside intervention the party wants vindication and/or a third party who will uncover the 'truth' and declare the other party wrong.

Those who decline ADR processes do so because they believe they are entitled to succeed in full and see no reason to compromise, or their assessment was that the other side was unreasonable, obsessive, or it had become a matter of principle. The remainder said they were willing to mediate but the other side was not.[23]

The ALRC contends that clients depend on lawyers for information and advice on dispute management options and they may not be informed of all the alternatives and be unable to counter a lawyer's preference for litigation.[24] Unfortunately, many lawyers have a limited familiarity with or understanding of other dispute management processes. Until quite recently, Courts were seen as the premier forum for hearing and determining disputes. While there is now greater awareness of alternatives, some lawyers are resistant to change or consider mediation and other ADR processes as inferior to judicial dispute resolution.[25] This scepticism may also extend to the judiciary.

For example, Zariski contends that "... some judges remain ambivalent to what they see as risky and unproved alternatives to traditional litigation" Many lawyers may distrust or lack respect for resolution methods which they see as informal, unfettered by legal norms and which lack coercive power. They may consider ADR to be 'second class justice'. Lurking behind these attitudes may well be lawyers' fear of loss of power, prestige and income to other organised practitioners.[26]

On the positive side NADRAC reports that increasingly, particularly in the commercial area, ADR is seen as part of an overall dispute management process in which disputes are regarded as constructive events. In addition the ALRC and others are now actively speculating that a number of studies into user satisfaction with ADR processes suggest that community expectations of a 'day in court' as the way to resolve legal disputes are changing.[27]

A related source of tension is whether user satisfaction should be a concern. As Sourdin and Davies note, on the level of rule making and determination, the litigation system is not about satisfying disputants, while on the dispute resolution level, the interests and satisfaction of the parties are important.[28] With the trend from rights-based to interest-based dispute resolution, there is a dilemma arising in many situations where the interests of the individual are not necessarily the interests of the community. Underlying this concern is that if important legal principles and practical

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[24] ALRC, op.cit., 1997

[25] Ibid.

[26] Zarinsky, op cit., 2-3.

[27] See for example: A Parker, S. (1998) *Courts and the Public*, Australian Institute of Judicial Administration Incorporated, Carlton South,Victoria; ALRC, op.cit., 1998b.

[28] Sourdin, T and Davies, T. (1997) *Educating Judges about ADR*, Journal of Judicial Administration, Vol 7, August No.1.

issues are not brought to courts Judges will be deprived of the opportunity to keep up to date with the needs of society.

Further, many of the critics of ADR argue that despite the problems with traditional processes we need to rely upon these relatively formal systems because they reflect our present societal values. The traditional mediatory roles which ADR advocates extol and which were centred in church, family and high status individuals have persisted in only a few close knit homogenous communities. In Australia, as represented in its huge urban sprawl where people value spatial and workplace mobility, these informal processes have broken down. As a society we therefore face a dilemma of a remote and creaking legal system which few of us can afford to use but where the traditional alternatives are also largely gone. Increasingly we have had to rely upon the age old tactic of "lumping it" i.e. putting up with or walking away from the problem.

A number of authors note the need for more research and evaluation of ADR and its processes, as well as comparative evaluation of the outcomes of ADR with those of traditional litigation. The limited data evaluating either litigation or ADR processes is undoubtedly related to the difficulty of measuring many of the benefits of ADR and litigation.[29]

There are significant methodological difficulties in comparing ADR with traditional litigation. One problem, difficult but not impossible to overcome, in comparing costs is that any comparison with the cost of cases that go to trial will be flawed because many civil cases settle out of court. A conceptual problem is that some of the other possible benefits of ADR, such as community development, are difficult to measure.[30]

There are a number of other questions which will increasingly concern ADR watchers. The first is to do with the continued level of support to be provided by government to these services. Whilst the community based services have provided much of the inspiration and drive for the development of services there is increasing evidence that they fall low on the priority list for adequate funding. The ability to maintain them at the level they have been operating is very suspect in the face of continued increases in demand. The likely impact this will have on the field is hard to determine.

Another issue is the confusion which exists within the field itself and without as to the definition and quality of various services provided. NADRAC is providing leadership in this area with the publication and dissemination of various guides but

[29] See for example: ALRC, 1997, op.cit.; ALRC, 1996, op.cit.
[30] Lewis, S. and Condliffe, P., (1999) *Slaying Dragons: Evaluating Mediator Services*, Australasian Dispute Resolution Journal, V10, No 2, 131.

there is evidence that, for example, mediation practiced in one sphere may be quite dissimilar to mediation practiced in another. This, in itself, is not necessarily bad but it can lead to confusion for the consumers of such services and to possible abuse.

Another problem area is the development of acceptable training, accreditation and practice standards which do vary enormously across the field. Again, NADRAC is taking the lead in this and is soon to publish a discussion paper relating to these issues. This is also linked to the inability of the field to develop a key industry or peak body able to represent the various professional elements. Indeed there are some who would argue, with some justification, that the field does not require this and is better off without such leadership or regulation. This debate will rage for some time.

Conclusion

As community awareness grows of other ways of resolving disputes, which can facilitate more satisfactory outcomes and processes and which are less costly both financially and non-financially, the demand for ADR services will continue to increase. In many ways the ADR movement reflects both the rise of consumer and rights consciousness as well as the questioning of the traditional competitive forums for managing conflict. Paradoxically, however, it carries the traditions of community folkways that we have never lost and which we recognise in the school meeting, the Church hall and the local neighbourhood even now.