

5 November 2007

Mr Johan Scheffer MLC  
Chair, Law Reform Committee  
Parliament House  
Spring St  
EAST MELBOURNE 3002

## Submission re inquiry into Alternative Dispute Resolution

Dear Mr Scheffer,

Thank you for the opportunity to respond to the Discussion Paper on ADR. I wish to address one issue only, and that is the adequacy of training in order to prepare practitioners for the role of mediator.

For more than a decade I have been a private practitioner in mediation and facilitation, and an educator in conflict resolution at the University of Melbourne. In a private capacity, I have also trained numerous organisations in the skills of conflict resolution, and, specifically, mediation. The last five years have seen me engaged in researching for my PhD the topic, 'The Resources on which Mediators Rely'. The topic emerged from my own experience of a complex and demanding role, and from discussions with colleagues over a period of 12 years.

My research has confirmed my initial belief about the role, but it has gone beyond embryonic thoughts. I now have the evidence to show that the role is not only complex, but, in many respects, ambiguous, with the potential to generate role pressure and role strain. The competencies demanded of its practitioners are many and varied, and I have begun to publish papers on these.

For this reason, I believe that the time given currently to training people (usually 30-40 hours) is inadequate, even though I have been guilty of attempting that task myself in the past. Training needs to cover:

- a theory base with which practitioners must be familiar. Theories include such factors as understanding the causes of emotion, motivation, and understanding what happens in change processes.
- social and emotional competencies which the practitioner requires to manage the emotional states of the parties as well as their own
- the political strategies which are required to maintain control, but also encourage self-determination in the parties, and which address issues of power
- extensive practice in a variety of situations and mediation domains.

Thorough training is particularly demanded by the new requirements of the Family Law Act.

Further, many 'trainers', although experienced in mediation, are not qualified educators who are familiar with the challenges of adult learning. Their teaching strategies sometimes leave much to be desired.

The research evidence I have gathered suggests that this demanding task should be undertaken by qualified educators who are also practitioners, and who operate within a University setting, so that the appropriate theory base is not only taught, but subject to refinement through ongoing research activity.

I appreciate very much the chance to submit my concerns, and wish you well as you and the Committee continue your vital work.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Marshall', written in a cursive style.

Patricia Marshall MA, DipEd, DipHR.