

Focus on solicitor-mediators

Committee aims to lift profile

The Queensland Law Society Alternative Dispute Resolution (ADR) Committee has launched a project to promote the use of solicitor-mediators. Report by **Toby Boys**.



The QLS Alternative Dispute Resolution (ADR) Committee consists of practitioners from a range of professional backgrounds and expertise, from solicitors in large commercial firms to sole practitioners and academics.

We have different interests in terms of the areas of law and industries in which we practise. We often talk about mediation, but our interest in ADR also encompasses processes such as arbitration, expert determination and collaborative law, as well as the concepts of conflict and dispute management more broadly.

But what we share is a genuine interest in ADR and a desire to determine how ADR processes can best be used to prevent and resolve conflict. We are also looking to promote the use of ADR and ADR practitioners amongst QLS members.

To achieve this, we try to identify an issue or topic that can be considered as a 'project', either by the committee members as a whole or a sub-committee made up of members with a special interest in that subject matter.

Promoting the use of solicitor-mediators

One project the committee has resolved to undertake is to investigate the extent to which solicitor-mediators are being engaged by parties and the steps that can be taken to promote the use of solicitor-mediators amongst QLS members and their clients.

The project is born out of anecdotes that parties are more likely to engage barrister-mediators, particularly in commercial and personal injuries matters. But are the anecdotes correct and, if they are correct, why is this happening? Who is making the choice about the appointment of mediators, and what are the factors they take into account?

The project is also premised on the assumption that solicitor-mediators provide a good service at a fair price and are, therefore, worthy of further promotion. Of course, that may be a fair assumption to make, considering that there are many talented solicitors who have vast experience in acting as mediators and assisting their clients in mediated matters.

Other benefits of solicitor-mediators may include their experience in working closely with clients, gaining a good understanding of the personal, commercial and strategic drivers at play; being more attuned to the practical outcomes that may be available to the parties and having more experience in estimating the true costs of litigation.

But we have to accept that there may be a perception among practitioners (whether justified or not) that solicitors are not as good or well-equipped as our barrister colleagues to provide the type or quality of mediation service expected by practitioners or their clients. If that is correct, then we need to know what those expectations are, and whether anything can be done by solicitor-mediators to meet those expectations and change the perception.

So, how are we going to conduct our investigation?

Firstly, it must be said that we are not proposing to conduct the type of research that may be expected from a university or other research group – we simply do not have the means or expertise to do so.

However, as a starting point, we are hosting a number of meetings with representatives of as many legal firms as we can manage, in order to discuss and obtain their opinion about this topic. The matters we intend to discuss include:

- Who makes the recommendation and decision on which mediator to appoint?
- How often and for what reasons do practitioners recommend or choose a solicitor-mediator?
- What do practitioners look for in a mediator?
- What do practitioners see as the advantages and disadvantages of appointing a solicitor-mediator?

We will also be inviting practitioners to complete a short online survey with the aim of obtaining quantitative data on the extent of their use of solicitor-mediators, with the more qualitative data coming from the meetings mentioned above.

Our aim is to then take all of this data and consider how we can help improve the ADR services provided by solicitor-mediators to meet – or better still, exceed – the expectations of practitioners and their clients.

Of course, a study like this can only be possible with the input of practitioners who attend the meetings and complete the survey. All assistance is welcome, so please feel free to contact the QLS ADR Committee (email G.VanBaarle@qls.com.au) if you have any questions or wish to participate in the study.

Toby Boys is a partner at Holding Redlich Lawyers, a QLS accredited specialist (commercial litigation), a nationally accredited mediator and member of the ADR committee.