Improving Court Efficiency through Alternate Dispute Resolutions (ADR)

An increasing emphasis on mandatory Alternative Dispute Resolution (ADR) reduces the number of disputes entering the court and tribunal systems.

ADR, particularly mediation, has been integrated into court and tribunal processes in various ways. Mediation as an early or pre-action requirement has been introduced in many jurisdictions, including Australia and the UK, as a way to encourage timeliness and efficiency in the civil justice system. As a result, those disputes that do end up in the litigation system form a very small minority of the overall number of disputes in society. Once within the litigation system, traditional trial processes account for the determination of an even smaller proportion of disputes.

The Evaluation of Pre-Action Processes in South Australia Project, was designed to analyse the effectiveness of the 2014 Pre-Action Protocols and provide feedback to the South Australian Judiciary and other interested stakeholders.

The problem

Research suggests that most civil disputes are resolved before entry into any court or tribunal system. Civil justice reform increasingly focuses on the early use of facilitated negotiation through forms of ADR as a strategy to keep disputes out of the legal system. However, there are differing views relating to the timing, value and efficiency of ADR interventions. Some consider using ADR processes such as mediation at a pre-action stage of limited utility, as evidence has not yet been gathered or exchanged. Others consider that early ADR can be of assistance, even if settlement does not directly result, because it may narrow the factual and legal issues in dispute. Mandatory ADR requirements, pre-action or otherwise, have often been regarded as controversial by some lawyers or judges because of concerns that access to justice will be threatened, by increasing the levels of cost and delay experienced by litigants, particularly when matters do not resolve or where significant costs are 'front-loaded.'

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Research Methodologies

Professor Sourdin co-authored 'The Evaluation of Specific Pre-Action Processes in South Australia' in 2018. The Evaluation Project applied a range of methodologies at different stages. The initial stage of research was funded by the Supreme Court of South Australia (SA) and involved; the development of a literature review, preliminary data collection, analysis and reporting. Qualitative and quantitative data was collected using a range of research methods and from a variety of sources. The key findings were thematically grouped covering; cost, timelines, fairness and justice, effectiveness and attitudes and behaviour. The Review supported retaining the existing structure for pre-action protocols, and strongly recommended strengthening the protocols to include pre-action mediation. The Project aimed to:

- Establish orderly procedures for the just resolution of civil disputes
- To facilitate and encourage the resolution of civil disputes by agreement between parties
- To avoid unnecessary delay in the resolution of civil disputes
- To promote efficiency in dispute resolution and minimise the cost of civil litigation

Research impact

In 2020, the South Australian Civil Court Rules, including pre-action protocol requirements were revised and reflected outcomes of the Review conducted by Professor Sourdin. The 2020 Revision requires parties and solicitors in any civil proceeding to engage in a pre-action meeting with specific outcomes required, such as, attempted settlement or the mapping out of the evidence and other material required for trial. Further, the revised rules provide robust procedures requiring judicial officers to review compliance with pre-action steps, and to award costs penalties for non-compliance. These reforms are valuable because they require in person communication in a negotiation setting and set consequences for failure to comply. Professor Sourdins' research has contributed to reform in South Australia, supporting more timely and efficient dispute resolution processes that aim to minimise the cost associated with civil litigation.

Milestones and Research Impact

2012: Journal article titled 'Not teaching ADR in Law Schools? Implications for Law students, Clients and the ADR field' *Australasian Dispute Resolution Journal*

2012: Book titled 'Exploring Civil Pre Action Requirements: Resolving Disputes outside Courts' *Australasian Dispute Resolution Service*

2012: Book titled 'Australasian Dispute Resolution Service' *Thomson Reuters Australia*

2012: Journal article titled 'Teaching Alternative Dispute Resolution (ADR) in Law Schools: Developing the Law Curriculum to meet the needs of the modern Legal Practitioner' *Australasian Dispute Resolution Journal*

2012: Journal article titled 'Decision-making in ADR: Science, sense and sensibility' *The Arbitrator and Mediator*

2013: Journal article titled 'Innovation and Alternative Dispute Resolution' *The Arbitrator and Mediator*

2013: Journal article titled 'Resolving Disputes without Courts?' *The Arbitrator and Mediator*

2013: Journal article titled 'The Role of the Court in Alternative Dispute Resolution' *Asian Journal on Mediation*

2014: Journal article titled 'Using Alternative Dispute Resolution to save time' *The Arbitrator and Mediator*

2014: Journal article titled 'Good Faith in Participation in Mediation: An Australian Perspective' *ACResolution*

2014: Journal article titled 'International Dispatch: ADR trends Down Under' *Dispute Resolution Magazine*

2014: Journal article titled 'Alternative Dispute Resolution (ADR) principles: From negotiation to Mediation' *Nagoya University Journal of Law and Politics*

2015: Journal article titled 'Evaluating Alternative Dispute Resolution (ADR) in Disputes about Taxation' *The Arbitrator and Mediator*

2015: Evaluating Alternative Dispute Resolution in Taxation Disputes – Final Report.

2017: Journal article titled 'Consumer Vulnerability and Complaint handling: Challenges, opportunities and Dispute System Design' *International Journal of Consumer Studies*

2018: Journal article titled 'The Mediating Brain' *Australasian Dispute Resolution Journal*

2018: The Evaluation of Specific Pre-Action Processes in South Australia Review

2019: Journal article titled 'Vulnerability and Dispute Resolution in the Banking and Finance Sector' *Social Business*

2020: Book titled 'Alternative Dispute Resolution' *Thomson Reuters Australia*

2021: Journal article titled 'Is the Tail Wagging the Dog? Finding a Place for ADR in Pre-Action Processes' *Adelaide Law Review*

To learn more about this research program:
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