

DEPARTMENT OF
JUSTICE
VICTORIA

DISPUTE SETTLEMENT CENTRE OF VICTORIA



INFORMATION KIT

Table of Contents

1. ABOUT THE DISPUTE SETTLEMENT CENTRE OF VICTORIA	1
1.1 How And Why We Are Here Today	1
The History of the Centre	1
1.2 The Role of the Dispute Settlement Centre of Victoria	3
1.3 Profile of the Dispute Settlement Centre of Victoria	4
1.4 The Mediators	4
1.5 Confidentiality	5
1.6 The Types of Disputes we deal with	6
1.6.1 Generalist service	6
1.6.2 Court-annexed mediations	6
1.7 The services provided by the DSCV	7
1.7.1 Dispute Advisory Service	7
1.7.2 Mediation Service	8
1.7.3 Facilitation:	8
1.7.4 Community Education:	8
2. APPROPRIATE DISPUTE RESOLUTION (ADR) PROCESSES	9
2.1 Definitions of key ADR processes	9
3. MEDIATION	10
3.1 Mediation - General Principles	10
3.1.1 When Is Mediation Appropriate	11
3.2 The Mediation Process	12
3.2.1 Pre-Mediation Preparation (Intake)	12
3.2.2 The Mediation Session	15
4. CONFLICT AND CONFLICT RESOLUTION	17
4.1 Conflict Resolution	17
4.2 Conflict Resolution Styles	18
4.2.1 Hard Negotiation	18
4.2.2 Soft Negotiation	18
4.2.3 Positional Bargaining	18
4.2.4 Principled or Interest Based Negotiation	19
5. SOME STATISTICS:	21
6. A CASE STUDY	23

INTRODUCTION

Welcome to the Dispute Settlement Centre of Victoria Information Kit.

This kit is designed to provide you with information about the Dispute Settlement Centre of Victoria, the service we provide, the types of disputes we deal with and how we assist people to resolve disputes. It also contains a brief description of appropriate dispute resolution (ADR) processes and conflict resolution styles. This table of contents summary shows which chapters cover which topics.

The DSCV is not an educational agency and does not develop educational resources. The information in this kit can be used together with the 'In dispute' pages on our Internet site to provide a rich source of information.

Disclaimer

This information is of a general nature only and not intended to be a substitute for independent legal or other professional advice.

THE DISPUTE SETTLEMENT CENTRE OF VICTORIA (THE DSCV)

1. About the Dispute Settlement Centre of Victoria

1.1 How And Why We Are Here Today

The History of the Centre

For most of the twentieth century, Australian people have relied heavily on the legal and judicial system (i.e. Litigation) as a means of resolving disputes between two or more parties.

BUT -

- It is expensive. Often people cannot afford a solicitor and/or court costs, so they do nothing about the dispute. This often means that the dispute gets worse.
- Sometimes the dispute does not seem serious enough to worry about, but later it causes greater problems.
- Often when disputes are decided by a judge or an arbitrator, both parties involved in the disputes are unhappy with the decision and this can lead to increased tension and a worsening situation between parties.
- The legal and court system can be inflexible and the solutions provided are limited. The courts only look at the remedies the parties have requested and often there is no suitable remedy available if a disputant wants a non -monetary solution.
- The reliance of the public on litigation has resulted in delays before an outcome is reached.

However, litigation is only one of a very wide range of processes which can be used to resolve disputes. There are a range of dispute resolution methods available that are known collectively as Appropriate Dispute Resolution processes (ADR for short). The key ADR processes are Mediation, Conciliation and Arbitration.¹

In the mid 1980's, ADR was already being encouraged in family disputes, (including divorce and custody settlements), mediation in the construction industry had long been used in industrial disputes, but was not generally available to resolve the broad range of 'neighbourhood' type disputes encountered by the Victorian public.

As a result, the Legal Aid Commission of Victoria established a Dispute Resolution Project Committee to investigate the need for alternative means of solving the large numbers of disputes that were unnecessarily resulting in litigation, or had no method of resolution as the subject matter of the dispute was unsuitable for litigation.

1987: The then Legal Aid Commission funded four three-year pilot projects in Victoria, establishing Centres to provide mediation as an alternative to the court system to resolve disputes.

¹ Definitions of these processes can be found in the section headed Appropriate Dispute Resolution (ADR) processes.

The original aim of the Centres was to provide a community-based alternative for resolving disputes between neighbours that was accessible and free and which promoted co-operative problem solving. Where possible the centres assisted clients to find their own solutions.

1989: The then State Attorney General's Department assumed responsibility for the program and funded an additional three centres, funding all seven centres for an additional three years.

1993: The Dispute Settlement Centre Program was restructured to a centralised administration which now handles disputes from throughout the whole State of Victoria. This restructure increased the availability of mediation. Whereas previously mediation was available only in the metropolitan and three rural regions, the restructure allowed free public access to dispute resolution services at convenient locations around the State.

1995: DSCV worked with the Melbourne Magistrates' Court as part of the Portals program to divert civil cases from pre-hearing to mediation.

2000: DSCV established an Aboriginal Liaison officer and a panel of twenty seven indigenous mediators across Victoria as part of the Department of Justices Aboriginal Justice Agreement. The project has been running for over two years and has helped increase Victoria's aboriginal community's capacity to manage conflict through training, awareness of options and accessibility of mediation.

2001: Services to Rural & Regional Victoria improved with the establishment of the RDSC (Rural Dispute Settlement Centre) initiative. Mediation panels in rural Victoria were bolstered with the addition of twenty new mediators from farming backgrounds to assist in the mediation of neighbourhood disputes relating to farming activities. A joint initiative of the Department of Justice and the Department of Natural Resources (now the Department of Primary Industry) this service offers a practical solution for people facing conflict over changing land-use, without having to resort to litigation.

2002: Further projects have been started to increase accessibility of ADR services to the community. Packaged under the title of "Strengthening ADR", DSCV facilitators now assist local government to run public meetings on issues of community concern, particularly in the planning arena. Mediation is now promoted through the Magistrate's Court as an alternative to using intervention orders to resolve neighbourhood disputes and

2003/04: DSCV has trained culturally specific mediators to reflect the Culturally and Linguistically Diverse (CALD) nature of our community. The first phase of on-line dispute resolution commenced in Victoria with the launch of 'Disputeinfo' (www.justice.vic.gov.au/disputeinfo) – an interactive, self help guide to resolving common conflict situations. DSCV will continue to be involved in research for on-line mediation alternatives.

2006/09: Under the Department of Justices' 'Gateways to Justice' initiatives DSCV commences two community mediation pilot projects, one based the Neighbourhood Justice Centre in Collingwood (servicing residents and workers in the City of Yarra) and one based at the Geelong Magistrates' Court, (servicing residents and workers in the City of Greater Geelong), with outreach services for Corio Norlane.

The establishment of these two initiatives recognises:

- the continuing over-representation of vulnerable people in the justice system
- the need to deal more effectively with complex cases involving multiple interlinked problems
- that dealing with justice at a local level through the formation of partnerships and encouraging local ownership can contribute to the identification and resolution of community problems with effective local solutions
- the importance of the community being engaged with, and supportive of the justice system leading to an increase in the justice system

2007/09: DSCV also enters into a pilot with the Magistrates' Court of Victoria to provide mediation services at the Broadmeadows Magistrates' Court from 1 October 2007 in relation to the following civil disputes –

- all defended civil claims where the amount sought is less than \$10,000;
- all disputes under the Associations Incorporation Act 1981 irrespective of the value or the nature of the relief sought provided that each is within the jurisdiction of the Court; and
- pre-issue mediation for all disputes, irrespective of amount, that is within the jurisdiction of the Court. That is, mediation of disputes referred by the parties prior to the issue of any form of originating process in the Court.

1.2 The Role of the Dispute Settlement Centre of Victoria

Our role is:

- to provide an informal, impartial, accessible, low cost dispute resolution service to all communities in Victoria
- to assist people to be responsible for the resolution and outcome of their own disputes
- to provide an alternative to legal action
- to conduct public education and information sessions about the program and about appropriate dispute resolution practices

Who uses the service

The people who use DSCV services are from all age groups. They are mostly English speaking, although 24% of all mediation clients were born outside Australia, and 21% had a first language other than English. Professional interpreters are used in around 13% of mediations.

The occupations of the clients who use the service are as varied as their ages and cover a broad range including students, retired, pensioners, semi-skilled and professional people.

The choice to mediate is not confined to any one particular section of the community. Mediation is widely accepted as an appropriate way of resolving disputes within the community.

1.3 Profile of the Dispute Settlement Centre of Victoria

The Dispute Settlement Centre of Victoria is a program of the Department of Justice, Victoria.

Staff

The Centre employs approximately 180 sessional mediators who are located in various cities and towns throughout Victoria and mediate in their local area as well as twenty six full-time employees, who manage, train and run the finance and administration of the centre. More than half the full time staff are Dispute Assessment Officers, who are employed to provide advice and assistance on resolving disputes, assessing if cases are suitable for mediation and then making all arrangements for mediation, including a thorough preparation for the parties.

Mediation Rooms

The Centre has three purpose built mediation rooms in our offices in Lonsdale Street, Melbourne. These rooms are also available for hire by private mediators.

In outer suburban areas and rural regions we use a range of community venues to hold the mediations.

Locations

DSCV is in the process of extending its services along the Department of Justice regional model. DSCV expects to have an office in all five rural regions by 2011.

DSCV Head Office: 4/456 Lonsdale Street, Melbourne.

DSC Gippsland Morwell Justice Service Centre, 25 Ann St, Morwell

DSC Corio Geelong Magistrate's Court, Railway Terrace Geelong

DSC NJC Neighbourhood Justice Centre, (NJC), Wellington St,
Collingwood

Advice and assistance is available through the telephone advisory service to anyone in Victoria, and there is a free call number for country callers. Dispute Assessment Officers regularly visit the major metropolitan courts.

Mediations can be held in Melbourne, its suburbs and in rural and country areas.

1.4 The Mediators

Who are the mediators?

The Dispute Settlement Centre of Victoria employs a panel of approximately 180 highly skilled and trained mediators on a sessional basis. They come from a wide range of backgrounds, qualifications, experience and expertise. Mediators are selected primarily for their mediation skills and do not give advice or make recommendations to the parties, regardless of their qualifications, knowledge or particular field of expertise.

Mediators are placed on the panel after a stringent selection process and successfully completing the 60 hour DSCV training course.

Specialist and ongoing training is provided to the mediators to maintain their skills, and enhance their experience, knowledge and understanding.

Mediators are located in various parts of Victoria. They mediate in their local area and also travel to other areas to mediate. All arrangements to book the mediators and the venues are made through our office in Melbourne.

1.5 Confidentiality

All contact with our service is confidential and is covered by Sections 21L-N of the Evidence Act 1958.

Section 21L states “*Evidence of anything said or of any admission or agreement made at, or of any document prepared for the purpose of, a conference with a mediator in connection with a dispute settlement centre is not admissible in any Court or legal proceeding, except with the consent of all persons who were present at that conference*”.

This does not prevent people who attended a mediation from telling other people or their families what happened during the session. However it is part of the “good faith” nature of discussions that everyone respects the confidentiality of the session

Section 21M prevents the disclosure of any information provided to our staff and Mediators. They are not allowed to publish or communicate anything shown or told to them except where the person who provided that information:

- a) has provided their consent; or
- b) has not been identified, and the information is only used to evaluate our service.

We are allowed to disclose information where we reasonably consider it necessary to prevent or minimise injury or damage to any person or property.

Note: This information is an extract and interpretation of Section 21L and M of the Evidence Act 1958. For a complete copy of this section please refer to the Act itself. A copy is available as a downloadable document in the Student Information Kit on this site.

1.6 The Types of Disputes we deal with

Originally the Neighbourhood Mediation Centres were established to assist with disputes involving neighbours, clubs and organisations, work colleagues and management and other disputes within the community. Since that time, however, the program has broadened the range of disputes that are mediated.

1.6.1 Generalist service

We deal with a wide range of disputes involving:

trees, fences, noise, behaviour of people and animals, workplace disputes, business disputes, civil/court matters, environmental and planning disputes, public policy facilitations, shared households, clubs and organisations, some family matters, cultural differences, wills, relationships, division of responsibilities, body corporate and many other disputes. We can assist individuals, small groups and large groups.

We do not generally deal with Family Law disputes and are not an accredited Family Law Mediation Service.

We have been involved in a number of pilot programs with the Magistrates' Court, most recently focussing on intervention order applications between neighbours, which could be more suitably resolved through mediation.

1.6.2 Court-annexed mediations

Mediation is being used increasingly as a step within Court processes to resolve disputes. Even after legal proceedings have commenced many people use mediation to avoid the expense, delays and uncertainty of outcome of a Court hearing before a Magistrate or Judge.

Cases can come to mediation from Court in a number of different ways. Some Courts have a formal process of referring or ordering cases to mediation, some Courts give the parties the option of choosing mediation. Even where there is no formal process in place, if the people in dispute agree they would like to use mediation they can organise it themselves and then advise the Court if the matter is settled.

All of these methods can be used to refer cases to the Dispute Settlement Centre of Victoria.

A new pilot program initiated by the Chief Magistrate has been introduced in the Broadmeadows Magistrates' Court that refers all Defended Civil claims under \$40,000 to compulsory mediation. This is in accordance with Practice Direction No.1 of 2009 (Mediation Pilot Program) of the Magistrates' Court of Victoria.

In 2002, DSCV and the Magistrates' Court implemented some referral protocols to assess suitable intervention order applications for mediation. These cases still had to fulfil usual DSCV requirements for suitability. The parties has to enter into mediation voluntarily and with no fear of violence. Where possible, a DSCV 'mediation liaison officer' would interview clients who had applied for intervention orders and were

interested in the diversion option, to ensure the service was appropriate. This project is currently under evaluation.

1.7 The services provided by the DSCV

The services provided by the DSCV fall into three categories:

- Dispute Advisory Service and referral to other agencies
- Mediation
- Facilitation
- Community education

1.7.1 Dispute Advisory Service

The DSCV receives thousands of calls a year from the public wanting assistance with their disputes. People contact us by phone to discuss how to resolve a dispute or to find out ways of approaching a situation in such a way that a dispute does not arise.

- **We listen to what the dispute is and assess how we can help**

When a person calls the centre a Dispute Assessment Officer (DAO) listens to a brief description of the problem and assesses whether the centre can help or whether there is a more appropriate specialist organisation or authority that could be of assistance.

There are some matters that the centre will not be able to handle as mediation is not an appropriate method to resolve the dispute. For instance, if there is current violence in a relationship there is not only a safety risk but the person who is the victim of the violence or in fear of violence is not in a position to negotiate fairly and equally.

If there is a specialist service available to handle a particular dispute we will refer the client on to the appropriate agency. For example, separating couples may be referred to use a mediation service accredited under the Family Law Act because they may wish to have their agreement registered at the Family Court as part of their divorce proceedings.

- **We provide helpful information and advice**

We discuss self-help options to enable the caller to resolve the dispute themselves, including:

- ways of approaching the other person or organisation involved to discuss the problem,
- what has already been tried and what the response was,
- options and solutions that hadn't been thought of or tried,
- the advantages and disadvantages of various approaches and possible outcomes
- what they would like to see happen and how they might get the best result.

We also send out any relevant printed information that we have on the topic and suggest other organisations that might also be helpful.

We do not provide legal advice but we can put people in touch with organisations that provide free or low cost legal advice. It is important that people know their rights

and responsibilities in relation to the problem they are having so that they can choose the best method of settling the matter.

By providing information, referrals and advice we assist people to resolve their dispute themselves faster, at a lower cost, in a more satisfactory and lasting way and without involving other people or authorities unnecessarily.

All calls to our service are confidential.

For many people, the information and advice provided by the Dispute Advisory Service gives them enough information to sort things out themselves or to locate the appropriate agency to help them.

When these approaches are not possible or have not worked, or people feel that a more structured process would be more successful we offer to arrange a mediation session.

1.7.2 Mediation Service

In addition to providing self-help information and advice to assist people to resolve their disputes themselves we also provide a professional mediation service.

There are two stages to a mediation:

1. The pre-mediation preparation or 'intake process, during which the dispute is assessed for suitability and the people involved prepare for the meeting, and
2. the actual mediation session which is an informal, structured meeting at which the people involved in the dispute discuss the dispute with the help of the mediators and try to reach an agreed solution.

The preparation process and the mediation session are described in Chapter 3.

1.7.3 Facilitation:

The DSCV provides facilitators to groups and organisations that are experiencing conflict. Facilitation is a process similar to mediation, however the disputes are often not clearly defined, and the process is more likely to produce an 'action plan' rather than a specific agreement, which is reached through consensus decision making. Increasingly, local government authorities are using this process in the form of a public meeting to examine objections to new planning applications.

1.7.4 Community Education:

The DSCV provides community education to groups and organisations that are interested in conflict resolution. Speakers can be provided to explain the service provided by the DSCV, how easy it is for individuals to use the service, how referrers can help their clients to use the service and how mediation works. Skilled trainers can be provided, for a fee, to organisations interested in learning skills and strategies for dealing successfully and effectively with people in conflict.

2. Appropriate Dispute Resolution (ADR) Processes

Appropriate Dispute Resolution (ADR) procedures are being used increasingly by individuals, organisations and governments seeking to reduce the costs and delays experienced with traditional legal processes.

Appropriate Dispute Resolution (ADR) are often referred to as Appropriate Dispute Resolution (ADR), because they present an alternative to traditional Court-based methods of dispute resolution, however, with the increasing use of mediation, case conferencing and other processes adopted by the Courts, DSCV chooses to use the word 'Appropriate'

ADR processes generally involve a third party to assist the parties to resolve a dispute and may be classified according to the degree of intervention and determinative powers of that third party.

There are a number of definitions and models of dispute resolution processes. The definitions contained in this kit are those provided by NADRAC², and adopted by the DSCV.

2.1 Definitions of key ADR processes

MEDIATION

Mediation is a process in which the parties to a dispute, with the assistance of a neutral third party (the mediator) identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise or determine the process of mediation whereby resolution is attempted.³

CONCILIATION

Conciliation is a process in which the parties to a dispute, with the assistance of a neutral third party (the conciliator) identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement.⁴

FACILITATION

² NADRAC - National Alternative Dispute Advisory Council is an independent advisory council providing policy advice to the Federal Attorney-General.

³ Definition from 'Alternative Dispute Resolution Definitions', National Alternative Dispute Resolution Advisory Council, Canberra March 1997. P. 5

⁴ Ibid p.6

Facilitation is a process in which the parties (usually a group) with the assistance of a neutral third party (the facilitator), identify problems to be solved, tasks to be accomplished or disputed issues to be resolved. Facilitation may conclude there, or it may continue to assist the parties to develop options, consider alternatives and endeavour to reach an agreement. The facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process, but may advise on or determine the process of facilitation.⁵

ARBITRATION

Arbitration is a process in which the parties to a dispute present arguments and evidence to a neutral third party (the arbitrator) who makes a determination.⁶

ADJUDICATION

Adjudication is a process in which the parties present arguments and evidence to a neutral third party (the adjudicator) who makes a determination which is enforceable by the authority of the adjudicator. The most common form of internally enforceable adjudication is determination by state authorities empowered to enforce decisions by law (for example courts, tribunals) within the traditional judicial system. However, there are also other internally enforceable adjudication processes (for example, internal disciplinary or grievance processes implemented by employers).⁷

3. MEDIATION

3.1 Mediation - General Principles

Mediation is defined as a process in which the parties to a dispute, with the assistance of a neutral third party (the mediator) identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise or determine the process of mediation whereby resolution is attempted.⁸

Mediation assumes that people are capable of making decisions about what best suits them and that people are most likely to comply with agreements that they have developed and agreed to themselves.

Mediation is not counselling. It places the responsibility of resolving the dispute onto the parties of that dispute and the mediators will not give advice or make suggestions as to what should be done.

⁵ Ibid p.8

⁶ Ibid p. 11

⁷ Ibid p. 10

⁸ ADR definitions paper, NADRAC 1997

Some fundamental aspects of the mediation process are:

VOLUNTARY NATURE: In order for a dispute to be mediated, all parties to the dispute must freely agree to participate in mediation.

CONFIDENTIAL: All information received by the DSCV, its Dispute Assessment Officers and mediators is treated as strictly confidential. Information received from one party to the dispute is never divulged to the other party or parties to the dispute, or to any other person or organisation, without their permission.

IMPARTIAL: At all times, mediators are neutral, independent and impartial. They do not give advice or share their own opinions.

Mediators do not provide legal advice. However, parties to the dispute are encouraged to seek legal advice prior to the meeting and at various stages of the mediation process.

The aim of the mediation process is to assist people to create “WIN / WIN” solutions to disputes: that is solutions which satisfy the needs and interests of all parties. To achieve this, the process relies heavily on building effective communication between the parties so that they can explore the issues together and arrive at an agreement.

3.1.1 When Is Mediation Appropriate

Mediation is appropriate in many situations where communication and discussion about the issues will lead to a resolution of the dispute.

Mediation is most effective when the people involved in the dispute want to take an active part in the resolution of their dispute and to have responsibility for the outcome.

Generally, the earlier in a dispute that mediation takes place the better; before people have become entrenched in their position and have invested a lot of time, energy, emotion and money in the problem. However, mediation can be effective at any stage of a dispute and the DSCV has successfully mediated disputes which have been going on for more than 20 years.

However, mediation is not suitable in all situations. In deciding whether mediation may be appropriate, it is necessary to consider a variety of factors, including:

- The alternative methods that parties have to resolving their disputes: for example the legal and judicial systems. Parties will need to weigh up the costs and benefits of all methods open to them;
- If the dispute requires an interpretation of the law or a legal ruling then mediation cannot meet this need and a legal forum would be best;
- The willingness of parties to attend the mediation and meet with the people or person that they are in dispute with;

- The willingness of all parties to negotiate in good faith;
- The willingness of the parties to settle the dispute and reach an agreement;
- Whether there is a history of broken agreements between the parties; and
- Any power imbalances between the parties. For example, if there is an on-going history of violence between the parties, then mediation would generally be inappropriate.

In many circumstances, mediation will be of some assistance and the cost free ease of the mediation process means that many people are willing to give mediation a try.

3.2 The Mediation Process

3.2.1 Pre-Mediation Preparation (Intake)

While the basic concept of mediation is fairly simple, it often takes a lot of work to put it into practice. Just as conflict can escalate in stages, the task of overcoming the parties natural aversion to working together must also be overcome in stages. The mediation process involves a number of steps, but these can be divided into two broad categories: Pre-mediation Preparation (Intake) and the actual Mediation session.

The Purpose of Intake

It is during this Preparation (Intake) step of the mediation process that the parties have their first opportunity to:

- briefly discuss the issues and their concerns;
- discuss what they have tried to do about the dispute; and
- discuss how they would like to see things change in the future.

It also allows the Centre to:

- describe what mediation is;
- explain how mediation works; and
- evaluate whether the dispute is appropriate for mediation.

The discussions with the parties are confidential and the Dispute Assessment Officer must be careful not to become embroiled in the dispute. The Dispute Assessment Officer's role is to obtain information relevant to organising the mediation and to prepare the parties for the mediation.

There may be a number of discussions before the parties are prepared to meet. This is generally done over the phone.

Callers requiring the assistance of an interpreter can access the Telephone Interpreting Service if they prefer to speak to the Dispute Assessment Officer's in their own language.

3.2.1.1 Preparation for 'Standard' (non-court referred) mediations

3.2.1.1.1 Contact directly from the people involved in the dispute

The initial contact

The mediation process starts when one of the parties to the dispute contacts our service and explains to the Dispute Assessment Officer the nature of their problem. This is generally done by phone.

Based on this information the Dispute Assessment Officer assesses whether or not the problem is suitable for mediation; discusses self-help options, explains to the caller how the mediation process works; and then asks if they would like the Centre to organise a mediation.

Contacting the 'other party to the dispute' and inviting them to mediation

If they do, we then contact the other people involved, usually by letter, informing them that we have been contacted by the person with whom they are having a dispute, and that whilst we do not represent either party, we are offering to assist them resolve their dispute.

If there is no response

If the second party does not respond to the first letter within 10 days, we send a follow up letter. If we have still not been contacted within the following 10 days we presume that they are not interested in our invitation to mediate and we have no further involvement in the matter. We would write to the first contacting party advising them to consider some other way of resolving the dispute.

If the other party responds

If that person responds and rings the centre, we discuss their concerns and how they feel the matter could be resolved and explain what is involved with mediation and discuss whether they feel it would suit them.

If they don't agree to attend mediation we discuss some ways that they could try to settle the problem between themselves. Mediation is voluntary and we cannot compel anyone to attend. If they do not agree to participate, we have no further involvement in the matter and we write to the first contacting party and let them know.

Once everyone agrees to attend a mediation, the Dispute Assessment Officer arranges a suitable day, time and venue for the mediation, and selects two mediators to attend the mediation.

3.2.1.1.2 "Contact from an agency or third-party"

Occasionally, an agent or person not directly involved in the dispute, such as a police officer, housing worker, school counsellor or a lawyer may contact the centre and ask us to organise a mediation for two of their clients who are in dispute.

In these situations we will request this person (the 'referrer') to have one of the parties involved in the dispute call us directly to start the process. It is a policy of the centre that the Dispute Assessment Officer must still speak to each of the parties by

phone to assess whether mediation is suitable, to discuss what mediation is and how to prepare for it and to confirm that the parties are intending to come of their own free will.

If mediation is arranged, the DSCV does not report back to the referrer without the prior consent of the parties.

3.2.1.2 Preparation for Disputes involving a large number of people (Multiparty Disputes)

Where there are disputes involving organisations or a large group of people, such as a club, the residents of a whole street or a block of flats, it is difficult to contact each person individually to discuss the problem.

The Dispute Assessment Officer will arrange an Information Session to be held in the area where the people are and invite the interested people to attend. The information session is used to explain the service we offer, to answer questions about how mediation works and to ascertain whether people are interested in arranging a mediation session.

Once the mediators have assessed the level of interest, the issues involved, and the complexity of the matter, the Dispute Assessment Officer can contact the interested parties and depending on the complexity of the situation organise several small mediations, or one large facilitated meeting.

3.2.1.3 Preparation for Court-annexed mediations

Most of the matters that come to mediation do so as an alternative to legal action. But sometimes people who have started legal proceedings choose to use the mediation process to resolve the problem.

Mediation can be used at any stage of the dispute; before any legal action has started, any time before a hearing or trial is held and even after a hearing, to arrange payments or discuss unresolved issues.

There are 2 main ways that cases come from Court to mediation:

- Referred through the Magistrates' Court, when an application for an intervention order is made (either at the time of making the application, or on the first return date)
- By a direct request of the party(s) or their legal representative(s) who have contacted DSCV to organise mediation

It is becoming increasingly common in other Victorian courts for parties involved in litigation to try and settle their dispute through mediation while they are waiting for a Judge or Magistrate to hear their matter. Sometimes they have been encouraged by the court to take this course of action, in the hope of settling their matter in a faster and more congenial and lasting way.

In those circumstances the parties choose a mediation service or private mediator and contact them directly to arrange the mediation. The Court is not involved in the

arrangements. If people use our service at this stage, the Dispute Assessment Officer would arrange for them to send in any relevant Court documents and would then proceed to arrange the mediation like any other, which includes speaking to each person involved and explaining the mediation process.

It is up to the parties to notify the Court of any arrangements made and the outcome of the mediation. This is not done by our service because it has not been formally referred by the Court.

The only exception occurs when an intervention order application has been adjourned by a Magistrate to allow the parties the opportunity to mediate. If the mediation proceeds, and parties agree to withdraw the application unconditionally, both will sign a Court document mutually consenting to the withdrawal of the application. The form is then faxed to the Court by the DSCV, so the application can be struck out on the return date.

3.2.2 The Mediation Session

Once the pre-mediation preparation has been completed the mediation session takes place.

A mediation session is a meeting in which two trained mediators use an informal structured process to work through the issues with the parties involved in the dispute and try to reach an agreement.

The mediators do not decide on the content of the session and they do not control what agreements are made. This is determined by the people in dispute. The mediators control the process on which the session is structured.

A typical mediation session lasts between 3 - 4 hours. Usually one mediation session is sufficient to resolve a dispute, although this varies according to the number of people involved and the complexity of the dispute. A further session can be arranged if necessary.

3.2.2.1 Co-mediation model

There are a number of different models of mediation that are practiced by various mediation services and private mediators.

The DSCV uses a co-mediation model, which means that two mediators are allocated to each case. Using two mediators in each case allows us to match the mediators to the parties on a number of important criteria including their expertise, mediation experience, qualifications, cultural background, age, gender and location.

The mediators each have a defined role to play in the mediation and work as a team during the session.

The mediation sessions are guided by the following steps:

3.2.2.2 The Steps of Mediation

- The Mediation Session follows 8 basic steps which allow the people involved in the dispute to describe the situation as they see it in their own words and to hear each others view.
- During the session, the parties describe the dispute; how it has been in the past, what is happening at present and then look towards the future and discuss options and solutions.
- The mediators assist the parties to identify and discuss the issues in a safe, controlled and respectful environment and reach an acceptable solution.

INTRODUCTION

During this stage the mediators and parties introduce themselves. The mediators explain how the session will be conducted and answer any questions the parties have.

DESCRIPTION OF EVENTS

During this stage the parties each tell the mediators how they see the dispute and what the issues are for them.

LIST OF ISSUES

The mediators identify and list the main points that the parties have raised. During the next stage these points are discussed in detail.

EXPLORATION

During this part of the mediation the parties discuss the issues with each other. This is an opportunity to hear directly from one another, to ask questions and to give explanations. This helps to gain a better understanding of each others' view of the situation.

PRIVATE SESSION

The mediators meet with each party privately to check how they are feeling about the session and to discuss anything that the party may not want to discuss in the group session. During private session the focus moves from the problems of the past and starts to look at possible solutions for the future.

NEGOTIATION

The parties and the mediators all meet together again to generate and discuss options for resolutions. The mediators assist to maintain focus on the issues and draw points of agreement together.

AGREEMENT

During this stage any agreements reached by the parties can be written up by the mediators. All aspects of the agreement are checked:

- to ensure that everyone understands what has been included in the agreement;
- to check that the agreement is realistic;
- to include dates and times for actions or payments; and
- to consider how the parties will deal with unexpected circumstances that may affect the agreement.

With certain court-referred cases, the court must be advised whether the matter was resolved or not.

CLOSING STATEMENTS

The mediators thank the parties for their co-operation and congratulate them on the agreement/s that are reached.

4. CONFLICT AND CONFLICT RESOLUTION

Disputes and conflict are fairly inevitable in daily life.

Conflict involves at least two parties and usually comes about as a result of a perception of incompatible interests or positions.

As a result the parties engage in opposing actions and reactions with the aim of controlling the other/s in order to gain at other's expense. The parties may acquire/exercise or attempt to acquire/exercise power over others. This power can come in a variety of forms:

- Economic
- Physical
- Knowledge
- By association
- Legal
- Emotional
- Needs
- Ability to provide needs
- Ability to meet needs
- By access to options
- Concepts of Authority

4.1 Conflict Resolution

Conflict and conflict resolution are often referred to in terms of three possible outcomes:

Lose/Lose

In a lose/lose situation none of the parties are happy with the outcome. Nobody actually gets what they really want.

Win/Lose

In a win/lose situation some of the parties get what they actually want (usually at the expense of the other parties) the others do not.

Win/Win

In a win/win situation all the parties get what they actually want. All the parties are likely to be happy with the outcome.

Good conflict resolution is not about people making compromises, it is about people negotiating about the things that are important to them, coming up with creative options and designing agreements that they are happy with, and that allow both them and the other parties to get/have what they want. Whereas compromise usually means

that you or the other parties give up all or part of what you really want which usually leads to someone being unhappy with the outcome.

4.2 Conflict Resolution Styles

The outcome of negotiations are often the result of the negotiation style. There are a number of negotiation styles, however, broadly they fall into the following categories.

4.2.1 Hard Negotiation

A hard negotiator will view a negotiation as a contest.

In hard negotiation the parties will usually take extreme positions with each party assuming that the one that holds out longest is likely to win.

The Problem with Hard Negotiation

The problem with hard negotiation is that usually, assuming that an agreement is reached at all, the other parties are unlikely to be satisfied with the outcome. If there is no likelihood of an ongoing relationship, or the need to negotiate other matters in the future, this might be all right, but otherwise it will be likely to cause problems later.

4.2.2 Soft Negotiation

A Soft Negotiator will usually try to avoid personal conflict and therefore will make concessions readily in a bid to reach an agreement.

The problem with Soft Negotiation

The problem with soft negotiation is that in their attempts to resolve disputes so as to avoid personal conflict, the parties may make poor agreements that realistically do not suit them or meet their needs.

The Soft Negotiator is likely to feel dissatisfied and used.

Regardless of whether a soft or hard style of negotiation is used, often negotiators will take a fixed position in their negotiations.

This is referred to as positional bargaining, or positional negotiation.

4.2.3 Positional Bargaining

Positional bargaining puts limitations on outcomes, because it puts limitations on the parties and what they will and will not consider, in terms of options for resolving conflict.

In positional bargaining/negotiation, parties tend to see resources as limited (and they actually may be) and therefore tend to attempt to share or distribute the resources between each of the parties, with relative gains and losses as the only solution.

Resources may be such things as:

- Money
- Time
- Information

The end result more often than not is that at least one party leaves dissatisfied.

In a one off situation this might even be all right, but it is likely to pose significant problems if there is to be an on-going relationship.

The Problem with Positional Negotiation

The main problem with positional negotiation is that once you start to negotiate over positions you effectively lock yourself and others into fixed positions, i.e. “You will”, “I will not”.

This often serves no other purpose than to make ideas and attitudes more firmly entrenched as to who is right and who is wrong. Notions of right and wrong, blaming or ridiculing, will usually force people into more staunchly defending their position.

Face saving often becomes more important than reaching agreement and people will often resort to attacking each other rather than admit that perhaps their position is not a sound one.

Leading to ultimately, either:

- Very poor agreements being reached. Agreements that in real terms do not meet the interests of either party; or
- The interests of one party only are met; or
- More frequently no agreement is reached and parties leave negotiation, each blaming the other for the lack of positive outcome.

The harder the negotiation the more the above is true. Hard positional negotiation seeks to ‘WIN’. This is usually at a cost of some sort to the other parties, and hard positional negotiator views such other parties as ‘adversaries’.

Such bargaining is very inefficient, takes up valuable and often costly time and resources, produces little or no real outcome and will frequently mean that no future efforts will be made to resolve that or any other conflict/dispute.

4.2.4 Principled or Interest Based Negotiation

In interest based negotiating/bargaining, parties tend not to view resources as limited and seek solutions which allow all parties to get at least some of their interests met.

Fisher & Ury⁹, of the Harvard Negotiation Project suggest that there are five relatively simple rules which assist in ensuring that the outcome of negotiation will be positive for all parties.

- Do not bargain over positions
- Separate the people from the problem
- Focus on interests not positions
- Invent options for mutual gain
- Insist on objective criteria

⁹ *Getting to Yes* by Roger Fisher and William Ury. Hutchinson Business, United Kingdom 1981.

5. Some Statistics:

Statistics for Dispute Settlement Centre of Victoria

1/7/2007 to 30/6/2008

Measure	'Standard' disputes *	Court Related disputes **	'Special Projects' Disputes ***	Total***
Number of Dispute Advisory Service calls received	14,134	1,562	1,241	16,937
Number of Invitations to Mediate Sent Out	1,310	552	225	2,087
Number of Mediations Conducted	181	240	84	505
Agreement at mediation	155	199	68	422
Agreement Rate at Mediation	86%	83%	81%	84%
Expeditious service (files closed in under 40 days)				82%

* Standard Mediations include Multi-Party disputes.

**Court related disputes that include the Magistrates Court, Broadmeadows Civil Court and court-annexed mediations.

*** DSCV has a number of Special Projects including mediation program at the Neighbourhood Justice Centre, at Corio/Norlane and the Aboriginal Justice Agreement.

DSCV Statewide service provision

1/7/2007 - 30/6/2008

Number of Dispute Advisory Service calls received

In the last financial year (2007-08) we received 16,939 calls for information, advice and assistance with disputes. In many instances the information and advice provided helps people without the need to arrange a mediation .

Measure	Total
Dispute Advisory Service calls	15,965
General Enquiries	974
Invitations to Mediate Sent	2,087

At mediation, there has been an overall settlement rate of 82%. Standard mediations have the highest settlement rate (86%), Court related cases have an agreement rate of 83% while Special Projects mediations have an agreement rate of 81%.

Types of disputes we deal with

Issues about fences account for almost half of the enquiries, we received (49%) followed by adult behaviour (13%) and trees (12%).

Main Types of Disputes	%
Fence	49%
Behaviour (adults)	13%
Tree	12%
Other (issues that accounted for less than 2% each)	26%

Referrers

People hear about our service in a number of ways. Most people hear about us through an agency or organisation that they have gone to for information or assistance with their problem. Local Councils are our largest source of referral (70%).

Source of referral identified by callers	%
Local Government	70%
Self - by word of mouth, phone book etc	14%
Courts	10%
Police	2.4%
Victoria Legal Aid & Community Legal Centres	2.4%

This statistics page is updated annually. Last updated on 04/07/2008.

6. A Case Study

Jim and Kate are neighbours who have a history of arguing with each other over many neighbourhood issues, including an ongoing dispute about Kate's dog barking all day.

The most recent hostility arose when Kate told Jim that she was going to erect a fence in the front area between their houses. Previously the fence between their houses did not extend to the front yards which share an expanse of garden and lawn. However, Kate said she has a right to extend the timber fence regardless of what Jim thinks and that he must pay half the costs.

Jim told Kate in no uncertain terms what she can do with her fence, absolutely refused to pay half and threatened to tear down any fence that she puts up. Firmly entrenched in their positions, the neighbours are at a standoff and hostilities are rising.

Kate went to her local Community Legal Centre to get legal advice. The solicitor there told her that she if she wanted Jim to pay for half of the fence, and he refused, she would have to hire a private solicitor to sue Jim and obtain a Court order before she started to build the fence.

The solicitor told her that it could take several months and cost Kate hundreds of dollars in legal fees if Jim decided to fight her in Court. If Kate paid for the fence herself, Jim had no right to tear down the fence, but if he did, all Kate could do would be to sue him for damages.

Kate wanted to avoid the expense and time involved in taking legal action, and did not want to take her neighbour to Court, so the solicitor suggested she contact the Dispute Settlement Centre of Victoria.

Kate rang and discussed her problem with Paul, a Dispute Assessment Officer(DAO), who explained how the service worked. Kate was unsure about meeting with Jim because of his aggressive manner. He was not violent, but they always ended up shouting at each other. She asked Paul to send her some pamphlets about mediation and she would discuss it with her family before deciding what to do.

On the weekend she had an another argument with Jim, about her dog and the fence, and decided that the situation was going to get completely out of hand if she didn't do something about it. She called Paul at the DSCV the following Monday and said that she was interested in having a meeting with Jim and the mediators.

Paul wrote a letter to Jim, inviting him to ring and talk about how the DSCV could help him and Kate resolve their problem. When Jim received this letter he called Paul and explained that Kate was going to force him to look at an ugly timber fence in his garden, and that she had no regard for the fact that he

was a pensioner. He said that she was trying to force him into paying for a fence he did not want.

Paul listened to his concerns and discussed the problem with him. He pointed out that while there was a possibility that Kate could sue him, the fact that she was willing to try mediation meant that she was prepared to listen to his side of things and try to find a solution to their problem. Jim said that he was also willing to sort something out if Kate was and agreed to come to a meeting.

After a couple of phone calls the Dispute Assessment Officer arranged for the two parties to meet together at the DSCV's Lonsdale St mediation rooms in a fortnight's time and then booked two mediators to mediate the dispute.

In mediation, both neighbours were encouraged to listen to what each other had to say. In turn, they were asked why they have assumed their different positions.

Kate said she is concerned that her dog, Fido, needs more space to roam and that is why he is barking so much. Up until then, Fido was confined to the back yard which is much smaller than the front. Although she was worried about the costs involved, Kate thought that if she could secure her large front yard, Fido may have more space and be more settled during the day.

Jim said he too would like more privacy but he didn't want a fence because it would shade over his prize rose garden which is situated near the boundary line. And anyway he didn't trust Kate to find the best deal when it comes to constructing it – "She just wants to rip me off!"

With the help of the mediators they decided that the principal issues to be discussed were the cost of a fence, the need for privacy, respect for each other's land use (Jim's wish to grow roses and Kate's right to keep Fido) and Fido's barking.

By exploring their needs and interests, both neighbours recognised that they had interests in common. They both wanted to remedy the tensions between them, have more privacy, find a solution to Fido's excessive barking and they were both concerned about the cost of erecting a fence.

During the private session Kate told the mediators that she also thought having a fence may distance her from Jim which was a good thing as she was sick of fighting and wanted more privacy. She was more interested in putting up a barrier than blocking Jim out completely. Jim said he wouldn't mind Fido having the roam of Kate's front yard as he was a friendly dog but that alone would not stop him barking. He too was sick of fighting with his neighbour.

At the end of the mediation session, the neighbours came to an agreement whereby they decided to erect a mesh style fence which allowed the sunlight in to Jim's roses whilst still containing Fido. Jim agreed to find the best quote

for the fence construction on his boundary line (his sister is in the business) and he also agreed to pay half that quote. In return, Kate agreed to walk Fido at least five times a week in order to settle his barking habits.

The mediators asked Jim and Kate what would happen if Kate could not keep up with the commitment of walking Fido every day. Kate said she would try to have a friend who lived nearby help her out if required. Jim said he would be available to walk the dog occasionally too as it was in his interest to keep the animal quiet.

All of the things that Jim and Kate had agreed to do were written up, in their own words by the mediators so that they had a record of their agreement.

Things did go according to plan: the fence was built to their satisfaction at a cost that they were both happy with. Fido and Kate go for regular walks and Jim's roses flourished. Jim and Kate now have a much more comfortable relationship with each other and there is no more tension and arguing.

This is the last page of the Information Kit.
