

NMC2019 Online Survey responses

Question 5: “What would you like mediation researchers to investigate?”

By Alysoun Boyle

In May 2019, all registered delegates at the National Mediation Conference 2019 were invited to participate in an online survey (‘The Survey’) seeking their suggestions for mediation research. The University of Newcastle Human Research Ethics Committee approved the Survey, as part of the researcher’s much larger PhD project. As agreed at a meeting with the MSB in April 2019, this summary document includes the submitted suggestions for mediation research (i.e. Survey Question 5). Question 5 was designed with a textbox essay format, enabling responders to write long answers including their own ideas, without any guidance or suggestions.

The Survey included a separate tickbox question requesting responders to self-identify their own areas of DR practice, according to a list of eighteen practice options, including mediation and Family Dispute Resolution (FDR). There was no limit on the number of processes that responders could identify. The below responses include only those from self-identified practising mediators and/or Family Dispute Resolution Practitioners (FDRPs).

Sample population

All registered delegates at the conference received an email inviting their participation. To minimise any potential personal influence from the researcher, the email was sent by, and in the name of, the Professional Conference Organiser. The email included information about the Survey, and its purpose, and a direct link to the Survey whereby people could choose whether or not to participate.

The number of practising mediators in Australia has not been ascertained, and it would be quite complex to make such an assessment; so it is not possible to know if the 550 conference delegates is a significant proportion of the larger mediator (and FDRP) population. Although the conference represents a unique opportunity for accessing a number of practising mediators in Australia, the representativeness of the conference population might be limited by some conference characteristics, including: the conference is reasonably costly to attend, including delegate fees, travel, and accommodation; conference delegates appear to be from “mainstream” population groups, with limited representation from more diverse cultural backgrounds; and the logistics of attending the conference can limit attendance by DR practitioners who do not reside in capital cities.

In addition, online surveys are recognised for having low response rates; and researchers have reported poor research participation, in general, by practising mediators. In part, the Survey included components designed specifically to counteract the reported impediments to online survey response rates; hence it sought to ascertain if certain design characteristics would result in increased response rates – and to gauge the response rates among practising mediators. Unfortunately, the overall response rate was quite low, confirming other researchers’ findings from online surveys; however, a small number of responses to the survey suggest that some practising mediators were keen to participate in the Survey despite having no ideas to contribute for future mediation research. In other words, there appeared to be interest in participating in mediation research. This could be re-examined in future research.

Despite well-entrenched views that nonresponses to online surveys affect, or skew, survey data, recent research has been unable to confirm this. In particular, the recent research found that, if nonresponders were representative of the sample population, a nonresponder bias could not be established. Thus, although a significant proportion of conference delegates did not respond to the Survey, they are considered to be representative of the sample population (i.e. conference delegates) and no consideration is given to their nonresponses’ potential skewing of the Survey data.

Categorisation of Responses

Based on the content of the relevant submitted responses to Question 5 of the survey, two core categories have been devised: non-FDR (responses whose content appeared not to be relevant to FDR); and FDR (responses whose content included either specific reference to FDR, or mentioned issues directly relevant to FDR). The number of the former far out-weighs the number of the latter, in itself an interesting result.

Within each of those two categories, sub-categories (listed below) enable further differentiation of the responses. To enable comparison, a single set of sub-categories was devised that would be equally applicable to the non-FDR and to the FDR responses. Based on specific responses, FDR has an additional sub-category, “Children”, that does not warrant inclusion in Non-FDR. Similarly, Non-FDR has an additional category, “ODR”, that does not warrant inclusion in FDR.

Apart from the above comments, this document does not include any analysis or observations about the Survey responses to Question 5. The Survey invitation email included a statement that analysis and observations of survey data would be included in the researcher’s PhD thesis. This document is provided to the MSB on the understanding that it will be used to inform that body’s future activities.

The below-listed suggestions for mediation research are quotes from actual Survey responses.¹ Notably one survey respondent commented:

“Really all aspects of DR can benefit from further research. There are too many topics to cover here. A priority would be providing an evidence base to support the claims made by DR practitioners.”²

A. Non-FDR sub-categories	B. FDR sub-categories
<ul style="list-style-type: none"> i) Process <ul style="list-style-type: none"> a. Specific outcomes b. Non-specific outcomes c. Specific effectiveness d. Non-specific effectiveness e. Models/styles f. Gender issues g. ODR h. Standards i. Access j. Context ii) Mediator <ul style="list-style-type: none"> a. Skills/expertise b. Accreditation/standards (includes training) c. Collegiality iii) Disputants iv) Advisors 	<ul style="list-style-type: none"> i) Process <ul style="list-style-type: none"> a. Specific outcomes b. Non-specific outcomes c. Specific effectiveness d. Non-specific effectiveness e. Models/styles f. Gender issues g. Standards h. Access i. Context j. Children ii) FDRPs [= Mediators] <ul style="list-style-type: none"> a. Skills/expertise b. Accreditation/standards (includes training) c. Collegiality iii) Parents [= Disputants] iv) Advisors

¹ In some responses, minor edits have been made (e.g. correcting spelling errors).

² Responder ID# 36.

Responses categorised as being relevant to **Non-FDR mediation**, by sub-category

<i>Sub-category</i>	<i>Responses to Survey Question 5 – Research ideas</i>
<p><i>i) Process</i> <i>a. Specific outcomes</i></p>	<ul style="list-style-type: none"> • Statistics about successful mediations and following up in coming years to see if the agreement "stuck".
<p><i>b. Non-specific outcomes</i></p>	<ul style="list-style-type: none"> • Access and Outcomes • Compliance with outcomes • Perceptions of outcomes/statistics on outcomes. • Success rates and major blockages to successful outcomes • Outcomes versus Expectations of the parties. • Perceptions as to why mediation failed to reach a solution/outcome. • How confidential are outcomes • Outcomes (measurement) • Measured outcomes of mediation • Early utilization of Mediation reduces the negative outcomes that happen when resolution is sought through the courts. • Factors influencing mediation outcomes
<p><i>c. Non-specific effectiveness</i></p>	<ul style="list-style-type: none"> • Mediation Effectiveness • What works well and what doesn't work well in mediation.
<p><i>d. Specific effectiveness</i></p>	<ul style="list-style-type: none"> • Balancing perceptions of fairness
<p><i>e. Models/styles/approaches</i></p>	<ul style="list-style-type: none"> • Co-mediation and its strengths • Why some mediators don't like [co mediation] • What could be done to encourage non-believers in co mediation to participate in it • What could be done to mentor new mediators in co-mediation? • Whether facilitative mediation or a more interventionist form is quicker • In what situations shorter mediation sessions (3 hours) are preferable to longer ones • How we reconcile the values of facilitative mediation with those of traditional justice institutions. • I would like some practical [options] that can be used in an upscale way for large numbers of similar disputes, e.g. an effective, efficient, repeatable process. • Explore the gap between training and practice • Explore satisfaction levels with judicial mediation • Prevalence of different models of mediation in practice • Effectiveness of different models of mediation in practice - sustainability of agreements, party satisfaction with outcomes, cost benefit analysis • Study of models of early intervention by neutral third party dispute resolvers in various countries dealing with domestic and gang violence, small business conflict etc. • The availability and effectiveness of different school peer mediation models around the country and particularly their application to bullying. • Study of use of different mediation strategies in different contexts/with different dispute subjects e.g. pure facilitation, intensive questioning in private meeting, single text strategy, shuttle mediation, co-mediation etc.

	<ul style="list-style-type: none"> • As outcome is such a fickle thing in my line of practice, I would be more interested in research regarding the scaffolding of the process, e.g. what would be the best preparation for mediation. • Most importantly: how could mediation training be shaped to lead it beyond the focus of a singular approach basically nation-wide, when in reality, mediators will work with many models, etc ... • The difference between espoused and actual mediation practice. • Unpack peace-making and problem solving practices in Australia. • Sustainability of outcomes – what approaches create more sustainable outcomes • Mediation styles • Effectiveness of models and the transitions between them. • Research comparing mediator methods such as reflective practice and directive practice • Research on prevalence of facilitative mediation, dispute resolution and of evaluative mediation, dispute resolution and comparing process and outcomes of same • Differences in mediation models • Mediation models presented in the mediator training programs and the contribution of such models to the containment of mediation within prescriptive mediation parameters such that mediation is an unresponsive / non-creative process. • Changing modalities of mediation • Understanding diversity in practice methods - what works.
<i>f. Gender issues</i>	<ul style="list-style-type: none"> • The impact of gendered workplace practices on the mediation process • How to make mediation fair to women when the "neutral" process of mediation can replicate the discriminatory practices they experience in their workplaces • What kind of training needs to be integrated within the current mediation courses to ensure that all mediators - men and women - understand how gendered practices and inherent discrimination can impact on how they prepare for and conduct mediations
<i>g. ODR</i>	<ul style="list-style-type: none"> • I am really interested in the British Columbian Civil Resolution Tribunal model of online dispute resolution which combines providing information with case management and mediation involving a real live mediator. I am interested in the effectiveness (resolution rates) and participant satisfaction rates, compared with other forms of ODR such as Adieu's Consensus Accelerator. • The various forms of ODR and any evidence of effectiveness – for whom, when, how and why. • It would be helpful to research into working and collaboration with other countries in areas such as: ADR and online mediation, Elder mediation
<i>h. Standards</i>	<ul style="list-style-type: none"> • Level of adherence to the model of mediation outlined in the National Standards by NMAS accredited mediator in practice • Is there any evidence to suggest that video recording is an effective way of providing quality assurance to organizations? Has anyone researched the impact of video recording of sessions with the parties consent?
<i>i. Access (including awareness)</i>	<ul style="list-style-type: none"> • The timing for intervention and what difference it makes. • Community awareness of mediation in various sectors of practice

	<ul style="list-style-type: none"> • The relationship between use and demand for ADR and the lack of access to the legal system. • The reasons for continuing levels of domestic violence with particular reference to perpetrator motivation, re-education, and access to DR programs. • Comparison of the impact of mainland eastern states having large departmentally-based non-family mediation services with the situation in the other three states with their drastically limited resources. • The efficacy of using neutral venues as opposed to other options such as advocate or counsellor offices and on-site mediations in neighbour and building disputes. • Public perception of mediation and awareness of the availability of services and how this is impacted by media (e.g. forthcoming "Trial By Kyle" TV program). • Encouraging awareness of mediation in the ordinary business community. • Is there a non-financial obstacle to accessing a mediator for unlitigated dispute[s]?
<p><i>j. Context</i></p>	<ul style="list-style-type: none"> • Exploring more thoroughly traditional and contemporary First Nation peace making practices. • Examine the challenges and benefits of peace-making in First Nation communities. • How might Australia build the capacity of ADR, facilitative problem solving and peacemaking practices into a legal framework particular to working effectively with First Nations people? • Analysis the commonalities and distinctions between western and First Nation ADR and peacemaking. • It would be helpful to research into working and collaboration with other countries in areas such as: ADR and online mediation, Elder mediation • Cultural perspectives • Why commercial disputes do not have compulsory mediation prior to commencing action in court • Effectiveness of lasting outcomes of workplace mediation between staff. • Court annexed mediation methods and results compared with private and agency mediation results and methods/process • Why is it so difficult to obtain outcomes engaging with CALD and ATSI ? • Using interpreters in Mediation, the right approach to select and manage interpreters. • How mediation could be considered part of a continuum of health services. i.e. conflict reduction skills can be learned in a mediation process. this in turn could reduce the number of psychotherapy sessions that are often utilized ongoing especially when there is no resolution. • Research into whether there is any link between the ethnic/cultural background of a mediator and his or her clientele. That is - do people from diverse cultural background feel more comfortable with people coming from the same or similar, or even any, ethnic or cultural background. • Update Kathy Mack's research comparing outcomes in voluntary and mandatory mediation
<p><i>ii) Mediator</i> <i>a. Skills/expertise</i></p>	<ul style="list-style-type: none"> • Support for self-determination by mediators • Support for human rights by mediators

	<ul style="list-style-type: none"> • The difference (if any) between mediators perception of their effectiveness and parties perception. • Is there a difference in mediation when the parties choose a mediator with the subject expertise but still want mediation? • Could it be true that a mediator does not need subject expertise where the issues are not expert or are relationship issues but could have subject expertise when the issue is expert. • I think research into key dispute resolution organizations such as ombudsmans, and where dispute resolution skillsets could be refined and implemented would help a lot. • Close analysis of verbal exchanges between mediators and parties to illuminate effective and ineffective techniques. • There is little evidence-based research on the formal qualifications and EQ skills required for effective mediation. • Research into the forms of clinical supervision which most effectively both support and enhance the capacity of mediators. • Whether particular techniques are more/less suited to particular types of disputes. • Effective strategies for dealing with particularly difficult kinds of disputes such as cases of entrapment, feuds, and cases where one party has mental health issues. • Themes that arise in mediation and how you might prevent disputes • What are best "interventions" to prevent disputes • How best to use information collected by mediators to build capacity to prevent disputes • Mediator effectiveness • What factors do mediators consider when determining whether a mediation was effective in supporting the parties? • How important is it to mediators that parties are able to find a resolution? ["skill", as in capacity for this] • How important is "not knowing" or "not being influential" to mediators? ["skill" as in capacity for this] • Do mediators see their own ego as being involved in mediation? How do they address that? • What techniques are most effective in regards to assisting positive outcomes? • What makes a good mediator?
<p><i>b.</i> <i>Accreditation/standards</i> <i>(includes training)</i></p>	<ul style="list-style-type: none"> • Whether mediator accreditation makes a difference to perceptions • Relevance and importance of professional conduct rules including NMAS. • The importance of all mediators/dispute resolution practitioners to adhere to a credible standard.
<p><i>c. Collegiality</i></p>	<ul style="list-style-type: none"> • Do mediators feel like colleagues or a community of professionals? If so how can that expand? If not what can they suggest to create ongoing development of their professional learning and connections? • Are mediators willing to share what they find effective with other mediators?
<p><i>iii) Disputants (includes "parties")</i></p>	<ul style="list-style-type: none"> • Perceptions of processes • Do clients feel less stressed about their dispute after mediation? If so, in what way does mediation achieve this?

	<ul style="list-style-type: none"> • What attributes of mediators do clients find most helpful? • Does age of mediator matter to clients? If so, why or why not? • Is gender of mediator important to clients? Why? • How disputants choose their mediator? • What is the most important quality disputants look for in a mediator? • Participants' perceptions of the effects of their participation in a structured process To what extent is there a parallel, benefits or detriments between giving evidence in chief and speaking as a party at a mediation? Does the latter meet the needs usually given when the former goes well? • Psychological influences and disincentives to resolve disputes • I WOULD like some research done on whether parties who settle legal proceedings now, in mediation processes, feel any better about the settlement than they did in "the old days" when they settled "at the door of the Court". They "should" feel better if mediation is the quality process we like to think it is • To explore region of the brain that protects, and the ethics of around family feeling forced to come up with agreements that may not work if brain is not using the cortex or the prefrontal cortex, to reason with. <ul style="list-style-type: none"> ○ Ways of supporting an unregulated (fight/flight or freeze) brain to down regulate prior to mediating. ○ Researching type of language that promotes the brain to down regulate, prompting peace language. ○ Testing person capacity [to participate in] mediation and the need for advocacy to support person through mediation process. ○ Mediation preparation, for very unregulated anxious clients: visuals of mediation process. ○ Training mediators, in all the above expanding their view of conflict in the room strategizing peacemaking language. • Key factors involved in selection of the mediator for your dispute.³ • Perceptions of mediation pre- and post- participation by parties. • Extent of party self-determination in mediation. • Feedback from mediation parties • The extent to which the disposition of the disputants affects the interventions and effectiveness of the mediator, by comparison with the type of dispute or its perceived "ripeness". • Qualitative research on participants' understanding and satisfaction in relation to mediation and dispute resolution • How to promote mediation readiness? • The importance of financial literacy /equality before a mediation/dispute resolution commences • Decision making – how does “positive psychology” affect it • Emotional Coaching Techniques for high conflict clients.
<p><i>iv) Advisors</i></p>	<ul style="list-style-type: none"> • The reasons for lawyer reluctance to embrace facilitative mediation. • The reasons for lawyers' enthusiasm to transform mediation into a rules based process. • The effectiveness of having legal representation at a mediation (does it hinder or help) • The role of legal advisers in mediation.

³ This suggestion could equally be categorised under “Advisors”; it is widely reported and well-known that legal advisors will often select the mediator on behalf of their clients.

	<ul style="list-style-type: none"> • Legally assisted mediation, what role the lawyer can play in the discussion. • Lawyers' influences in mediation practice
<i>General statistics/data</i>	<ul style="list-style-type: none"> • Hours of mediation undertaken [by mediators] each month • Cost of mediation v other processes • I would NOT want research which is based on "statistics" as in my experience (a) the numbers are too small to mean anything, and (b) statistics never capture quality information anyway. • The costs of mediation -v- the costs of [court] proceedings. • Measuring the financial and/or time benefits of participating in mediation in commercial disputes (leases or business to business contracts) • Creating a regional map of (a) frequency of mediation, and (b) issues in a mediation in commercial disputes • Cost effectiveness of mediation.
<i>Philosophy, values, ethics</i>	<ul style="list-style-type: none"> • The philosophy (as opposed to the psychology) of interests, values and "principles" i.e. the way people think about them and the common logical faults. • What are philosophical/theoretical underpinnings of mediation/mediators and how do they shape practice. • Deeper understanding of ethical frameworks to inform practice in a real way. • Challenges for ethical and effective practice and ways to manage them.

Non-mediation processes

- How to legitim[ise] Conciliation as an ADR process
- The effect of use of conciliation in cases where there is an enormous imbalance of power and effective inability to access justice (e.g. Fair Work, AHRC and similar jurisdictions where one party is typically government or a corporation and the other an individual).
- Multiple party conciliation outcomes.
- The lack of responsible and qualified people conducting restorative justice and what it means to be qualified.
- I am more interested in understanding how interests based approaches in organisations and in our political structure can support more sustainable, long term outcomes.
- How conflict coaching affects participation in mediation (does it assist)
- Conflict coaching - should this be a part of all mediation processes?

Responses categorised as being specifically focussed on **FDR mediation**, by sub-category

<i>Sub-category</i>	<i>Responses to Survey Question 5 – Research ideas</i>
<p><i>i) FDR (= Process)</i> <i>a. Specific outcomes</i></p>	<ul style="list-style-type: none"> • The improvement, if any, of parties' ability to resolve conflict post mediation. • Whether parties would recommend mediation to others in similar disputes. • Benefits of short and longer time agreements or parenting plans including umbrella agreements • Client satisfaction with FDR • How the parenting relationship works after FDR?
<p><i>b. Non-specific outcomes</i></p>	<ul style="list-style-type: none"> • What happens post FDR?
<p><i>c. Non-specific effectiveness</i></p>	
<p><i>d. Specific effectiveness</i></p>	
<p><i>e. Models/styles/approaches</i></p>	<ul style="list-style-type: none"> • There is still very basic knowledge missing about how effective different styles of FDR are. For example, how effective are shuttle mediation sessions / telephone sessions, compared to face to face FDR? • Effectiveness of shuttle mediation v face-to-face mediation • Safety, screening and assessment process. • Who is more facilitative, transformative etc • Impact on clients, post FDR, of decisions to use shuttle or same room mediation • The best approach to manage and mitigate risk in the FDR processes. • My particular interest is in family mediation. I would like to know more about the longitudinal effects for children and families on having been through a more facilitated process (FDR) rather than just litigation or lawyer-assisted negotiation. • I am also interested in how we can embed more therapeutic approaches into FDR more generally
<p><i>f. Gender issues</i></p>	<ul style="list-style-type: none"> • The differential impact on women of family law mediation practices when domestic violence is a feature of the marital home. • Economic recovery of women post separation compared to men. • Gender differences in FDR • Power differential in FDR around family violence
<p><i>h. Standards</i></p>	
<p><i>i. Access (including awareness)</i></p>	
<p><i>j. Context</i></p>	<ul style="list-style-type: none"> • How can mediation be effective/empowering for victims of FV/DV • Ongoing family law reforms and their impact on sector of Family Dispute Resolution. • Family violence - Who is our work affecting and are we helping? • Community perceptions of equal shared parental responsibility vs equal time • We want to developing family dispute resolution in [<i>our country</i>]. Your benefits and experiences must [<i>help/inform</i>] us

<p><i>K. Children</i></p>	<ul style="list-style-type: none"> • In family law especially, the extent to which mediated agreements about children survive over different periods post mediation. • How effective is child inclusive FDR • Impacts of father's rights groups on FDR arrangements for children including the implementation of 'equal shared' parental responsibility • Proportion of pre-separation care arrangements for children by each parent to post -separation care arrangements • Longitudinal study of 50/50 arrangements - particularly when beginning in early childhood on children's mental health and general well-being. • I would like more research into including children in the preparation for mediation. For example could mediators meet with the children from a relationship prior to the mediation to help children understand the process and what general results could be obtained. e.g. "Mum and Dad are coming to talk about how they can work together as your parents." I believe that this would enable children to feel more empowered as they would be aware of the process their parents are undertaking and although specific results could not be guaranteed, this may reduce anxiety in the child. • The views of the children and how they impact on parental decision making. • Impact on children (involvement in FDR) and age [? How does children's involvement in FDR affect them; does a child's age change the affects?] • Involving the child more • The impact on children • Family conferencing including teenage kids. • Child focused mediation. • The impact on child focused outcomes by including Property and Parenting Matters at FRC's.
<p><i>ii) FDRP (= Mediator)</i> <i>a. Skills/expertise</i></p>	<ul style="list-style-type: none"> • Correlation between successful property mediations and mediator qualifications and experience • Correlation between successful parenting disputes and mediator qualifications and experience. • How prepared are mediators to mediate property disputes • Successful strategies in FDR • I would like to see some more research which investigates how emotion and dynamics of power are managed and responded to by FDRPs. • How to manage high conflict in the room?
<p><i>b.</i> <i>Accreditation/standards</i> <i>(includes training)</i></p>	<ul style="list-style-type: none"> • What level of accreditation should property mediators have?
<p><i>c. Collegiality</i></p>	
<p><i>iii) Disputants (= Parents; includes "parties")</i></p>	<ul style="list-style-type: none"> • What does it take to 'ripen' parents (to prepare them) to reach agreement in Family Dispute Resolution? • Parties' views of why mediation was successful or unsuccessful. • Parties' views on what makes a good mediator. • What was helpful to clients and what was unhelpful

<i>iv) Advisors</i>	<ul style="list-style-type: none"> • The extent to which mediated property agreements are formalised in essentially the same terms as the mediated agreement or whether conflict re-ignites at the point when parties seek formalisation of their agreements via lawyers. • Efficacy with positional lawyers • How to stop lawyers jumping to positional bargaining, avoiding exploration phase with parties together, and generally advocating and representing. They find any excuse to move to shuttle!
<i>General statistics/data</i>	<ul style="list-style-type: none"> • Savings generated since implementation of 'mandatory' FDR and why this has not translated into greater recognition of remuneration for mediators/FDRPs • General longevity of FDRPs in profession and ways to retain FDRPs. • S601 certificates – use nationally [it seems this response relates to data on the use of S601 certificates in different States/Territories; perhaps general rates of use, and under which circumstances they tend to be used more/less].
<i>Philosophy, values, ethics</i>	<ul style="list-style-type: none"> • Positiveness in dispute resolution, positive supervision/reflective practice and ethical decision making.