

# ▶ ADULT LITERACY RESEARCH

## Literacy, numeracy and alternative dispute resolution

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▶ **THE FORMAL COURT SYSTEM** has long been criticised for its technicality, adversarial nature, cost and inaccessibility to many people. As a result, there has been an increase in the use of alternative dispute resolution methods, such as mediation and arbitration, processes which have grown from community-based systems of dispute resolution.

Alternative dispute resolution is promoted as quick, economical and fair, and as a means of increasing access to justice by disadvantaged groups. While this system removes some of the obstacles people with literacy and numeracy difficulties may face, it brings problems of its own.

Unlike the courts, where legal professionals are responsible for most of the undertaking, the major players in alternative methods are the mediator practitioner and the concerned parties themselves (sometimes assisted by a 'friend'). The parties may be divorced from supportive communities and, while the actual mediation may be largely oral, significant use of documentation and written communication is often required.

Therefore, people with literacy (and sometimes numeracy) difficulties may be disadvantaged and strategies that minimise barriers to just and effective results for all parties should be employed.

### ▶ The research

The focus of the study was on native English speakers with limited literacy. While there have been a number of studies of the problems people with limited literacy experience in dealing with the formal legal system, there are few references to alternative dispute resolution.

In this study, selected mediation practitioners were surveyed. In addition, the literacy and numeracy demands of documents required in dispute resolution were analysed. The study sought to explore whether mediators encountered and recognised literacy and numeracy issues during mediation processes, their strategies for addressing such issues and their recommendations for appropriate professional development in this area.

### ▶ The findings

Many mediators were unaware of literacy issues affecting their clients. In some cases, the organisation mainly focused on assisting large enterprises and the question did not arise. In other cases, parties were legally represented. A small majority of respondents did indicate an awareness of literacy and numeracy issues, especially among clients not fluent in English, Indigenous persons and the aged.

Generally, parties do not draw attention to their literacy difficulties and the practitioner needs to infer that a problem exists from indirect cues, such as lack of comprehension when pen and paper or whiteboard explanations are employed. In some situations language and literacy issues are commonplace and are anticipated, while in a few instances the parties themselves reveal their difficulty.

Some practitioners noted that literacy weaknesses may well change the power balance between contending parties, and it was frequently noted that problems often arose when financial matters were in dispute, highlighting the importance of numeracy.

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A number of strategies to assist those with literacy difficulties were identified:

- expanding communication, for example, speaking clearly, and slowly, and providing careful explanations
- using multiple communication channels
- demonstrating patience
- using another advocate to assist the party
- acting as an advocate for one or both parties
- learning how to identify and deal with parties 'covering up' their limited literacy/numeracy skills
- maintaining awareness of the potential for communication difficulties
- using social skills
- clarifying processes.

No respondent to the survey indicated receiving professional literacy training, although several noted their limited capacity to identify problems in this area. In any case, professional development requirements for accreditation according to the Law Society specialist guidelines are very brief: only five days are required, during which a wide range of issues must be addressed.

While literacy and numeracy issues may not be relevant in all cases, they may be a concern for those at the social and small business ends of the spectrum. In circumstances such as these, many alternative dispute resolution practitioners adopt strategies to ensure that their communication is fair and effective, but this depends, in the first instance, on the mediator's ability to identify literacy and numeracy barriers.

## Implications for policy and practice

▶ The study recommends developing literacy and numeracy resources for use in professional development. Practitioners need to understand that literacy should not be assumed until it is demonstrated, and that, while mediation is primarily an oral process, there are significant demands on the participant's ability to write and to hear.

This study is a first step in an area where there is a very limited body of prior knowledge. Further research is recommended, both in relation to mediation strategies for those with literacy difficulties, and also on the extent to which literacy barriers discourage participation in alternative dispute resolution processes.

**The full report of *Literacy, numeracy and alternative dispute resolution*, by Joy Cumming, will be available from the NCVER website at <<http://www.ncver.edu.au>>.**

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