

## **"Moving towards resolution during intake"**

By Deborah Lynn Zutter

Australia's National Alternative Dispute Resolution Advisory Council has observed that each dispute resolution provider has a unique opportunity, through ADR, to assess and develop a service to accommodate the needs of users.

The notion of designing a dispute resolution service with the needs of users in mind was applied by Queensland's Residential Tenancies Authority (RTA). Initially designed as a mediation dispute resolution service in 1995, it has evolved into a staged conciliation dispute resolution service during intake. Following a review of the Act, amendments were introduced in 1998.

The Residential Tenancies Act 1994 provides that all residential bonds are forwarded to the RTA. At the conclusion of a tenancy, the landlord may give the tenant a form indicating the amount of the bond that the landlord believes should be released to the tenant. If the landlord purports that some of the bond be paid for damages or cleaning the tenant often disagrees. A Dispute Resolution Notice may be completed by either party and forwarded to the Dispute Resolution Services Division (the DR Division) of the RTA.

When first introduced, DR Division staff arranged for the mediation of landlord and tenant disputes by ad hoc mediators. After receiving written notice of the dispute, staff would contact the disputants by phone, seek their willingness to resolve the dispute by mediation, and schedule the mediation.

A review of the Act revealed that a number of disputes were settled before mediation following the telephone intervention by the DR Division. Landlords and tenants were asking staff to engage in shuttle negotiation by passing offers of settlement to and from each other. In fact, "a significant number of parties [found] using the telephone an efficient way of negotiating an outcome without the need for a conference".

At the same time, staff were experiencing the usual frustrations involved in scheduling mediations and clients were complaining that it took too long to complete the mediation process. The dispute resolution process did not encourage the use of active strategies to help disputants to resolve their disputes by suggesting options for resolution. Finally there was the perception that it was less costly to resolve disputes at intake using staff than to engage mediators and schedule mediation.

In response to the findings, a more flexible dispute resolution process encompassing a broader range of services was introduced in 1998. Entitled the conciliation process, it includes the provision of information about the Act to the parties, an assessment of the appropriate dispute resolution process and telephone conferencing conducted by staff mediators. The intervention by the tenancy conciliator may take the form of in-person meetings or telephone conference calls. Neither the DRO nor the tenancy conciliators are strictly neutral. Compliance with the Act is encouraged as is reality testing possible solutions with the parties. Participation in any part of the conciliation process is voluntary. Participants enjoy statutory confidentiality.

Once forms are lodged with the DR Division and an administrative file is created, the file is assessed: Does the DR Division have jurisdiction over the dispute? Has either party indicated a desire to take matter to the Small Claims Tribunal? Is the matter urgent? Urgent matters and matters where a preference to proceed to the Small Claims Tribunal has been indicated will be directed to the Tribunal.

Matters within the jurisdiction of the Act, and those not forwarded to the Small Claims Tribunal, are referred to a DRO whose first responsibility is to review the dispute to determine whether telephone shuttle negotiation conducted by the DRO, a referral should be made to a tenancy conciliator for separate or joint conferences, or a Notice of Unresolved Dispute should be issued so the matter can be dealt with by the Small Claims Tribunal.

In order to make this assessment, the DRO phones each party. The first call is usually made to the claimant. After explaining that the DRO's role is to assist the parties, the officer helps each disputant locate relevant information, informs the parties about the provisions of the Act, and identifies whether a party needs assistance, such as an interpreter, in order to participate. Dispute resolution officers are given customized training that facilitates professional, efficient and assertive communication.

Essential aspects of "typical" phone calls with landlords and tenants have been identified, organised into a logical sequence and potential scripts for training DRO's developed. DRO's are taught to ask open questions, such as "Help me to understand what this dispute is all about." Any messages or offers to be

made by the DRO to the other disputant are restated in neutral language and checked with the the disputant. The details of the possible settlements are developed with each disputant and reviewed for accuracy. Possible next steps are discussed with each party.

The move to conciliate still involves using mediation skills in negotiating outcomes. It reflects the context of dispute resolution, in this case the Residential Tenancies Act 1994, and is a response to the demands of RTA clients who want to make informed and lawful decisions when resolving their disputes under the Act, according to the Residential Tenancies Authority Annual Report 2000.

Shuttle negotiation at intake has been found to be particularly effective for resolving bond disputes where the amount claimed is less than or equal to the value of the bond and the tenancy is terminated, both parties show a willingness to negotiate on specific items of amounts in dispute, there are only two interested parties involved, and the dispute us over a single issue or a straightforward tenancy matter.

The Dispute Resolution Services 2000 Annual Report highlights the following:

- \* the number of dispute resolution requests has increased from 5,776 in 1997 to 14,991 in 1999/2000;
- \* 68 per cent of dispute resolution requests are finalized within 28 days;
- \* 65 per cent of the 6,961 disputes are resolved when parties were willing to participate in the conciliation process;
- \* the majority of the disputes that were resolved reached agreement with the DRO intervention;
- \* clients reported 81.3 per cent satisfaction with information provided by the DR Division and overall satisfaction of 68.5 per cent with the dispute resolution service.

The experiences of the DR Division indicate that intake is critical to dispute resolution. As answers to the foregoing questions are discovered and reported mediators and mediation services will be able to design more effective intake processes.