

## **ADR and religion**

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***This paper was prepared and settled jointly by the members of ADRAC.***

### **What is the relevance of religion to ADR?**

This question is very different to considering the relevance of ADR to religion (as to which see below).

It has been suggested in suitability check-lists that the 'norms' of some religions make the use of facilitative ADR (e.g. mediation) unsuitable for the resolution of disputes. For example, it has been said that adherents to a religion that prefers a didactic, authoritative approach to decision-making may have difficulty participating effectively in mediation.

It has also been suggested that ADR practitioners may use the disputants' religious background as one criteria for assessing a disputant's suitability to participate in an ADR process.

It is ADRAC's view that:

- disputants wishing to resolve their differences have the right to make an informed decision about which ADR process they prefer to use;
- although the disputants may take into account the influence of their religious affiliations, ADR practitioners should be wary of making suitability assessments based on matters of religion;
- when an ADR practitioner, or other intake person, chooses to assess a dispute's suitability for commencing an ADR process, the matter and the disputants should be considered on their merits, rather than on assumptions about religious affiliations; and

- an informed decision about whether or not to participate in any ADR process is the responsibility of the parties to the subject dispute; if the parties choose not to participate, for any reason, that is their right.

ADRAC notes that, where there is a pre-existing contractual obligation to commence an ADR process, religious considerations may not be relevant.

### **What is the relevance of ADR to religion**

Various religions have attracted significant criticisms in recent years for ADR-type mechanisms which they have put in place to deal with allegations of seriously inappropriate behaviour allegedly engaged in by their officials – most notably, sexual abuse of children entrusted into their care.

These criticisms relate to perceived deficiencies in the formulation and implementation of particular ADR-type mechanisms. Criticisms have including the following:

- the schemes were designed (advertently or otherwise) to advance and protect the interests of one of the disputants, the religious denomination in question, over the interests of all other parties;
- the schemes were promoted in ways which did not make this clear or were positively misleading;
- the design and/or delivery of the scheme was contrary to secular notions of good faith and fairness;
- the design and/or delivery of the scheme was contrary to fundamental teachings of the religious denomination;
- the schemes took advantage of the goodwill, and/or ongoing religious conviction, of complainants or their families – sometimes in nuanced ways and sometimes by concealment of relevant information concerning the alleged perpetrator;
- the schemes were intended to discourage complainants from exercising separate rights, or at least had this effect. For example:
  - resolution under the schemes sometimes required complainants to sign releases and indemnities;

- confidentiality arrangements under the schemes may have discouraged complainants from reporting matters to the police; and
- available outcomes did not address the real underlying interests of complainants and their families. For instance, available outcomes may not have included apologies, ongoing provision of professional or pastoral-type support, or any recognition of wrongdoing or responsibility on the part of the religious denomination in question;
- third parties who ostensibly performed roles as DR practitioners were selected by the churches and were not truly neutral, disinterested, or independent.

The Royal Commission into Institutional Responses to Child Sexual Abuse has received considerable evidence of, and has reported on, some ADR-type schemes established by various religions.

ADRAC considers that the perceived deficiencies in most, if not all, of these schemes may reflect inadequate attention to many of the fundamental values and principles underpinning 'good' ADR, such as:

- the importance of informed choice (facilitated by appropriate pre-intake processes);
- transparency and fairness;
- good faith participation;
- tailoring any ADR process to the exigencies of the particular dispute;
- focussing on interests and enduring solutions, not legal rights;
- neutrality and independence on the part of the DR practitioner (and, perhaps, some degree of external accountability); and,
- integrity and 'promotion of public confidence'.

The core values and principles underpinning ADR are discussed in more detail in [Principles of ADR](#).

Of course, religions serve the 'public good' in many profound ways, including by facilitating the resolution of disputes in genuinely sophisticated, therapeutic and 'healing' ways, which

exemplify all of the above values and principles of ADR. If things did go wrong in the design and implementation of ADR-type schemes dealing with alleged sexual abuse, what lessons can and have been learned?

ADRAC welcomes input.