

ADR Views



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The ADR Program at ACPACS is now located in Social Sciences Temporary Accommodation Bdg. 31B

A year on the move

The year of 2006 has been a very busy year for the ADR Program and for ACPACS. In addition to building our training and consultancy programs, we also moved into new offices. After much deliberation and preparation the Social Sciences Temporary Bdg. 31B (located behind the UQ Sports Sports & Fitness Centre; next to the Chaplaincy Complex). has become our new home. The new ACPACS offices offer increased workspace for our trainers and researchers, and closer contact to our growing pool of postgraduate students.

This, however, was not the only move of the year. Prof. Nadja Alexander accepted a Humboldt Research Fellowship at the European University Viadrina in Germany. She is working on a number of international projects including a comparison of German and Australian court-related mediation practice, judicial dispute resolution, the role of mediation in new democracies and as an interface between different legal traditions. Based in Berlin her Fellowship projects see her traveling to various European destinations.



ACPACS' new offices

This year the long awaited second edition of Nadja's book *Global Trends in Mediation* was published. More in-

formation and a review on the book can be found in sections 1.2. and 1.4. Since her arrival in Germany Nadja has developed a concept for a *Global Trends in Mediation* book series. The next volume in the *Global Trends* series will focus on ADR developments in 10 Mediterranean countries. It is scheduled for publication in September 2007.

ACPACS' work and interest in mediation and conflict resolution continues to extend to Vanuatu and the Solomon Islands. In Vanuatu a continuing project with the Malvatumauri Council of Chiefs builds on previous initiatives involving governance and conflict resolution.

ACPACS is a contributor to the Innocents Abroad Project led by University of South Australia and A/Prof. Dale Bagshaw. ACPACS is a contributor to the Innocents Abroad Project led by University of South Australia and A/Prof. Dale Bagshaw. The project examines the cultural relevance of Western dispute resolution training abroad.

The ADR Program Faculty wish you a happy and peaceful festive season. We look forward to hearing from you in the new year."

Successful ADR Program courses in 2006

ADR Program Activities in 2006

The dispute resolution field in Australia saw a year of intense discussion with the Draft National Mediation Standard occupying journal articles, research symposia, public consultations, conferences and discussions. A national committee has been formed to develop details of the proposed national standard and move the process of implementation forward. The ADR Program at ACPACS has been busy meeting the demand for mediation training and information.

In the first half of 2006 Prof. Nadja Alexander taught Mediation, Business Negotiation and Theories in Dispute Resolution in the TC Beirne School of Law's postgraduate program while Serge Loode conducted the undergraduate course ADR: Theories and Principles. Nadja was involved in the consultation process for the draft National Mediation Standard, and spoke about international certification schemes for mediation at the National Mediation Conference in Hobart.

Throughout the year the ADR Program continued to provide basic and advanced conciliation training for the Residential Tenancies Authority (RTA). Courses were run by Professors Nadja Alexander, Laurence Boulle, Pat Cavanagh, and Dr Polly Walker. In addition Nadja Alexander and Serge Loode developed a competency-based assessment tool to assist with the RTA's conciliator recruitment process.

In June 2006 ACPACS staff participated in the 3rd Asia-Pacific Mediation Forum in Suva (Fiji). Nadja Alexander, Volker Boege, Serge Loode, and Joanne Mackey presented on a range of topics including our work in Vanuatu, the Solomon Islands and Bougainville, and on comparative and international dispute resolution trends and the use of technology in ADR. The conference provided a plethora of opportunities to network with practitioners, policy makers and academics from the region and provided many new and inspiring viewpoints.

In late July 2006, Nadja Alexander left Brisbane for Berlin to take up a prestigious Humboldt Fellowship where she is working on international and comparative ADR projects.

The international flavour of dispute resolution continued with our Advanced Mediation Course conducted by Miryana Nestic (UK) and Ian Hanger QC (AUS). The trainers combined the latest techniques from Europe and the US with detailed knowledge of dispute resolution practice in Queensland to create an interesting and challenging workshop program. Participants included legal practitioners from Queensland and New South Wales as well as community mediators and researchers.

In November, after many months of intense work, the second edition of *Global Trends in Mediation*, edited by Nadja Alexander, was published by Kluwer Law International. The book provides a fascinating comparison of mediation practice and theory in 14 different countries, including Australia, the United States, Canada, France, England and Wales, and Germany. Since its publication it has received rave reviews by both academics and dispute resolution practitioners. Order forms can be downloaded from the ACPACS website at www.uq.edu.au/acpacs.

ACPACS also welcomed Prof. Gabriel Moens from Murdoch University who ran a half-day special workshop on International Commercial Arbitration. We expect to run a fully accredited International Arbitration Course with Prof. Moens in 2007.

The 2006 training calendar concluded with a basic Mediation Course led by Prof. Tania Sourdin from La Trobe University. Participants ranked the course as excellent and their feedback highlighted the vast experience and knowledge of the trainers and coaches. In the following week Prof. Patrick Cavanagh and Serge Loode conducted a one day workshop for difficult issues arising in family mediation for the Legal Aid Commission NSW in Sydney.

Finally, in early December Nadja Alexander's book, *Global Trends in Mediation* was formally launched in conjunction with an ADR Group event



Successful participants of the December mediation course receive their certificates

in Oxford, UK – a festive end for a busy ACPACS year.

Specialty training in mediation, arbitration and facilitation

Courses and events 2007

ACPACS ADR Program Courses

Mediation

In 2007 ACPACS will run mediation courses with a variety of trainers. These courses will offer professionals a solid foundation in mediation skills and the necessary knowledge to integrate mediation into their services portfolio. Mediation skills not only benefit lawyers and other professional conflict resolvers but are becoming more and more important for workplace investigators and community workers, as well as for all levels of government employees. Basic mediation courses are scheduled for:

- 12-15 April 2007 St Lucia Campus, Brisbane
- 13-16 September 2007 St Lucia Campus, Brisbane
- 5-9 December 2007 St Lucia Campus Brisbane

Advanced Mediation

The advanced course builds on existing mediation skills of participants. It captures the latest techniques from around the globe and canvasses topics such as effective preparation for mediation, the role of the mediator as coach, multi-party applications of mediation and the appropriateness of hybrid processes such as med-arb. The trainers are Miryana Nestic (UK), Ian Hanger QC,

and Professor Nadja Alexander. The advance course is scheduled for :

- 26-27 October 2007, St Lucia Campus, Brisbane



International Commercial Arbitration

In addition to our regular training courses we are also going to provide specialist training in international commercial arbitration this year. Commercial arbitration is one of the growth areas of legal practice and the most widely used dispute resolution method in international business. The course will allow participants to apply for accreditation with the Chartered Institute of Arbitrators in London and will be run by Prof. Gabriel Moens from Murdoch University. Currently Prof. Moens is the only trainer in Australia who can teach accredited courses for the Chartered Institute of Arbitrators. Course dates are:

- 27-29 September 2007, St Lucia Campus, Brisbane

Specialty Training Courses in Cross-cultural Mediation and Facilitation

Feedback from international and cross-cultural training programs highlight a need for heightened cultural awareness among mediators. We are currently working on a special workshop for mediators to recognise the cultural heritage of the western facilitative mediation process develop a respectful, flexible and culturally inclusive approach in relation to other ways of resolving disputes.

Multi-party disputes, as well as community and social conflict require a different range of interventions than is

common in mediation. The ADR Program will conduct an Open Space Technology Facilitation Course in the November 2007 focussing on these issues. Training dates will be announced shortly.

Course dates, venues and trainers may be subject to change. Please visit our website www.uq.edu.au/acpacs for further information and updates. Registration forms will be available on the ACPACS website early 2007.

Other Events



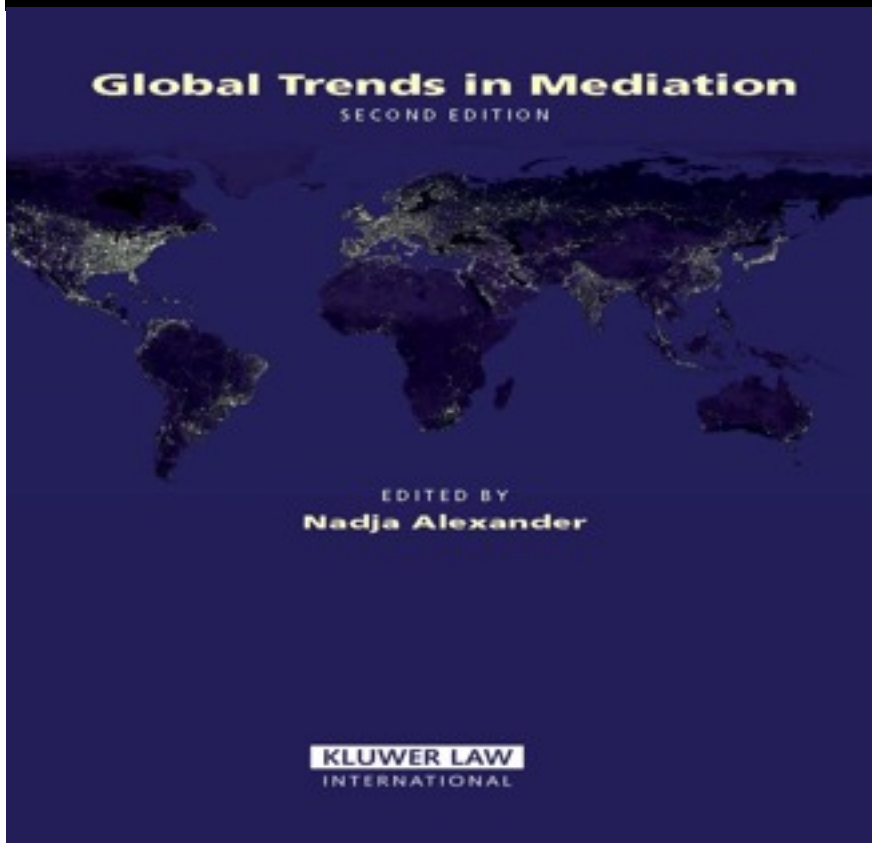
Australian-European Lawyers Conference 2007

The Law Council of Australia’s European Focus Group is convening the Australian-European Lawyers Conference 2007 on 2 & 3 March 2007. It coincides with the celebrations for the 50th anniversary of the Treaty of Rome which laid the foundations for the European Union, The Conference will focus on the EU’s system of supranationality, trade relations between Australia and the EU, international private trade law and commercial litigation, as well as issues of transnational litigation. More information is available on the [conference website](#) and on (02) 6246 3726.



NADRAC 3rd Research Forum

The National Alternative Dispute Resolution Advisory Council is holding its 3rd Research Forum at LaTrobe University on 13 and 14 July 2007. Abstracts for Papers can be submitted until 30 January 2007 to nadrac@ag.gov.au. More information is available from the NADRAC website and from the secretariat on (02) 6250 6272.



GLOBAL TRENDS IN MEDIATION

EDITED BY
NADJA ALEXANDER

The second edition of *Global Trends in Mediation* is a valuable resource for dispute resolution practitioners and academics, international lawyers, corporate counsel, policy-makers, business people and students. It will also be of interest to anyone wanting to learn more about the nature of mediation and its processes, practices and policies.

Kluwer Law International

ISBN 90-411-257-X

Micheal Leathes reviews Nadja Alexander's latest book

Global Trends in Mediation - A Review

Sir Isaac Newton invented the principle of the doubly-reflecting navigation instrument, which led to later the development of the sextant in 1730. How can you determine the best route forward if you don't know where you are? *Global Trends in Mediation* is a sextant with a modern twist - a literary GPS tracker for plotting the future development of mediation in the world. It is a vital, updated summary of the state of mediation in 14 civil and common law jurisdictions, blended with steerage about the way ahead.

Mediation is clearly on a series of pathways ultimately leading to international recognition and acceptance throughout the world. Its progress has been patchy, as this comparative assessment clearly demonstrates, but fundamentally a seismic movement is occurring. In some countries, mediation is maturing, while in others it is in its infancy. *Global Trends* pinpoints how, when, where and why.

This book is needed to gain an accurate understanding of the pathways. Professor Nadja Alexander has artfully edited this in-depth review for the state of mediation, interspersed with provocative insights into why mediation is also a state of mind. It is much more than a comparative analysis; it offers qualitative observations, balanced suggestions and provocative predictions. There is coverage of empirical research and experimentation, process quality and regulation, Government leadership and judicial schemes, online dispute resolution, attitudinal research, Industry-based schemes, voluntary/mandatory experiences and much more.

It is highly readable, with generous footnotes, authorities and links. The book has great depth while being segmented by its contributors into concise and flowing dialogue. The authors in each country surveyed have made a huge effort to explain history and development in a way that those unfamiliar with the technicalities of legal process will have no trouble comprehending. The reader is left wishing the book was twice as long, covering double the number of countries, and being a little bolder in suggesting what is actually needed on a

global scale to convert mediation into the 21st Century mainstream internationally. Perhaps that is now planned. It is needed.

All this renders *Global Trends in Mediation* an inspiration. New ideas, tried here and considered there, provoke progress elsewhere, enabling countries just embarking on the development of mediation to inherit the status quo from elsewhere, better able to leapfrog past painful experiences encountered abroad and make adaptations to local needs.

Because it covers both civil and common law systems, sometimes in the same nation, *Global Trends* blows away the myth that mediation is merely a solution to the inefficiencies of common law judicial process. This is a book for everyone who needs to contribute to the development of mediation in any country or region of the world. Anyone leading the way in the field needs this GPS instrument to help steer us into a better future.

Michael Leathes (UK)

*International ADR Proponent and Practitioner
November 2006*

Be prepared to be surprised!

What is Open Space Technology?

Open Space Technology offers a new paradigm – regarding theory, practice, terminology and approach – for conflict resolution, organizational development, organizational transformation and facilitation. Emerging in the late 1980s, Open Space manifested the revolutionary shift from organizational development to organizational transformation as a result of the analysis by just a handful of consultants and facilitators.

Based on Chaos Theory, the Theory of the Self-Organizing System and the concept of Complex Adaptive Systems, Open Space Technology stands out from and excels all other approaches in the realm of transformation. It is particularly characterized by the “invisibility” of the facilitator, the absence of a prefixed agenda, its apparent lack of structure and control, its welcoming of conflict and surprises and its reliance on individual responsibility and participation based on passion. In fact, Open Space Technology meetings turn out to be very structured and controlled – by the people involved. In this way they meet the needs of the participants infinitely better than any pre-planning could ever achieve. Open Space unleashes all the potential of groups and systems.

1. What is Open Space Technology?

In conferences, important things happen during coffee breaks. Participants discuss what really matters to them in small groups. They exchange ideas, make contacts, network and plan projects. This is the phenomenon that Open Space Technology is based on. In other words, Open Space captures the spirit of

one big break - with all its characteristics: energetic, self-organized, adapted by participants to their needs, unpredictable, chaotic, spontaneous and very productive.

“Open Space Technology (OST) is ...a deceptively simple approach to better, more productive meetings in which groups of from five to one thousand [recent event: 2108 participants¹]people quickly self-organize to deal effectively with complex issues in a very short time.”²



Open Space events last from several hours to several days, depending on circumstances and pursued aims. People might gather for a one-day workshop, a three-day conference or the weekly staff meeting. The optimum length and design of an event requires 16 hours spread over a three day period, preceded by a half day preparation meeting and followed by a half day next meeting³

2. How did it all start?

In 1983 Harrison Owen organized a conference resulting in a consensus: The important parts of this conference were the coffee breaks.⁴ Harrison asked himself, how to link the informality and

vividness/aliveness of a coffee break with the commitment/seriousness and result orientation of a work meeting. This led him to the prototype of human communication:

The Circle – Real things happen in the circle, where there is no above and below; no we or them.

Breath – When people are “Out of Breath” good things don’t happen. We first have to slow down and get back to our very own rhythm for cooperation and learning to unfold.

Bulletin Board – People share their passions and their concerns with each other.

The Market Place – People offer, choose and bargain.

Open Space Technology was “re-discovered”, a new-old practice revived, as Harrison Owen puts it. He and – and by now many others – have tried it and it works!

3. Who uses Open Space Technology?

Public and private organizations, small businesses, large corporations, associations, cooperatives, community based groups, communities, governments and families meet in Open Space to enhance the quality of collaboration.

Today Open Space Technology is being used in more than 91 countries. Boeing developed a new design for airplane-doors, AT&T designed a pavilion for the Olympic Games in Atlanta, the Institute of Cultural Affairs (ICA) planned its future, the Deutsche Bahn AG planned the process of a merger, ...and all that happened in Open Space.

4. How does it work?

Open Space Technology increases effectiveness and commitment. Partici-

¹ Annotation by author

² Harrison Owen: *The Spirit of Leadership – Liberating the Leader in Each of us*, 1st edition 1990, 2nd edition 2000, p. 10. “For more details on “...what Open Space is, how to create it, and what it might mean,” consult Harrison’s other books *Open Space Technology: A User’s Guide* and *Expanding Our Now: The story of Open Space Technology*.

³ In a one-day Open Space meeting you can usually expect people, who haven’t met very often or at all before, to get to know each other, do some effective networking, exchange ideas and therefore get new insights on a topic. In a one and a half-day meeting you can additionally expect self-organization to appear and designed action-planning makes sense. In a two-day meeting with sleeping twice you can expect the participants to experience self-organization in a way that can make a difference and action-planning will lead to sustainable appointments, next steps. For more details on the different effects of one to three-days meetings in Open Space see <http://www.boscop.de>.

⁴ The First International Symposium on Organization Transformation (OT1).

pants leave with new insights, energy, a sense of direction and the tools to move forward.

No prefixed agenda. People come together related to a central theme that is meaningful to all of them (such as The Future of our Cooperation, our Company, Our Health System – What can we do?). They sit in a circle and all have the opportunity to post issues and questions they care about. Within the first hour of the meeting, with a clear purpose in mind, all participants create an agenda and design self-organized parallel working sessions.

Space to participate, communicate and cooperate. Every issue of concern can be put to question. In order to move forward there is no better way than to start from what a person is passionate about. All those who share the same or a similar passion, interest or concern get together to work on it. The environment helps participants to communicate constructively without outside intervention. Team learning and cooperation take place; the potential for commitment is increased because participants take ownership of issues and procedures. That way, most hidden resources of the system are being activated.

Outcome and Documentation. Open Space Technology is a strongly action-oriented approach. Already during the event the participants start taking responsibility for putting the next steps into practice.

During the process outputs are published on the Documentation Wall so everyone can follow what happens in all other groups. Towards the end the participants develop an action plan and create action groups. On the last day, everybody receives the documentation containing short reports on the issues explored, actions that are planned, the names of the participants in each group and a contact list of everybody. This information supports the development of rich and diverse networks and the sustainability of further steps (the action planning).

Six to twelve weeks after the Open Space-gathering there is a “Next Meeting” for stocktaking and planning of further steps.

5. What is the role of the facilitator?

In the beginning the Open Space facilitator supports the opening of space. Afterwards it is the facilitators’ main task to hold time and space, so people can get their work done most effectively. The facilitators’ job is it to be present and invisible at the same time. By not inter-



Chairs are arranged in a circle for participants in an Open Space Technology Workshop

vening the facilitating person stays away from closing space, where self-organization is possible, thereby weakening the power of the participants and the system. The facilitator knows that the participants have all the competencies and abilities to handle the situation – even when there is a lot of conflict. When the facilitator succeeds in this art of facilitation (which is simple but not easy), the result can be powerful, effective learning, connecting, planning, decision-making and acting. It strengthens what is already there; passion, participation, responsibility, and performance.

6. Prerequisites for Open Space Technology gatherings

Open Space Technology is not a recipe for every situation, but it always works. It is a great approach for exploring issues, planning for the future, to structure quickly, to build and support teams, to improve communication, and to re-energize an organization. It is not useful in situations in which people think they know the answer already. Leaders who initiate Open Space must be ready for the unexpected and be open to change. Their intention should be transparent. The theme for the meeting should represent a real issue of interest.

Open Space works best when people showing up reflect the whole system.

In that case it does not matter how many are there; the ones who participate combine all the knowledge and all the possibilities of the group and they are sufficient to initiate change.

Given the following preconditions Open Space “rocks”:

- Work to be done is complex,
- answer(s) unknown,
- passion for resolution (and therefore the potential for conflict) is high,
- matters are urgent, time to act was yesterday and
- people that show up reflect the whole system.

7. Links to further information:

www.boscop.de

Website of the berlin open space cooperative, boscop eg. The site of the coop, registered under the German Coop Law, presently shows the work of its 11 members practicing as Open Space facilitators and trainers in Europe and worldwide. An English version will be online from February 2007.

www.openspaceworldmap.org

Open Space World Map presently showing 424 resident Open Space Workers in 70 countries (working in a total of 126 countries worldwide).

www.openspaceworldscape.org

Database presently showing 300 open space events with details of sponsor, date of event, number of participants, title, length of event, facilitator and a number of other details. This site grew out of the Berlin Open Space Landscape that depicted open space events that had taken place in Berlin (150) searchable by facilitator and field.

www.openspaceworld.org

Website for the worldwide Open Space movement. Information, contacts, training, annual worldwide OSonOS meeting.... simply everything to Open Space in 16 languages. The site is maintained by Michael Herman from Chicago.

www.openspaceworld.com

Website of Harrison Owen, the discoverer of Open Space Technology. Here you find information referring to his books, trainings and articles.

Compiled by Juliane Ade, boscop eg



Dr Polly Walker reviews Jane Docherty's book on worldview conflict

Reviews and other resources

Learning Lessons from Waco When the Parties Bring Their Gods to the Negotiation Table

Author: Jane Docherty

ISBN: 0815627769

Year: 2001

Publisher: Syracuse University Press

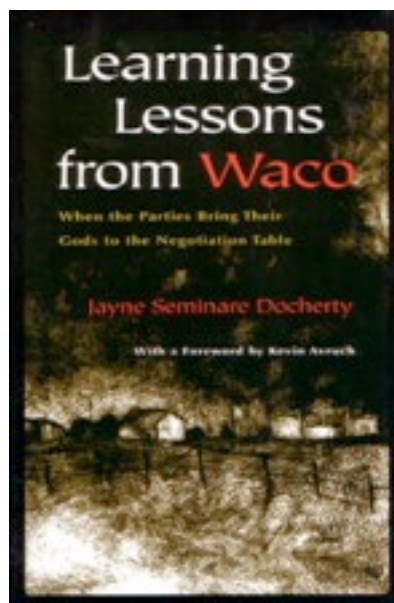
This book argues strongly for negotiators and mediators to develop world-viewing skills in order to deal more effectively with conflicts in which the parties hold vastly different worldviews. Docherty defines worldview as a constellation of concepts on what is real, how the real is organised and how we should act in light of that knowledge. The case study on which Docherty builds this text is one of crisis negotiation between Branch Davidians and the United States Federal Bureau of Investigation. Few of us may ever find ourselves in the position of negotiating an armed standoff. However, in our negotiation and mediation research and practice most of us will at some time deal with parties whose differences in worldview are so stark that ignoring these differences can result in, as Docherty states, 'a negotiation of the deaf' and a failure of the attempted conflict resolution.

In particular, Docherty's chapter on understanding worldview conflicts provides a map for mediators and negotiators wishing to navigate between multiple, differing 'worlds'. Although Docherty warns that we can never fully know another's worldview, she creates a framework for developing deeper understanding of parties' ontologies, logics, axiologies, epistemologies and ethics. She points out that negotiating worldview differences may also serve as conflict prevention because many groups whose worldviews are marginalised or

suppressed may withdraw from participation or respond with violence.

One challenging theme of this book is Docherty's insistence that effective world-viewing skills require more than an analysis of different parties' worldviews. Examining the worldview of the negotiators and mediators is an equally important part of the process. Often, alternative dispute resolution is portrayed as a professional practice which cuts through cultural difference. However, Docherty argues that everyone brings their 'ultimate concerns' or 'ultimate authority' to the table, and it is the interactions between these worldmaking stories that this book aims to examine. Although Docherty provides no easy answers, rather challenges us to develop a reflective practice of world-viewing, this text holds the potential for improving mediators and negotiators cultural fluency.

Review by Dr Polly O Walker



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Course Calendar 2007

April**12-15 April ACPACS ADR Program Mediation Course**

Venue: St Lucia Campus, Brisbane

Trainer: Prof. Patrick Cavanagh

September**13-16 September ACPACS ADR Program Mediation Course**

Venue: St Lucia Campus, Brisbane

Trainer: Miryana Nestic

27-29 September ACPACS ADR Program International Commercial Arbitration Course

Venue: St Lucia Campus, Brisbane

Trainer: Prof. Gabriel Moens

October**26-27 October ACPACS ADR Program Advanced Mediation Course**

Venue: St Lucia Campus, Brisbane

Trainers: Miryana Nestic, Ian Hanger QC, Nadja Alexander

November**ACPACS ADR Program Open Space Facilitation Course**

Venue: St Lucia Campus, Brisbane

Trainer: Juliane Ade

December**5-9 December ACPACS ADR Program Mediation Course**

Venue: St Lucia Campus, Brisbane

Trainer: Nadja Alexander

Dates, Venues and Trainers are subject to change. Please visit www.uq.edu.au/acpacs for regular updates.
