

***DOING JUSTICE IN ADR: IS IT WHAT  
DISPUTANTS WANT OR A  
CONVENIENT RATIONALISATION?***

**VADRA AGM Meeting 2013**

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## In 2011 NADRAC stated that:

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*“Despite their methodological shortcomings, research studies appear to support some of the claims of ADR, namely that it is responsive, quick, fair and informal, and that it is cheaper than litigation. Most parties appear to value ADR, and seem capable of making distinctions between substantive satisfaction and procedural satisfaction in that, while they may be unhappy with the outcome of the dispute, they appreciate the fairness of the procedure and the competence of practitioners.”*

- ▶ NADRAC, *A Framework for ADR Standards* Commonwealth of Australia, 2001, 37.

# The Research

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- ▶ ARC Grant
- ▶ Owners Corporation (Body Corporate) domain
- ▶ 252 participants
- ▶ Three levels of study
  - ▶ Preferences
  - ▶ Perceptions of justice
  - ▶ efficiency

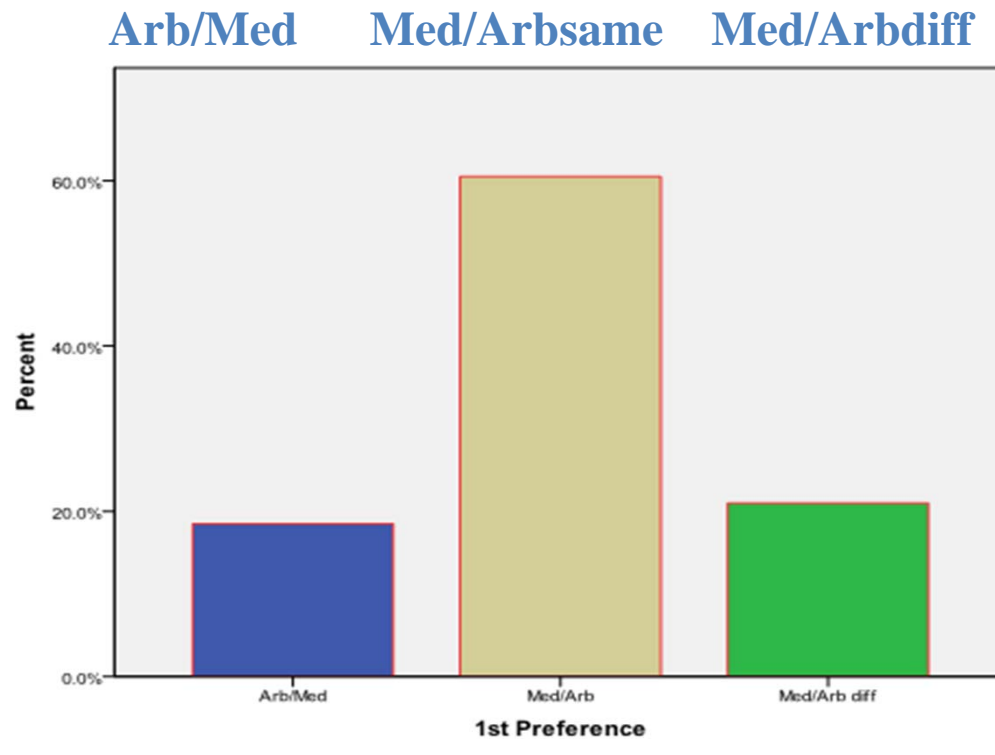
# Processes Tested

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1. Mediation followed by arbitration conducted by the same person (med/arb same);
2. Mediation followed by arbitration conducted by a different person (med/arb diff); and
3. Arbitration followed by mediation conducted by the same person (arb/med).

# The Choices Made

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# Rationalising Choices

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1 Procedural Justice	68.8%
2 Distributive Justice	15.4%
3 Interpersonal justice	4.1%
4 Informational Justice	4.5%
5 Efficiency/Cost	7.2%



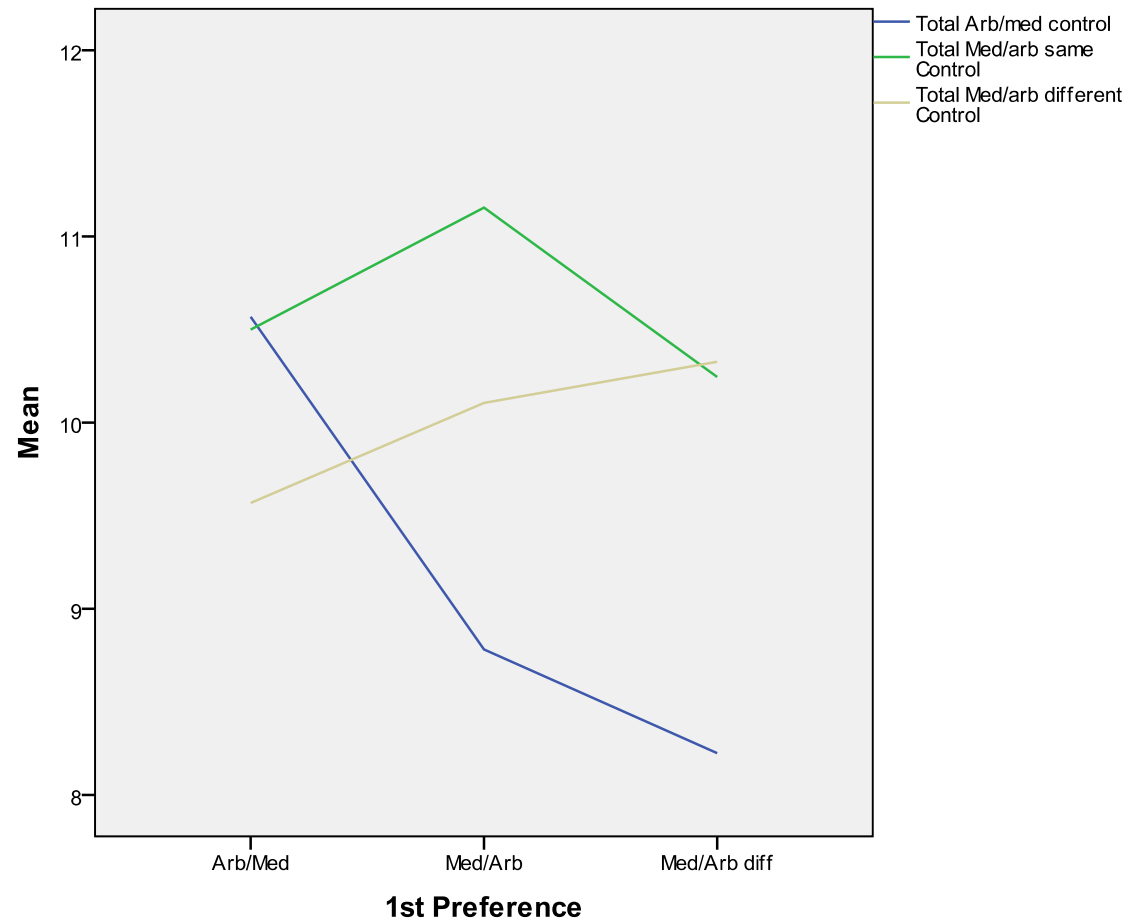
# Preferences and Control

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Participants were asked to rate decision control, process control and rule control for each of the three processes to be used in the simulation on a five point Likert scale.

- ▶ **Decision Control** – the ability of the parties to control the final decisions and outcomes
- ▶ **Process Control** – the ability of the parties to control the type of information/evidence provided
- ▶ **Rule Control** – the ability of the parties to make the rules that govern the process

# Mean Scores of Control Scores for Process





# What is Justice?

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- ▶ Bingham – 29 “types”
- ▶ 1949 - 1975                      Focus on Distributive Justice
- ▶ 1975 – 1995                      Focus on Procedural Justice
- ▶ 1980s – to present              Focus on Interactional Justice  
(Interpersonal and Informational Justice).

(Greenberg and

Colquitt)

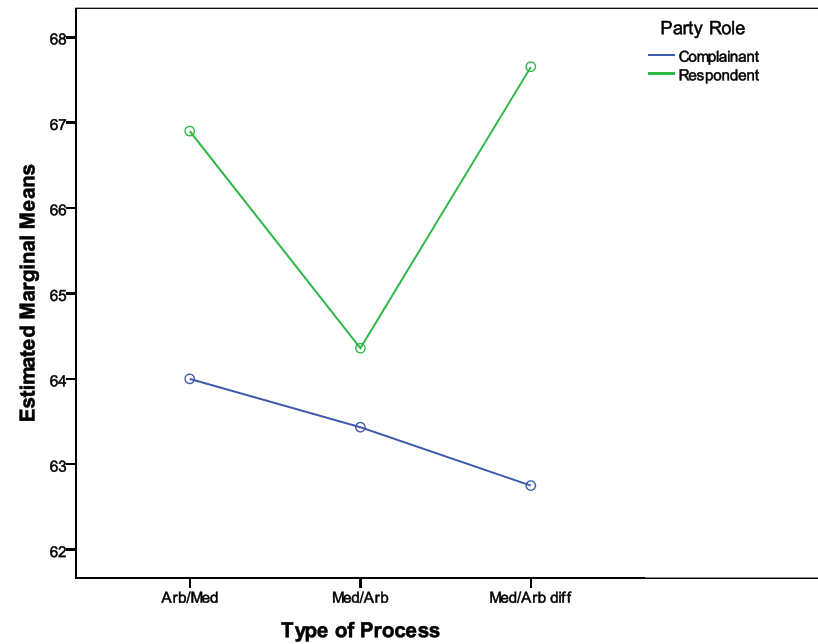
# Constructing Justice

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- ▶ Instrumental model
- ▶ Relational Model

# Post Mediation Justice Scores

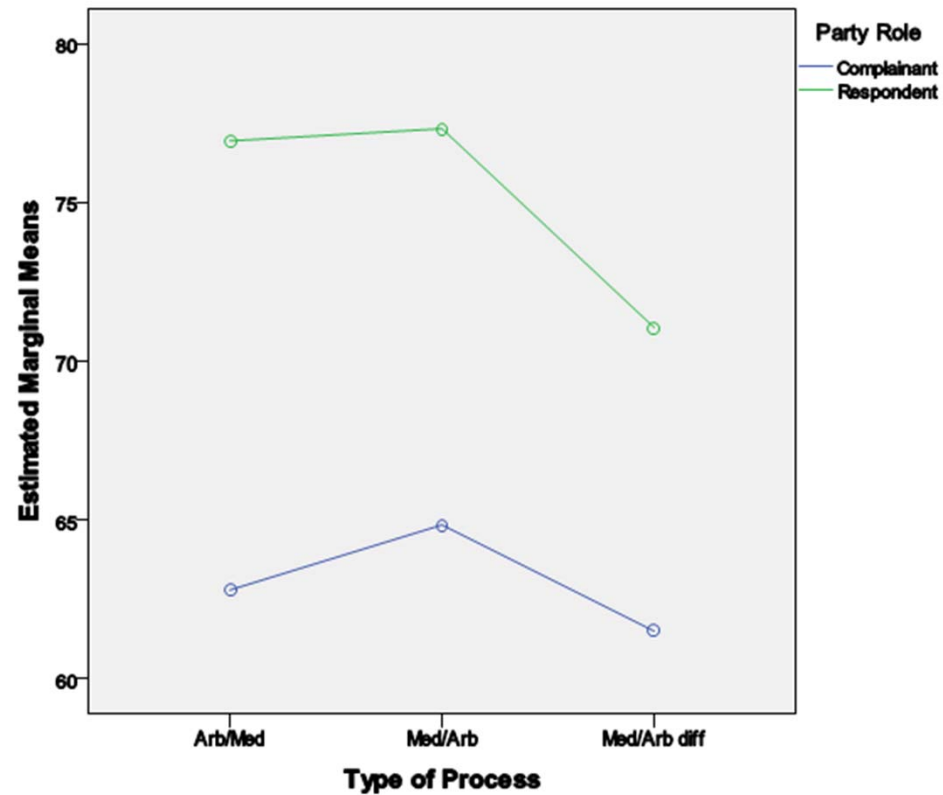
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.108.<sup>1</sup>

# Post-arbitration Justice Scores

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## Reasons for the Difference

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- ▶ Generally research shows the “interaction effect” between outcomes achieved and fairness perceptions of process to be weak. How?
  1. Egocentric view.
  2. Outcomes are information.
- ▶ Bad outcomes put the emphasis upon process.
- ▶ Little time for participants to form counter views

# Associations with Other Factors

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No significant association found for other variables with reasons for preferences or justice measures including:

- ▶ preference choice,
- ▶ role played (including complainant and respondent),
- ▶ gender,
- ▶ place of birth,
- ▶ citizenship and residential status.

# Implications

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- ▶ Control elements important in preferences but not related to justice perceptions pre mid or post test
- ▶ Justice perceptions not necessarily related to preferences (MedArb same rated lowest after mediation phase)
- ▶ Preferences or justice measures not predicated on “demographic or role characteristics”
- ▶ Agreement making does not vary justice measures but adverse outcomes do
- ▶ Preparing parties for mediation outcomes is important
- ▶ Training of mediators needs to place some more emphasis on outcomes
- ▶ Further research into efficiency and justice
- ▶ “on ground” review of legislation/practice indicates importance of design