

Book Review

Peter Condliffe¹

Managing Workplace Conflict: Alternative Dispute Resolution In Australia

Bernadine Van Granberg

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The *Workplace Relations Act 1996*, as amended in 2005 to become “*Work Choices*,” commenced operation on 27 March 2006. The new legislation opens up the practice of dispute resolution to a range of new providers, while at the same time substantially decreasing the role of the Australian Industrial Relations Commission (AIRC). The role of the AIRC in providing alternative dispute resolution (ADR) services is limited, although the role of private consultants is not. This signals the end of the dominance of the tribunal and will also act as a spur for the growth of private dispute resolution. However, the intense regulatory regime imposed by the new legislation creates quite a few dilemmas for private dispute resolution practitioners. This book, although written before the introduction of the Act, provides a very useful outline of some of the potential pitfalls awaiting the practitioner.

The author is the Head of School of Management at Victorian University in Melbourne and has published widely in this field. This new work comes at a critical time in the history of industrial relations in Australia. The author argues that because workplace dispute resolution in this country has been dominated by industrial tribunals there has been a consequent lag in the development of professional dispute skills by consultants in the field. This lack of skills, compounded by parallel failures to comprehend and manage related ethical and practice conundrums, are amply illustrated in a number of case studies in the latter part of the text.

What I found most valuable about this book is the way in which the author describes the move away from a centralised system of industrial relations and a retreat from public interest principles to one based on decentralised relations and privatised arrangements. The author insightfully analyses this move and relates to the dominant paradigm in ADR – that is that disputes or misunderstandings occur between inter-dependent parties who share similar goals – as neatly fitting in and being compatible with this major shift.

Although practitioners in the field usually give emphasis to statutory sources of change, this author lends some valuable insight by putting her emphasis upon sociological and structural factors. In particular she describes the effect of political changes and the rise of human resource management as a discipline in employer organisations. As well, other phenomena including the rise of non-standard work practices and falling union rates provide a picture which allows one to more fully understand the way in which the legislative changes have occurred. As a long term ADR practitioner, I also found the author’s treatment of the traditional adjudication system to be an interesting one. She describes it as a

1 Peter Condliffe is a Barrister, Specialist Mediator and Facilitator at Owen Dixon Chambers East, Melbourne.

sort of “collectivist approach based upon precedent” which by comparison the new privatised dispute resolution processes obviously are not. It caused me to pause and think about the inherent social advantages that may be possible in public models of disputing which set certain standards of conduct and procedure. The experience of the new dispute resolutions systems in industrial relations where this will largely disappear will obviously have some profound and long term effects on our society. It remains to be seen what these will ultimately be.

No doubt there will be many benefits to the new dispute resolution systems and the author analyses these and comes up with a list which is familiar to those who have been involved in ADR for any period of time. These include reductions in costs; involvement in an educative process; the ability for the process to involve wider issues; increased disputant control; greater efficiency; and a reduction in polarization between the parties. For the newcomer to the field, the chapters in the book on ADR processes and models will be informative and useful. For those who have practised for some time, most of this material will be familiar territory and much of it is available in the existing literature.

The author clearly sees the new privatised regimes as representing the triumph of the “Unitarian approach” to the role of conflict in organisations. In this paradigm conflict is seen as a transient phenomenon that can be removed through appropriate managerial action. Where conflict persists it is usually attributed to the activities of deviants and troublemakers. Unitarianism places an emphasis on the achievement of common objectives. It envisages workplaces being united and working together in the manner of a well integrated team under the umbrella of common goals. Concepts such as authority, leadership and control tend to be the preferred means of describing the managerial prerogatives for guiding the organisation towards its common interests. It largely ignores the role of power. Pluralist and oppositional or radical frames of reference are not envisaged as part of the new dispute management landscape as perhaps they were under the old system.

As well as the informative background analysis the book is distinguished by two other useful aspects. The first is a comprehensive survey of employers and ADR practitioners. The survey of Victorian employers revealed that mediation was unexpectedly a relatively common phenomenon, with 69 of the 129 employers claiming they had utilised it in the past. This figure is particularly high compared with the findings the author made in relation to the number of dispute resolution clause existing in enterprise agreements (12.3%). The author attributed this to the methodological processes of the survey where those employers using ADR processes were more likely to respond than those not. It was interesting to note the professional background of the mediators hired in the survey. 16.8% were from employer associations, 12.9% from unions and a further 12.9% from legal firms. In 8.9% of cases retired industrial relations tribunal members were employed and the “Others” consisted of a disparate group of persons from academia, consultants with management backgrounds and psychologists. Internal mediation by a human resource staff member was the most prevalent form of workplace ADR. Of the 69 employers who had utilised mediation in the past, only 23 or 80% actually engaged an external third party.

These figures indicate that there is yet to emerge a distinct professional grouping of industrial relations dispute resolvers. They also indicate a preference, when selecting the dispute resolver, on content skills relating to industrial relations rather than process skills relating to dispute management.

The second survey described in the book was of 156 ADR practitioners. These practitioners were taken from the Fourth Annual Mediation Conference held in Melbourne in 2000 and while this would

have provided a ready population to survey, perhaps it was not a group who had extensive knowledge or practice in workplace ADR. Interestingly, only 8% of this group felt that there was a rapid growth in ADR generally and almost half (49%) indicated that workplace ADR was fairly small, although a growing part of the general ADR work load.

The information gathered from these surveys provides the author with a useful springboard for her analysis of the issues described above. They also apparently led her to the material for her case studies which form a significant and interesting part of the book.

The case studies tended to confirm the prediction by the author that ADR will largely benefit employers rather than employees. A series of critical issues manifested themselves in these case descriptions which may leave many readers feeling quite sceptical of the purported beneficial claims sometimes made for ADR. There is clearly identified here wide gaps between the normative rhetoric of ADR and the reality of practice. According to the author, these gaps reflect a lack of understanding, both by practitioners and disputants of the nature of ADR and the ethical responsibilities of the ADR practitioner. Part of the problem the author identifies is that the conflict consultants employed often confuse their role with that of "management consultants". Their ability to be impartial and to manage power disparities is something which seemed beyond or not within the consciousness of some of the consultants employed. They also demonstrated significant conflicts of interest, lack of neutrality, denial of procedural justice and problems in dealing with power imbalances. The author attributes these issues to lack of training and knowledge on the part of the practitioners and disputants and an absence of controls on the behaviour and conduct of the practitioners.

Paradoxically most of those parties engaged in these studies felt satisfied by the process because it was procedurally fair. The author thereby identifies one of the key contradictions evident in the wider ADR field. That is that, even if a process is regarded as equitable and procedurally fair this does not necessarily lead to fair outcomes. This will no doubt be an issue that will be developed and explored at some length as Work Choices becomes fully operational and numbers of parties experience the new processes.

The author predicts that ADR which will occur principally in non-unionised or poorly unionised and "new economy" service industries and contribute to further marginalization of unions. Its effect on the AIRC itself is harder to predict, but as well as reducing the tribunal's workload and allowing it to respond to more major disputes the changes may in fact erode members knowledge and expertise in their industry of specialization. This will lead further to a more market driven "economic Darwinism".

No doubt the bipartisan neoliberal political agenda in Australia over the past two decades will be further consolidated by these changes, but the issues raised by the author point to some significant issues which may cause some pause for reflection. She concludes, perhaps rather optimistically, that the future of workplace ADR will depend on practitioners themselves taking control of the standards required.