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# Mediation: past and promise

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The 5th National Mediation Conference 2000

# Mediation: past and promise

*Peter Condliffe*

It was the mid-80s and I remember an eminent academic telling me that I should read a book by some authors called Fisher and Ury. She said it would help me understand something about interest based negotiating and could be useful in training courses for mediators. Positions ... interests ... transitions ... reframes ... etc, etc. It was a steep learning curve and we were experimenting as we went along.

Times have changed and in a few short years much has been achieved. We have moved from a heavy supply side emphasis (everyone wanted to be a mediator but no one much was mediating) to a demand side shift (nearly everyone still wants to be a mediator but there are now some eager customers).

This conference will celebrate those achievements and look to the future to examine the potential still before us. Divided into five streams (family, commercial, public issues, practice and theory, cross cultural/native title), as well as sessions for discussion and sharing, this conference will involve and enrich you from the start to the very end. You will come away with some new contacts, good papers and enhanced knowledge of the field. The most experienced and eminent practitioners from around Australia will be there. As well, the President of the Society of Professionals in Dispute Resolution (US) will deliver a keynote address and mingle.

And just in case you have forgotten some of those achievements, here is an outline for you to ponder and prepare yourself for what promises to be the best ever mediation event in Australia.

As Astor and Chinkin point out in their groundbreaking book *Dispute Resolution in Australia* (Butterworths, 1992), indigenous communities in Australia have used a range of methods to deal with conflict (for example shaming, exclusion, compensation, initiation and training based upon a system of kinship based law)

for thousands of years. Also, those of us who have studied Australian history know that non-litigious forms of dispute management have been practiced in Australia since colonial times, through arbitration provisions inherited from English law and the establishment of informal tribunal and ombudsmen systems. As well, the Federal government, at a very early stage, developed a conciliation and arbitration system to manage the labour market, although in practice it progressively developed into a rather formal litigious system.

However, it was not until the late 1960s and 70s that significant interest began to focus upon informal dispute resolution, although the early focus was upon tribunal systems and arbitration. In the late 1970s interest in mediation based approaches began. Most arbitration, ombudsmen and tribunal systems provide alternatives to traditional litigation but do not necessarily provide for the self-determination of the disputant parties, which is central to mediation programs. It was this emphasis which tied mediation into the rise of communitarian and consumer rights ideals and projects of the time.

The beginning of the government funded Community Justice Centres Pilot in 1980 (NSW) provided the initial impetus, followed by similar establishments in Victoria (1987) and Queensland (1990). They were modelled on community based mediation services, which had begun to spring up in great profusion in the US. These services, institutionalised within government bureaucracies, aimed at providing services to a long neglected and ill used sector of conflict: namely, community disputes. They have also pioneered the use of mediation in public issue disputes, victim offender mediation (and conferencing) and family mediation.

The legal profession quickly followed these developments and established a specially constituted forum (LEADR) to develop and lobby for the use of mediation

within the legal system. Many law schools now have ADR or mediation courses. Other professions have been slower to embrace these new approaches but this is rapidly changing, especially in the environmental planning and human service fields.

Courts, banking, insurance and other large institutionalised systems have now embraced mediation, in varying degrees, as part of their conflict management strategies. In Queensland, for example, there are now over 30 pieces of legislation that specifically provide for mediation services.

As part of this wider 'ADR movement' mediation has begun to have a major impact on the way in which individuals, organisations and communities perceive and manage conflict.

Despite mediation being an age old process, the modern mediation movement, in Australia and other western countries, is still in its beginning stages. Theory and practice, in most instances, are still being trialed and advanced in incremental and ad hoc ways as the field expands and embraces the new approaches and techniques. It is this dynamic which will focus our attention in this important conference.

The conference is in sunny Brisbane on 17-19 May 2000 at the Sheraton Hotel. Phone the conference organisers for details on 03 9521 8881. ●

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