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Mediation: past and promise - the 5th National Mediation Conference 2000

Peter Condliffe

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General Editor



Laurence Boulle
*Professor of Law,
Bond University, Queensland*

Special Edition Editor

Peter Condliffe
*Barrister/Mediator,
Director, Peacemaking
Associates, Brisbane*

Editorial

Mediation: Past and Promise — the 5th National Mediation Conference 2000

Peter Condliffe

The 5th National Mediation Conference, held at the Sheraton, Brisbane from 17-19 May, celebrated the many achievements of the ADR movement and looked to the future to examine the potential still before us. Divided into five streams (family, commercial, public issues, practice and theory, and cross cultural/native title) as well as sessions for discussion and sharing, the conference was designed to personally engage every delegate who attended. It was 'bookended' by 'Learning Circles'. These were designed to enhance participation, build networks and reflect some of our values as mediators. Some of the most experienced and eminent practitioners from around Australia were there.

Professor Laurence Boulle presented, with some amazing audio-visuals, an excellent key note address titled 'Minding the gaps — reflecting on the story of Australian mediation'. An edited version of this address is included here. Sharon Press, Director of the Dispute Resolution Centre in Tallahassee, Florida (US) and President of the Society of Professionals in Dispute Resolution, delivered a second stimulating keynote address titled 'Mediation trends and expectations: a view from abroad'.

Over 250 delegates from all over Australia, and some from overseas, enjoyed three days of workshops, papers

and meetings. There were over 50 offerings in all. Some hardy souls took themselves off to Stradbroke Island (just off the coast) for a fourth day field trip under the leadership of Griffith University academic and mediator Ron Neumann. While there they looked at some of the sites and talked to some of the people involved in a public issue disputing process.

The conference theme was chosen in a spirit stirred by the millennium changeover.

Over the last 25 years Australians have had available to them an increasing array of new and innovative ADR processes to manage their conflicts. This has happened not only in the legal sphere, but also in such disparate areas as industrial relations, family therapy, business disputes, public issue disputes (especially in environmental and planning matters), and by professional groups to manage disciplinary and consumer complaints. The ADR movement has progressively, almost stealthily, come to occupy an increasingly important part in the move away from authoritarian and top down social and institutional structures to more open, accountable and inclusive arrangements.

Those who have studied Australian history know that non-litigious forms of dispute management have been practised in Australia since colonial times through ➤



Editorial Panel

Tom Altobelli
*Senior Lecturer,
 Faculty of Law,
 University of Wollongong*

David Bryson
*Conciliation Officer,
 WorkCover Conciliation
 Service, Victoria*

Peter Condliffe
*Barrister/Mediator,
 Director, Peacemaking
 Associates, Brisbane*

Shirli Kirschner
*Resolve Advisors Pty Ltd,
 Sydney*

Nadja Alexander
*Senior Lecturer,
 Faculty of Law,
 University of Queensland*

Michael Mills
*Partner,
 Freehill, Hollingdale
 and Page, Perth*

➤ 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 it progressively developed into a rather formal litigious system. Our indigenous communities 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.

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 NSW in 1980 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 United States. These services, institutionalised within government bureaucracies, aimed at providing services to a long neglected and ill used sector of conflict — 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 was this dynamic which was the central focus of this important conference and which is reflected in a selection of some of the articles which are included here and in the next issue.

Professor Boule outlines some of the key issues and challenges facing the ADR movement. Using the metaphor of the 'gap' passengers encounter as they disembark from a train (which during his presentation was backed up by some marvellous sound and visual effects) he outlines the contradictions inherent between: broad social developments and mediation's underlying values; justice and efficiency; theory and practice; supply and demand; and mediation as a life skill and occupational practice.

Dr Tom Altobelli, a lawyer and academic, presents a useful overview concentrating upon some key indicators of ADR's growth, including legislation, changing attitudes and practices, adoption of ADR by industry, and increased education.

Finally Rachael Field, an academic from Queensland University of Technology, presents one of the more controversial papers from the conference, concerned with the issue of mediator neutrality and power imbalances. She critically assesses the claim that mediators can be both neutral and redress power imbalances. ●

*Peter Condliffe, Barrister/Mediator,
 Director, Peacemaking Associates.*