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Book Review

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Bernadine van Gramberg, *Managing Workplace Conflict – Alternative Dispute Resolution in Australia*, The Federation Press, Sydney, 2006, 240 pp, <www.federationpress.com.au>

The front cover of this book is dominated by a giant fire-ball burning against a dark background. Is this the conflagration which will ensue if workplace conflicts proliferate and are not appropriately managed? Above the fireball is a blue sky with wisps of white cloud. Perhaps the symbolism is best left to readers who can interpret according to their own predelictions. However whatever the dramatics on the front cover, there is a fine contribution to the ADR literature between the covers.

Managing Workplace Conflict is a text on workplace ADR in the changing Australian legislative, economic and political frameworks. In comparison to some other jurisdictions Australia has been slow to develop and integrate ADR into workplace relations, if one excludes the conciliation role of commissions from the ambit of ADR. While there have been other texts on these themes Bernadine van Gramberg's work is topical, analytical and stimulating. It is relevant for employers, unions, human resource departments, ADR practitioners, government agencies – and ultimately for all workers in contemporary Australia. It combines perspectives from the literature, empirical surveys, case studies and official reports, synthesised and evaluated from the author's own critical perspective.

This text is written with an eye to new opportunities for consultants in conflict management and dispute resolution. Opportunities have been precipitated by a weakening in the roles of unions and industrial commissions in relation to workplace bargaining and dispute resolution. For some time government policy and regulation have been creating spaces for private practitioners outside the ambit of the Industrial Relations Commission. (See p 151 of this issue of the *ADR Bulletin* where Amanda Coulthard deals with the changing role of the AIRC in relation to its dispute resolution functions.) The model dispute resolution clause provided for AWAs allows parties to bypass the formal system in favour of private mediation, though until recently these processes were not much used. However more recent legislative changes close some industrial relations doors and open others and the book provides useful insights in the latter category for conflict management consultants.

The book is also written with a critical eye on many of the claimed principles and characteristics of mediation, such as neutrality and impartiality, confidentiality and privacy, the justice credentials of mediation, and ethical issues relating to power imbalances. There is an extensive discussion of workplace justice, where procedural, distributive and 'interactional' components are interwoven (and John Rawls plays a welcome cameo role in an ADR text). This is not just an intellectual debate and reference is made to empirical surveys on the successful impact of the use of ADR in the improvement of union–management relations by virtue of the fact that

mediators have used interest-based grievance procedures. While these debates are located in the workplace context they have implications for ADR generally. There is also a discussion of the highly topical issue of mediator training and accreditation.

For ADR cognoscenti there is the customary trawl through definitions and models of ADR – this is always difficult to undertake in an inspiring way and there were references to some rather tired sources. However it is interesting to see, with illustrations from other jurisdictions, how the text includes within the ambit of 'ADR' such processes and systems as open-door policy, peer review, voluntary voice systems and internal ombuds. The elasticity of ADR is illustrated once again.

However it is in relation to the integration of ADR processes and principles into current workplace changes that this book makes its greatest contribution. Here there are three impressive features:

1. The first feature is the book's location of ADR developments in a broader socioeconomic framework. The development of ADR has not been an accident of history but is a function of political, economic and managerial imperatives. In the last few years there have been concerted efforts by government and business to decentralise, de-institutionalise and individualise workplace transactions and conflicts. Neo-liberal policies of deregulation and privatisation have opened up possibilities for new forms of dispute resolution and it is not surprising that ADR has been invited to take its place at the new table. These trends in policy and regulation have resulted in a shift of power from workers to employers. Together with changes in human resource management (HRM) they have caused ADR to become the 'dispute resolution tool of choice in an HRM regime'. Here it is worth noting that, whatever its drivers in other contexts, it is predominantly employers who have pushed ADR to the fore in workplace situations. It tends to focus on the specifics more than on the context, on individuals more than on groups, and on conflict as involving misunderstandings which can be resolved through mutual collaboration rather than as a manifestation of broader power relations in the political economy. Thus both opportunities and responsibilities are being created for ADR practitioners.

2. The second feature is the provision of survey-based evidence on aspects of ADR. In Victoria 550 firms were surveyed on their attitudes to ADR and 1710 ADR practitioners were surveyed about aspects of their practices. Individual interviews were also conducted with key players in modern workplace relations. Employers provided surprising evidence on the frequency of mediation use in Victorian workplaces, with more than half of the 129 firms having used it. Of interest for ADR practitioners was the finding that human resource managers were used in 33.7 per cent of cases – though it is not entirely clear what conception of mediation the respondents had in mind when they provided this information. (In the survey of ADR practitioners 28.8 per cent of mediators were found to be lawyers.) A large majority of practitioner respondents felt that workplace mediation had grown in the last 10 years (though with a relatively large group unsure on this issue). Few practitioners had full-time practices in workplace dispute resolution and most worked in community, family and other areas as well. Mediation and facilitation were by far the most frequent forms of ADR being provided in the workplace out of the five categories listed in the survey instrument. The sources of work for the practitioners were referrals and word-of-mouth, followed by work from regular clients. Advertising, *mirabile dictu*, was felt to be a source of new work for only 3.5 per cent of practitioners – clearly sooner or later marketer will pursue mediator for a happier relationship. This survey information is welcome evidence-based knowledge for ADR in general and workplace mediation in particular

3. The third noteworthy feature of the book is its illustration of tensions between the theory and operation of mediation through the analysis of some extended case studies on aspects of dispute resolution practice in the work place. In one case study the consultant engaged in a fact-finding exercise which was misunderstood by the non-English speaking participants; the failure to communicate adequately, an appearance of bias and poor control of the process led to the venture having

Court work

Concurrent evidence in courts and ADR

Concurrent evidence has been a feature of civil trials in many Australian courts for several years. It involves conflicting experts giving evidence and being questioned by the judge, counsel and fellow experts in one joint session – also known as 'hot-tubbing.'

A new DVD resource is available on concurrent evidence produced, concurrently, by the New South Wales Judicial Services Commission and the Australian Institute for Judicial Administration. The concept is introduced by Chief Justice John McLennan of the Common Law Division of the NSW Supreme Court and the process is then illustrated with a simulation which uses as its script an actual trial transcript involving a resumption matter. After the simulation advocates and experts give their views on the strengths and shortcomings of the process. The DVD ends with comments from Justice Lockhart, formerly of the Federal Court and one of the pioneers of concurrent evidence in Australia.

While different variants of 'hot-tubbing' have been used in ADR processes for many years this resource is also of interest to mediators and other practitioners. It depicts four witnesses in a process controlled by the judge, with questioning by counsel and one another. More than this number of witnesses could be accommodated in this procedure. Perhaps the courts are giving a lead here to the ADR community.

For more information see <www.aija.org.au/ or www.judcom.nsw.gov.au/>.

mainly a negative impact. The second involved an enterprise bargaining process facilitated by an external consultant; this case illustrates how easy it is for a consultant previously engaged in the management of the company to have a conflict of interests – part of the intervention which brought the parties to settlement was the consultant's advocacy on behalf of management. This case study is interesting in relation to its observations on bluff and deception as negotiation tactics and the responsibility of those supervising them. (As some commentators have suggested, mediators routinely supervise lies, bluff, threats and tricks – but we are sometimes too polite to admit it.) The third case study concerns an interpersonal breakdown between an employee and two supervisors where the ADR consultant's intervention was contaminated by a lack of procedural fairness, for example in influencing which agenda items were prioritised for discussion. This resulted in the parties' rejecting the outcome. As is usual case studies, of which there are too few in the mediation area, often highlight the differences between theories of mediation and its practice. Those who both practice and teach/write in the area are aware of the intra-psychic tensions this creates!

A full chapter on 'Consulting in Conflict' is based on the now safe assumption that ADR is a permanent, and growing, movement. This is a function of the changing political, economic and managerial climate referred to above. However mediation in turn is being adapted and modified to conform to these broader imperatives. This creates a number of potential predicaments for mediators and the mediation movement. Thus where it is employers who engage and remunerate mediators there is a subtle pressure to favour employers in order to secure future work. Here the survey evidence suggests some wilful blindness – union and employer interviewees were more likely to recognise this as a potential problem than were the practitioners themselves.

This text reminds us that ADR is never an apolitical innovation. This is not always evident in the uncritical literature which often operates with idealised assumptions about mediation's value and its contributions to the world. We live in complex social systems in which cause and effect are difficult to establish and understand. This raises questions about the ethics of ADR and its implications for corrective justice in the workplace, and many of these issues are dealt with by the author with good insight. As mediators ponder their own work choices (and whether to accept the AWA being encouraged by their employers) they will be greatly enriched by reading this book. And credit should also go to one of Australia's alternative publishers for venturing into the alternative dispute resolution field. ●

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