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**New horizons for ADR practice**

What does Work Choices mean for ADR practitioners?

Bernadine Van Gramberg

For the past century workplace dispute resolution in Australia has been dominated by industrial tribunals. This has arguably led to a lag in the development of professional dispute consultants with the skill set required to practice in the field. The emergence of private ADR consultants has been shown to coincide with the move to decentralise industrial relations from tribunals to the workplace in processes such as bargaining and grievance handling.¹

The *Workplace Relations Act 1996* (Cth) as amended in 2005 (the WRA) in line with the Government's Work Choices policy initiative (Work Choices) explicitly 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 WRA limits the types of ADR techniques available to the AIRC but does not limit those available to private consultants. On one hand this signals the end of the dominance of the tribunal (and a significant opportunity for growth in

dispute resolution as a business) but on the other, through its intense regulatory intervention, it creates a number of dilemmas for the private practitioner. This article traces the changes brought by Work Choices and discusses the opportunities and constraints facing new workplace dispute consultants.

Dispute resolution procedures and the emergence of private ADR

Dispute resolution procedures (DSPs) are formal written policies for resolving disputes in the workplace. In Australia they were required as a clause in awards under s 91 of the *Industrial Relations Act 1988* (Cth), and later became a mechanism to attempt resolution of disputes in the workplace in certified agreements and enterprise flexibility agreements prior to notifying a dispute to the AIRC.² In this sense DSPs represented a devolution of dispute resolution to the workplace in the first instance, with only unresolved conflict eligible for resolution in the AIRC. The WRA continued this practice and,

more recently, it was featured in Work Choices³ which mandates the inclusion of a DSP in all certified collective and individual agreements. Work Choices stipulates that in the absence of a negotiated DSP in the agreement the model DSP will apply.

The first role that can be stipulated for ADR consultants in this new environment is in the design of the DSP tailored to the types of disputes common in a particular workplace and the extent to which resources are available for their resolution. Through their DSP workplaces have the greatest potential to prescribe the types of ADR techniques available, and which of these will be facilitated by a private consultant or industrial tribunal. Generally, DSPs commence with unassisted negotiations between the disputants and their supervisor. This is the prescribed first step of the model DSP in the WRA⁴ and it also satisfies one of the principal objects of Work Choices:

... supporting harmonious and productive workplace relations by providing flexible mechanisms for



the voluntary settlement of disputes.⁵ The objective above refers to flexible mechanisms and also to voluntary settlement of disputes. Both these terms require some exploration in terms of their impact on ADR consultants. In the first instance, the flexible mechanisms could refer to the range of ADR processes that can be used to resolve a particular dispute and also to the range of third parties (for instance private practitioners and tribunals) who may deal with the dispute. In the second case, the use of the term 'voluntary settlement' makes it clear that this Act sets itself apart from the compulsory settlement prescribed under previous industrial relations legislation and underpinned in s 51(xxxv) of the Australian Constitution.

So, how flexible are the new mechanisms for the ADR consultant and the disputants? We consider first the flexibility in the processes available to the parties and the flexibility to choose among dispute resolution providers.

ADR processes available under Work Choices

Previous research by the author on ADR processes used by dispute resolution consultants demonstrated that only a narrow range of techniques were being utilised in workplaces, dominated by mediation (third party assists negotiation). The next most used techniques were facilitation (third party chairs discussion) and conciliation (third party participates in the construction of solution). Very few opted for private arbitration (third party makes the decision) and fewer still for med-arb (third party will arbitrate if requested by disputants).⁶ The research demonstrated that the mainstay of Australian workplace ADR resides in the facilitative processes⁷ of mediation, conciliation and facilitation. This is not surprising, as one member of the commission interviewed for the research explained: 'When it comes to arbitration or med-arb, they are more likely to end up in the Commission'.⁸ This was confirmed by an analysis of 2000 federally-registered collective agreements in which 98 per cent of workplaces listed the AIRC as the final arbiter of their workplace disputes.⁹

Work Choices looks set to change this dynamic by removing the AIRC's power to arbitrate in most disputes. This issue is taken up later in this article.

There are eight listed ADR processes available to workplaces for use in the model DSP¹⁰ under s 698 of the WRA as amended under Work Choices, which provides:

- An alternative dispute resolution process is a procedure for the resolution of disputes, and includes:
- (a) conferencing; and

... the model DSP in Work Choices restricts the range of processes now available to the AIRC but not to other dispute resolution providers ... ADR practitioners engaged to assist workplaces develop a DSP should be well-equipped with grievance models and techniques which best apply to the types of disputes common in that workplace.

- (b) mediation; and
 (c) assisted negotiation; and
 (d) neutral evaluation; and
 (e) case appraisal; and
 (f) conciliation; and
 (g) arbitration, or other determination of the rights and obligations of the parties in dispute; and
 (h) a procedure or service specified in the regulations.

While these processes are not defined or described in Work Choices, they were each outlined in the Explanatory Memorandum preceding the amending Act.¹¹ The processes include some techniques identified previously by NADRAC¹² (conferencing, mediation, conciliation and arbitration) as well as those provided in the *Federal Magistrates Act 1999* (Cth)¹³ as primary dispute resolution techniques (neutral evaluation, case appraisal). Finally, Work Choices leaves open the option of adding other processes through its regulations.¹⁴ These processes are specified under the model DSP so presumably those workplaces negotiating their own tailored DSP can add other ADR varieties and hybrids.

As indicated above, the model DSP in Work Choices restricts the range of

processes now available to the AIRC but not to other dispute resolution providers. Importantly, Work Choices limits the AIRC's arbitration role, which is at odds with research suggesting that disputants turn to the AIRC for that service in preference to private providers. Further, the WRA allows these techniques to apply to certain dispute types only. Again, greater flexibility over the use of a technique for a particular dispute type would be obtained by workplaces negotiating their own DSP rather than

relying on the model. In this sense, ADR practitioners engaged to assist workplaces develop a DSP should be well-equipped with grievance models and techniques which best apply to the types of disputes common in that workplace.

Section 694 sets out seven types of dispute to which the model DSP applies:

- disputes about entitlements under the Australian Fair Pay and Conditions Standard (see s 175); and
- disputes about the terms of a workplace agreement, where the agreement itself includes the model dispute resolution process or is taken to include that process (see s 353); and
- disputes about the application of a workplace determination (see s 504); and
- disputes about the application of awards (see s 514); and
- disputes under Div 1 of Pt 12, which deals with meal breaks (see s 609); and
- disputes under Div 2 of Pt 12, which deals with public holidays (see s 614); and
- disputes under Div 6 of Pt 12, which deals with parental leave (see s 691).

Interestingly, these are all forms of 'rights' disputes — that is, disputes



over the legal rights and entitlements of employees, and research and practice suggest that these types of disputes are generally best resolved through determinative processes such as arbitration. However, arbitration by the AIRC is not available to the disputants in a DSP. On the other hand, to negotiate these disputes is to entertain the possibility that parties will settle for less (or more) than their allocated rights. This emphasis on negotiation is supported by the aims of the DSP, that the parties attempt to settle the matter at the workplace between themselves (s 692). Incongruously, despite encouraging the parties to resolve their own disputes, they are prohibited from including provision for leave to attend dispute resolution training in their workplace agreements (s 515(k)).

Work Choices encourages new dispute resolution providers

The Explanatory Memorandum to the amending Act which prepared the way for the passing of the Work Choices legislation announced that the Government would:

... establish a system of registered private alternative dispute resolution (ADR) providers that will support genuine choice between the AIRC's dispute settling expertise and other dispute resolution specialists.¹⁵

To some extent a wide range of providers has been available to firms for some time, with earlier research by the author pointing to a growth in the participation of legal firms, HR consultants, retired tribunal members and academics involved in dispute resolution consulting.¹⁶ In stipulating a more formal role for these private providers, Work Choices has concomitantly decreased the role of the traditional provider, the AIRC, despite the rhetoric above indicating that genuine choice would be given. The declining role of the AIRC continues the trend set under the WRA where the terms of the model DSP for Australian Workplace Agreements (AWAs), a form of individual employment agreement, provided no role for the AIRC.¹⁷

Further, the process that the parties must go through in order to have the AIRC conduct ADR is far more onerous than opting for a private provider. Given

that in a dispute situation time is of the essence, the complexity of the process will assist in turning disputants away from the AIRC. Before turning to discuss the implications of this for private providers, it is timely to examine the model DSP.

How the model DSP works

The model DSP is set out in Pt 13 of the WRA. Section 695 provides the suggestion that affected employees should first discuss the matter with their supervisor and then with more senior management. If the matter cannot be resolved at the workplace, s 696 allows for one of the parties to notify the dispute to an ADR provider. If that provider is not the AIRC, the provider can commence ADR proceedings, adhering to the requirements of Div 6 of Pt 13 that:

- the matter applies to an ADR process not conducted by the AIRC (s 713);
- disputants are only guaranteed representation if it is specified in a workplace agreement (s 714(3)), but if it is not so specified, then all aspects of representation will be at the discretion of the provider (s 714(1));
- the provider conduct the proceedings privately (s 715(1)), and that all documents and evidence of things said remain confidential unless otherwise specified by the parties or by the law (s 715(2)).

Meeting these requirements is the responsibility of the provider rather than the parties. This makes it easier and quicker to have a dispute heard using a private provider than the more arduous process of engaging the AIRC. Importantly, though, it is the private provider who decides whether a disputant is represented or not in the process. Denial of representation to those who require assistance in knowledge, skills or language, for instance, could lead to a denial of workplace justice and ADR practitioners should be aware of the import of their decisions in this regard.

While access to private providers is straightforward, to have a matter heard by the AIRC a number of steps must be undertaken both by the disputants and the AIRC, with some exacting requirements. For example, where parties have not decided on a dispute resolution

provider, they must twice apply to the Industrial Registrar in order to finally appoint the AIRC. First, upon notifying the Industrial Registrar they will be issued with prescribed information about their choices in providers (s 696(4)), and if there is still no agreement they may apply again to the Industrial Registrar for the matter to be dealt with through ADR by a member of the AIRC (s 696(5)). Work must continue during the period in which the dispute is being resolved (s 697(1)(a)). This in itself might act as a deterrent to seeking access to the AIRC over a private provider.

If the parties decide on the AIRC as their preferred provider, they must pass a number of further obstacles under Work Choices.

Limitation of circumstances in which the AIRC can hear a dispute

For the AIRC to be able to hear a dispute the dispute must be one of the seven types which are permitted under the model DSP and the parties must have been unable to resolve the dispute at the workplace (s 699). This is designed to limit the circumstances under which the AIRC can hear the matter.¹⁸ Even if the parties themselves evaluate their dispute as being suitable for ADR, the AIRC must refuse the application if the dispute is not one which can be dealt with using the DSP (s 700). It also has discretion to refuse the application if it believes the parties have not made a genuine attempt to resolve the dispute or have not yet decided on a dispute resolution provider (s 700(2)).

Applications to the AIRC must be in the prescribed form as set out in the regulations and signed by the party making the application; the application must describe the matters in dispute to which the ADR applies, and must specify that the model DSP is to be conducted (s 699(2)). Even then, Work Choices suggests that the AIRC may request further information from the parties, including a description of all steps taken at workplace level to resolve the dispute (s 699(3)). Indeed the AIRC may amend the application (s 699(4)). This provision is designed to ensure that the AIRC has sufficient information about the dispute to satisfy its (narrow) jurisdiction to hear the dispute.¹⁹



Limitation of ADR processes available to the AIRC

Notwithstanding the wide range of ADR processes listed in s 698, the AIRC's powers to assist the parties in the model DSP are generally restricted to arranging conferences between the parties or their representatives in which the AIRC may be present (s 701(2)). It must quickly arrange a conference (which may be difficult, given the iterative process prior to the conference); without legal technicality; and according to any agreement of the parties, provided that this does not include compelling a person to do something, making an award; making an order, or appointing a board of reference (s 701(4)). These restrictions apply even if the parties themselves have agreed for the AIRC to take such action (s 701(5)).

With the consent of parties who are unable to reach agreement, the AIRC can make a recommendation (s 701(7)). While the model DSP does not specifically exclude the AIRC's power to arbitrate, it certainly does not provide for it.

However, the Explanatory Memorandum states that 'the AIRC may only arbitrate or determine a matter under the model dispute resolution process if all of the parties to the dispute agree to it doing so'.²⁰ The Explanatory Memorandum advises that 'the AIRC may not publish transcripts or decisions with respect to a dispute that is conducted under this decision'.²¹ Finally, it is notable that the WRA puts a stop to the AIRC using its wider powers to summon witnesses or documents which it has used previously in private arbitration. Specifically, those powers contained in Subdiv B of Div 4 of Pt 3 are disallowed for the purpose of conducting ADR.

Disputes other than those arising under the model dispute procedure (Part 13 Division 4)

Dispute resolution is also available to parties in dispute over the negotiation of a collective agreement and if all agree to refer the matter to the AIRC, they may apply for an ADR process to be conducted (s 704(1)). As with other applications to the AIRC, it must be in

the correct form, describe the matters in dispute and specify that ADR is required (s 704(2)). The parties may be asked for more information by the AIRC (s 704(3)) as part of its duty to determine its jurisdiction. In this Division, there are limits on the AIRC's powers as an ADR provider additional to those limits found under the model DSP provisions. First, the AIRC must refuse an application if the circumstances in s 704(1) do not exist (s 705). In other words, it must first decide that there is a dispute over the negotiation of an agreement. Second,

Section 709 requires that the dispute in question must be one that may be resolved by the AIRC under the terms of the agreement, and in which the steps of the DSP have been carried out prior to notification to the AIRC. Again, the AIRC is required to refuse the application if the dispute is not one that under the terms of the agreement can be resolved using its dispute resolution processes, and if it is not satisfied that all the DSP steps in the workplace have been undertaken (s 710). It is clear that the AIRC must satisfy itself that it has

It is likely that under Work Choices there would be no advantage in selecting the AIRC over other providers. Indeed, the process to get a matter heard by the AIRC is far more onerous than nominating another provider, and the powers of the AIRC are more restricted.

the ADR processes available to the AIRC exclude compelling a person to do something; arbitrating on the matter; making a determination; making an award or order; or appointing a board of reference (s 706(4)). As with the model DSP, these restrictions apply even if the parties agree to the AIRC taking such action (s 706(5)). This limits the AIRC to conducting a conference at which it may be present (s 706(2)) or making a recommendation if the parties cannot reach agreement and request it do so (s 706(7)). The section reflects the legislative ban on arbitration of bargaining disputes (which is already contained in the WRA) but extends the restriction to all other processes, such as private arbitration that the parties had been availing themselves of under the WRA. It is notable that these restrictions do not apply to private providers.

Workplace agreement disputes (Part 13 Division 5)

The third type of dispute in which the AIRC and private providers may become involved is in the resolution of disputes under workplace agreements.

jurisdiction to hear the matter, and this will depend on the wording of the workplace agreement.

The AIRC has its widest powers under this Division, the only restrictions being that it must act within the powers granted to it under the workplace agreement (s 711(1)) and that it cannot make an order (s 711(2)). It is, nevertheless, unable to draw upon its powers to summon witnesses or documents (s 711(4)). This will remove whatever advantage disputants had in the past in requesting the AIRC to undertake private arbitration.

The only additional requirement on private providers in resolving disputes over a workplace agreement is contained in s 714(3) which states that if the workplace agreement specifies representation of disputants then this must occur. It is likely that under Work Choices there would be no advantage in selecting the AIRC over other providers. Indeed, the process to get a matter heard by the AIRC is far more onerous than nominating another provider, and the powers of the AIRC are more restricted.



Why ADR?

As discussed above, s 698 provides a list of ADR techniques which are limited to the non-interventionist processes of conferencing, mediation, assisted negotiation, neutral evaluation and case appraisal. In general, the AIRC is precluded from undertaking more interventionist approaches such as arbitration unless it is explicitly authorised in a workplace agreement.

Mediation is the best known of the ADR processes, and so the definition of mediation provides the most practical starting point from which to consider the embedded values, norms and expectations of the mediator. NADRAC, established to advise the Federal Attorney-General on matters of ADR, defined mediation as:

[A] process in which the parties to a dispute, with the assistance of a neutral third party (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.²²

Mediation is designed to promote a creative, problem-solving interchange between the disputants, with the mediator clarifying points, asking questions and practising reflective listening. It has been described as being not about blame and responsibility for the past, but rather problem-solving with a future orientation.²³ The key to the facilitative processes (of which

mediation is one) is supervision of negotiation between the disputants by a third party (the mediator).

Because it is based on negotiation, mediation is subject to the problems inherent in negotiation, such as power disparity and the use of bargaining tactics. Supervision of negotiations can be performed in either an active or passive manner by the third party, and this will have an impact on the final outcome of the negotiations, particularly if parties are of unequal power. Facilitation is the term that has been applied to a form of mediation in which the mediator adopts a purely non-interventionist, or passive, role.²⁴ In contrast, evaluative mediation (conciliation) occurs where the mediator makes an assessment of the relative merits of the issues in order to move the parties on to a resolution. Evaluative mediation has been linked to the third party taking an active role in the resolution of the dispute, and is inclusive of the third party making suggestions and recommendations.²⁵ Evaluative mediators have also been described as 'orchestrators' and 'dealmakers'.²⁶

If evaluative action such as providing advice or opinion is criticised because it unduly influences outcomes, or represents significant intervention between the parties, then inaction, too, can be criticised for constituting tacit approval for the outcome and contributing to the false sense of fairness of the process experienced by the parties. The solution to this dilemma is unlikely to lie in allowing disputants

to be represented by advocates such as union organisers or lawyers. Indeed, the presence of lawyers is something that most proponents of mediation wish to avoid.²⁷ This is not simply due to a fear of increased litigation from mediation procedures, but in many jurisdictions where mediation operates disputants lack the financial resources to gain legal advice or representation.²⁸

It is unfortunate that the Federal Government and employer groups, with their preference for market-led approaches to business, have codified mediation as a rigidly facilitative process, which precludes mediators from expressing a view regarding the merits of the dispute or attempting to balance the power between the parties. Indeed the Explanatory Memorandum describes the mediator as having no advisory role regarding the issues in dispute or the possible outcomes, but being able only to advise on the mediation process.²⁹ Such a model will ensure that mediated outcomes would, generally, comply with the wishes of the more powerful disputant, by allowing existing power differentials to prevail. The implications of this model for workplace-based dispute settlement are likely to be considerable, if mediators adhere

to the provisions of Work Choices.

Confidentiality is a powerful and attractive feature of mediation. It serves to assure that parties may reveal their position without incurring adverse public comment and it reinforces their trust in the mediator. Privacy acts as a motivator for parties to use mediation rather than the more public forums such as courts. In her work on equal employment opportunity dispute resolution, Thornton³⁰ argued that the problem with confidentiality is that there is no opportunity to educate the public as to the plight of women in terms of the types of recurrent cases referred to the State and federal tribunals each year. Indeed confidential settlements have the potential to inhibit the development of case law,³¹ because no precedents or public standards are developed in facilitative ADR systems. In his research on the UK civil court system, Appleby³² argued that private settlements may 'restrict the

contributions

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development of further case law, which might have improved or clarified the legal position and hence the basis for the terms of compensation'. This is a most fundamental change engendered by Work Choices: from public to private and with little scope for third party intervention to rectify or moderate power imbalances.

Mediation is concerned principally with the dispute at hand and the parties directly involved: 'it is singularly relevant as a procedural device for progressing agreement making and ensuring the primacy of the direct parties whose private interests are at stake'.³³ The basic premise of mediation is that conflict is an interpersonal exchange with an individual solution: 'in its individualistic bias, mediation feeds into the bourgeois notion that individuals, not the wider social context, bear responsibility for social problems'.³⁴ This denies the fact that there may be a public interest in the matters being resolved and that people other than the immediate disputants may have an interest in the outcome.

Non-interventionist ADR processes are likely to be attractive to the Government and some employers because no precedents or 'shadow of the law' effects can emerge from their private deliberations. The balance of power in mediated negotiations is tipped to favour employers, not only because the workforce has steadily de-unionised over the past two decades but also because under this legislation employers in firms employing fewer than 100 workers have the ability to dismiss workers at will. In some situations there will be little incentive for employers to use the model DSP to resolve disputes with workers.

Implications for ADR practitioners

What does Work Choices mean for ADR practitioners? First, the sidelining of the AIRC as a dispute resolution provider, and the delays and complications associated with nominating it as the provider of choice will likely act as an impetus for businesses to hire private practitioners. This provides a number of opportunities

for, as well as a number of constraints on, private providers. It will allow providers to enter a field previously dominated by State and federal tribunals and this will likely lead to developments such as registration, training and codes of practice and so increase the professionalism of practitioners. It will likely contribute to further variants of ADR as practices become more flexible in response to different dispute types. On the other hand, power disparity between disputants may become more marked if they are not permitted representation or if ADR practitioners see themselves as management consultants or advocates on the basis of being paid for a service.

What employer behaviours will be encouraged by this legislation? One can but speculate at this early stage. However, it is clear that there will be implications in terms of reducing workplace justice and increasing workplace litigation. The steady growth of private arbitration in the AIRC, despite numerous (historical and recent) legislative restrictions on the process, belies the need for finality in decision-making over workplace disputes. Where this has not been provided, the parties have found ways to create it. It is likely that under Work Choices there will be pressure from disputants to seek finality and there are two clear ways in which this can happen. First, Work Choices does not preclude court action. Indeed, certain provisions allow parties to pursue litigation without involving the AIRC. While this is costly and time-consuming, it is likely that there will be a steady build-up of cases and case law over workplace matters. Clearly, in bringing in US-style industrial relations reforms we can expect US-style workplace outcomes, and one of those is increased workplace litigation.³⁵ In this case disputants may bypass private providers and take their matter directly to the courts.

Conclusions

Work Choices ensures that the AIRC will play a diminishing role in workplace dispute resolution. By so doing, the WRA is set to open up a new era for consulting in conflict which will be duly taken up by legal firms, HR consultants, retired tribunal members

and a range of other providers. The areas of consultation will include design of DSPs, facilitation of workplace agreements and ADR of workplace disputes. This will provide impetus for greater professionalism of ADR practitioners through registration, training and codes of practice and ethics.

Along with the growth of this new business, private providers will face the challenge of managing disputes between disputants of unequal power bases, the pressure of being an employer's hired gun or disputants who shop around for a more amenable practitioner and the difficulty in dealing with dispute finality. The disappearance of arbitration as we have known it in the AIRC will likely spark a new search for finality of dispute outcomes. If this is the case then not only tribunals, but also private providers will be circumvented in favour of the courts. ●

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Endnotes

1. Van Gramberg, B, 2006, *Managing Workplace Conflict: ADR in Australian Workplaces*, The Federation Press, Sydney.
2. Sections 170MC(1) and 170NC respectively of the *Industrial Relations Act 1988* (Cth) as amended in 1993.
3. Section 353 of the WRA.
4. Note to s 694 of the WRA.
5. Section 3(h) of the WRA.
6. Above note 1 at p 112.
7. National Alternative Dispute Resolution Advisory Council 2001, *On-Line ADR Background Paper*, Department of Finance and Administration, Canberra, available at <www.nadrac.gov.au>, accessed 20 December 2005.
8. Above note 7 at p 113.
9. Van Gramberg, B & Teicher, J 2005 'Industrial relations' in De Cieri, H



& Kramer, R (eds) *Human Resources Management in Australia* (2nd ed) McGraw-Hill, Sydney, pp 138–164.

10. Presumably, workplaces designing their own DSP are not restricted to these eight ADR techniques.

11. Explanatory Memorandum to the Workplace Relations (Work Choices) Bill 2005, Parliament of the Commonwealth of Australia, at p 21 <www.workplace.gov.au/NR/rdonlyres/D5BBE0D6-A1C9-4342-B97A-9FE1DFB8B7BA/0/wrawcbill2005em.pdf, Accessed 5/6/06>.

12. NADRAC 2003 Dispute Resolution Terms: The use of terms in (alternative) dispute resolution, September 2003, <[www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32_F341DBE097801FF\)~1Report8_6Dec.pdf/\\$file/1Report8_6Dec.pdf](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32_F341DBE097801FF)~1Report8_6Dec.pdf/$file/1Report8_6Dec.pdf)>, accessed 5 June 2006.

13. Section 21 provides for counselling; mediation; arbitration; neutral evaluation; case appraisal; and conciliation.

14. Thus far none has been specified.

15. Above note 12 at p 21.

16. Above note 7 at p 104.

17. Regulation 30ZI(2) of the *Workplace Relations Act Regulations 1996* (Cth).

18. Above note 12 at [2313].

19. Above note 12 at [2316].

20. Above note 12 at [2325].

21. Above note 12 at [2330].

22. Above note 8 at [1.1].

23. Hawkins, L & Hudson, M, 'The ENS Approach to Training Lawyers for ADR', 1991 *Law Institute Journal*, Jan-Feb, pp 55–56.

24. Above note 8.

25. Bush, RA, 1992, *The Dilemmas of Mediation Practice: A Study of Ethical Dilemmas and Policy Implications*, National Institute for Dispute Resolution, New York.

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29. Above note 5 at [2305].

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33. Thatcher, C, 2000, 'The AIRC as Mediation Provider?' *BCA Papers*, vol 2, no 1, pp 28–33.

34. Fuller, AA, 1991, 'Conflict Resolution, Bane or Boost to Peace and Justice?' *Nonviolent Activist*, December, pp 17–18.

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developments in ADR

- The release of information that two of the 2005 London bombing suspects lived in South Leeds induced the local council to call in 13 mediators to prevent possible conflict between Muslim and non-Muslim residents in the area. Large meetings and smaller discussion groups dealt with various concerns within the community and resulted in a shared commitment to the community and concern about media and police attention following the bombings.
- Ron Kraybill, a trainer, adviser and Associate Professor of Conflict Studies, announced the release of free review copies of *Style Matters: The Kraybill Conflict Style Inventory*. The inventory is a recently developed five-styles-of-conflict inventory used by various professionals. The 22-page inventory is able to recognise cultural diversity among its users and can be accessed on the publisher's website or in PDF form by sending an email indicating your organisational affiliation to <StyleMattersOffer@RiverhouseEpress.com>. For more information, visit the Riverhouse ePress website <www.riverhouseeexpress.com>.
- Both India and China are expanding local mediation programs. The High Court of Andhra Pradesh has decided to open ADR centres in all 23 districts in the State. Similarly, China's largest city Shanghai plans to open ADR Centres in every district court by the end of September, following the success of a similar program in a smaller district court in 2003.
- The American Bar Association (ABA) and the United States Agency for International Development conducted a week-long mediation training course for 50 participants in Liberia in an attempt to help sustain peace in the country. The ABA and the United Nations organised an additional one-day workshop on the need for mediation legislation in Liberia, noting similarities between modern mediation and traditional African dispute resolution by elders and chiefs.
- Mediation in civil cases in Poland commenced in December 2005. Draft executive regulations from the Polish Minister of Justice provide state reimbursement of lawyers' fees up to 150 per cent of what is paid in ordinary court cases for lawyers taking part in mediations. While large fees are designed to encourage mediation, the actual fees paid would ultimately be set by the court.
- The World Bank's International Finance Corporation organised a mediation skills training program in Pakistan in June 2006 for 36 Pakistani professionals from varying backgrounds. The training was part of an ongoing effort to establish a pilot mediation program in Pakistan in conjunction with the Federal Ministry of Law, Justice and Human Rights and the High Court of Sindh.