Book Reviews

Dispute Resolution in Australia

(298 pages plus appendices, bibliography and index)
Hilary Astor and Christine M Chinkin
Butterworths 1992 RRP $55.00

French medical personnel near the front lines during the First World War, faced with appalling casualties as a result of the carnage wrought by trench warfare, were faced with the problem of how to treat very large numbers of wounded men with quite inadequate medical resources. To solve this problem, they developed a technique which came to be called "triage". They divided the wounded men brought to them into three categories. Those so seriously wounded that even the most heroic application of medical resources would not have prevented death were made as comfortable as possible and left to die in peace. Those who clearly were going to survive their wounds without medical attention were sent to hospitals behind the lines. To the third category of wounded men - where the application of the medical resources they had could mean the difference between life and death - they devoted their full resources.

Deciding whether using an alternative dispute resolution ("ADR") technique such as mediation to attempt to resolve a particular dispute calls for a legal judgment of the same sort as the medical judgment required by triage. Some cases will probably settle, whatever the parties' legal advisers do. Other cases probably will never settle, whatever the parties' legal advisers do. There remains a third category of cases - those where the application of an ADR technique is likely to make a difference.

But how is a lawyer to decide which cases fall into this category? This is perhaps the most difficult judgment that lawyers considering using ADR may have to make.

Dispute Resolution in Australia will be of substantial assistance to them in making that decision. The authors, both senior lecturers at Sydney University Law School, aimed in writing this book to provide a university text presenting an accessible, coherent and critical description of dispute resolution in Australia. They have more than achieved that goal.

At a time when even practitioners active in the field have difficulty keeping up with all the developments in Australia, the authors (who have taught an elective course on dispute resolution to final year law students since 1989) have made the enormous literature on ADR accessible to the student and to the legal practitioner. They compare litigation and alternative methods. They describe in detail ADR techniques such as negotiation, mediation, expert appraisal and others, as well as hybrid processes. They describe the attempts within Australia and the United States to annex ADR processes to courts, a matter of particular relevance in New South Wales given the recent proposal by the Supreme Court of New South Wales for a court-annexed mediation pilot project (described in detail in this journal at p 9).

The legal practitioner applying the technique of triage will find particular assistance from chapter 9, which deals with selecting the appropriate dispute resolution process. No doubt some practitioners will prefer to develop their own checklists of the factors tending to indicate that a dispute is either suitable or not for the application of ADR techniques. Computer buffs will readily recognise the potential for the use of an expert system to guide practitioners through the many factors that have to be considered. (An expert system is already available in the United States for negotiation - "Negotiator Pro" manufactured by Beacon Expert Systems, Inc.) Eventually a practitioner's text for ADR will emerge to satisfy some of these needs.

In the meantime, *Dispute Resolution in Australia* is by far the most comprehensive source of material on ADR in Australia. Particularly helpful are its appendices, containing dispute resolution clauses; suggested rules for an expert determination process; and the guidelines for solicitors who act as mediators promulgated by the Law Society of New South Wales. ❑

Robert S Angyal

Plain Language for Lawyers

Michele M Asprey The Federation Press 1991
R.R.P. Paperback $25.00 Hard Cover $40.00

This book is about taking a different approach to drafting with the aim of communicating better. Few members of the Bar doubt the importance of good drafting and still fewer practise it. It is not uncommon to read a definition followed by "hereafter referred to as ...": a dreary prospect indeed and one which might discourage the subject from the society of the definer.

The author refers to most of the major works of contemporary value. She traces the self-imposed and statutory developments in Australia and overseas on the subject of plain language in the law. The chapter entitled "Legal Affectations and Other Nasty Habits" provides examples that are read and heard every day in court. The author is not merely critical: she provides arguments that compel their abandonment for alternatives in the book. The "Plain Language Vocabulary" is a sufficient incentive to buy this book.

I criticise the author's treatment of recitals. She doubts the value of background facts and prefers their insertion in operative provisions or omission altogether. The effect of s.53 of the *Conveyancing Act 1919* (which deals with recitals that are 20 years old) is ignored. In commercial drafting, the practical value of identifying common assumptions and objectives seems to emerge in litigation later on when the parties have adopted stances that give no clue to their original objectives.

This is a forthright book and it deserves such a review. It is a well written and witty book, which argues the case for clear expression forcefully, and provides practical illustrations of plain language at work. It is not a book that may be dismissed as directed to solicitors: it is valuable for anyone who seeks to improve skills in communicating in writing or speech. It is a good book for barristers and at $25.00 is good value. ❑

P M Donohoe