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Employer Demand for Mediation

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Abstract

In 1999, the Howard Liberal-National Government sought to amend the *Workplace Relations Act 1996* to allow parties in dispute to seek private mediation as an alternative to the Australian Industrial Relations Commission (AIRC). Despite its failure to secure the changes to the Act, there is evidence that some organisations are already utilising private mediation. This study examines the level of support and demand for private mediation amongst surveyed employers. It found that while the level of support of employers for private mediation is lower than the support for the AIRC, there is a groundswell of interest in a private dispute resolution system.

Mediation

Mediation is a process whereby parties in dispute come together on a voluntary basis with a mediator in order to arrive at a mutually acceptable settlement (Folberg & Taylor 1984). Mediation can also be described as negotiation assisted by an impartial facilitator. The mediator is said to bring about a change in the way disputants perceive their problem (Bush and Folger 1994). This is accomplished by supplying information (factual or normative) to the disputants through a process of managed information transfer and by altering the traditional negotiation procedure or setting with the insertion of the neutral third party whose role it is to encourage the parties to understand the dispute from both sides. In this way, mediation has been said to be both a process and an information-centred approach to conflict resolution (Bay 1994). The mediation process is generally private and informal although, depending on its use, the degree of formality can be varied. The process is designed to promote a creative, problem-solving interchange between the disputants with the mediator clarifying points, asking questions and practising reflective listening and has been described as being not about blame and responsibility for the past, but rather problem-solving with a future orientation (Hawkins and Hudson 1991).

Mediation as a growing trend in Australian workplaces

There is prima facie evidence of an increase in the use of private alternative dispute resolution practitioners in Australian workplaces. Mediation and other related processes known as alternative dispute resolution (ADR) have been introduced into a number of legal and quasi legal jurisdictions such as Community Justice Centres, Equal Opportunity Commissions, the Ombudsman's office, small claims and the Family Court. A number of acts of parliament, such as the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*, encourage the use of conciliation or mediation in the workplace. In the field of industrial relations, the model grievance procedure for Australian Workplace Agreements (AWAs) in the *Workplace Relations Act 1996 Regulations*, provides for private mediation (Schedule 9, subregulation 30ZI (2)). As

there were 226,691 AWAs registered in Australia by the end of February, 2002 (Office of the Employment Advocate 2002), it is likely that this has spawned at least some growth in private mediation.

In 1999, the federal government proposed changes to the *Workplace Relations Act 1996 (WRA)* which would have allowed parties in dispute to seek private mediation rather than refer their dispute to the Australian Industrial Relations Commission (the AIRC). The changes were considered in detail by a senate inquiry which reported in October 1999 (Senate Standing Committee on Employment, Workplace Relations, Small Business and Education 1999). The inquiry report was highly critical of the changes and subsequently lost the key Labor and Democrat support necessary to pass the legislation. Despite the failure of the changes to the WRA, it is arguable that the publicity and discussion on private mediation by government may have increased employer awareness of mediation as an alternative to the AIRC. Further, there is evidence that even without specific legislation, private mediation is being used by a number of employers. The purpose of this study was to gauge the level of prior use and future demand for private mediation services amongst employers.

Third parties and the rationale for their use in the workplace

Despite their traditionally reactive role in the development of Australian industrial relations, employer associations have become more active in the provision of workplace services (Morris 1996). A previously traditional focus on the roles of political lobbying, industrial advocacy, industry regulation and training (Plowman and Rimmer 1994) gave way in the late 1980's to a new workplace focus leading to a number of strategic changes in the activities of employer associations. Associations now have a major involvement at the workplace level in the negotiation of collective and individual employment agreements and consultancy services (Mortimer and Still 1996).

Surveys of employer associations conducted in 1993 and 1995 by Mortimer and Still (1996) confirmed that almost all provided facilitation services or had some other involvement in assisting the negotiation of enterprise agreements, and that these services were increasingly being taken up by members. Similarly, the 1995 Australian Workplace Industrial Relations Survey (AWIRS) found an increase in the use of these employer association services. In particular, 23 percent of member workplaces with agreements reported that employer associations were involved in the negotiation stages, especially in the mining, manufacturing, wholesale trade, health and community services and personal services. There was also a positive correlation between use of employer associations and unionised workplaces (Department of Industrial Relations 1996).

Another source of management consultants has emerged through the release of skilled personnel from the shedding of managerial staff through corporate downsizing and the broadening of law firm services. In turn, the flat structures of many organisations have left them depleted of specific skills and expertise. '[W]ith an abundance of clients, the consultancy business expanded dramatically in the 1980s and early 1990s as outsourcing and downsizing detached functions and services from parent organisations' (Morris 1996, p.19). AWIRS 95 found that 57 percent of workplaces used 'external advisory services'. Such

services were typically used in larger workplaces and slightly more prevalent in the public than private sector with workplaces employing specialist managers more likely to call on the services of external consultants. Of enterprises with more than 500 employees, 66 percent utilised law firms and 44 percent utilised management consultants. Whilst occupational health and safety and training were the most called-upon services, consultants were utilised for agreement making in 29 percent of workplaces using external consultants (Morehead, Steele, Alexander, Stephen and Duffin 1997, p. 91).

In previous research, the author examined the dispute resolution clauses in 2000 federal enterprise agreements in 1999 and 2001 (Van Gramberg 2002), finding that the formal insertion of private third parties (facilitators, mediators and arbitrators) occurred in 6.4 percent of agreements in 1999 and had grown to 12.3 percent of agreements in 2001. While this growth in the adoption of private mediation reflects workplace policy rather than actual activity, nevertheless it represents further prima-facie evidence that there is an increased acceptance of the role of private third parties in workplace dispute resolution.

The study into employer demand for mediation

Given the promotion of private mediation by the federal government, and the consulting activities of employer associations and management consultants, the present research sought to determine the level of prior use, support and demand from employers for a fee-for-service alternative to the (currently free) dispute resolution process undertaken by the AIRC. Of 550 questionnaires sent to employers in the state of Victoria, 129 responded (23.5 percent). Of this group, 27 employers indicated their willingness to be further interviewed and a total of 10 telephone interviews were conducted on their views on private mediation. The following data analysis draws on the survey and interview results.

Of the respondents, 35.2 percent identified themselves as manufacturers, 11.7 percent as government administration and 9.4 in Health and Community Services. The remaining respondents were scattered across the industry groupings and all industries were represented. The distribution of industries in the survey was similar to that found in the 1995 AWIRS and thus, whilst being a small sample, it was taken to be representative of the industry distribution of Australian workplaces. One important qualification to this statement is that the sample consisted mostly of medium to large employers with 114 of the 129 employers reporting 50 or more employees. This marked weighting towards larger employers is partly explained by three factors. First, it is arguable that larger employers would be more interested in the issue of workplace mediation than employers of fewer than twenty staff and so to some extent, self-selection would apply, with smaller employers more likely to find the questionnaire irrelevant and not respond. For instance, large employers are more likely to employ a specialist HR/IR manager than smaller firms (Morehead et al. 1995, p. 82) and they tend also to belong to an employer association (Morehead et al. 1995, p. 88). The present study found that 89.1percent of respondents had a specialist manager in the field of HR or IR and employer association membership was equally high at 83.6 percent. Both these variables have been shown to be associated with the hiring of external consultants (Morehead et al. 1995, pp. 91-92). Thus, we might expect our sample to be amenable to, or even active in, the hiring of private mediators, which we would not expect from a sample of

mainly small employers. Secondly, constructed from a combination of university alumni, subscribers to university publications and large public and private sector companies the structure of the mailing list featured a slightly greater proportion of larger employers than smaller ones.

Another characteristic of the sample was the presence of high unionisation rates. The Australian Workplace Relations Survey (AWIRS) found that high unionisation rates are linked to larger companies (Morehead et al. 1997, p. 141). In the sample described here only 12.5 percent or 16 respondents were not unionised. There were 44 (41.1 percent) respondents with workplace unionisation rates of 40 percent or less and the remaining 55 respondents (43 percent) reported unionisation rates of over 40 percent. The effect of unionisation on the uptake of mediation is discussed below.

Finally, the limitations of this study in terms of the small survey sample and its bias towards medium to large employers must be acknowledged, as the study findings depict only a snapshot into a narrow range of activities of these organisations. Discussion points emerging from this study serve to map the terrain of a relatively new research area in Australian employment relations.

The findings: mediation in workplace grievance procedures

Nearly all (95.3 percent) of respondents reported having a grievance procedure which dealt with workplace disputes. This figure is high compared with the 1995 AWIRS finding of 71 percent (Morehead et al. 1995, p. 128) and arguably reflects the increasing emphasis on establishing formal grievance handling procedures in awards and agreements and the fact that larger employers are probably more likely to have formal employment policies in place than smaller employers.

Over 35 percent of respondents reported having grievance procedures which contain a private mediation step. This result is considerably higher than the 12.3 percent found in the author's analysis of the grievance procedures contained within 1000 enterprise agreements certified by the AIRC in 2001 (Van Gramberg 2002). The greater presence of formal mediation policies found in this study compared with the enterprise agreement analysis could be a function of self-selection of respondents to the questionnaire. In other words, those employers who already have a mediation step in their grievance procedure may have been more likely to respond to the questionnaire than those who did not. It is less likely that it is attributable to the lack of knowledge of specific components of the organisation's grievance procedures by the respondent, given respondents tended to be HR or IR managers.

Mediation as a step in the grievance procedure appeared to be inversely related to the level of unionisation at the workplace. It was found that workplaces with less than 40 percent unionisation rates were more likely to have a mediation step in their grievance procedure (28 percent of respondents) than those with more than 40 percent unionisation (12 percent). The two variables, unionisation and the presence of a mediation step in the grievance procedure were highly correlated (.305 at the 0.01 level). This may indicate that in the absence of union activity at the workplace, employers are more likely to opt for private mediation. One

respondent pointed out that unions are not perceived by employers to be supportive of private mediation and 'will be reluctant to accept outcomes'. Similarly, another respondent suggested that 'it would require a change of attitude from union officials, both delegates and organisers in the union hierarchy'.

Where unions seemed to exert a cooling effect on the extent to which employers utilise a mediation step in their grievance process, the presence of employer associations was not related to an increased use of mediation. There was no significant difference between firms belonging to an employer association and those not members. In fact, the absence of an employer association was related to a slightly higher use of mediation than when an employer association was present. Of the 19 firms which indicated that they did not belong to an employer association, well over half of them (57.9 percent) claimed to have used mediation. In contrast, of the 107 firms which belonged to an employer association, 53.3 percent had used mediation.

Prior use of mediation by respondents

More than half the respondents (53.9 percent) had used mediation for a past workplace dispute. This figure was surprisingly high, however, on further analysis, over one third (34 percent) of the mediators used by respondents were the firm's own HR managers, indicating that much of the mediation activity is internal (see TABLE 1). External mediators tended to be from employer associations (16.8 percent), unions (12.9 percent) and lawyers (12.9 percent). Other sources of mediators nominated by respondents comprised retired industrial relations commissioners, external HR consultants and other consultants with union or government backgrounds. Psychologists were another source of mediators. Only one respondent nominated the use of a dedicated mediation consultant.

TABLE 1 Background of mediators utilised by respondents (n=69)

Background of Mediator	Frequency of use of mediator	Percentage use
Lawyer	13	12.9
Employer Association Rep	17	16.8
Union Representative	13	12.9
Ex-Commissioner	9	8.9
Academic	1	1.0
HR Manager	34	33.7
Other	14	13.8
TOTAL	101*	100.0

*Respondents were able to select more than one category for their mediators.

Considering mediation in the Australian industrial relations system

When asked if they would prefer to formally have their workplace disputes referred to private mediation rather than to the AIRC, respondents exhibited a high rate of indecision with 45.7 percent of the 127 respondents to this question, unsure. The level of indecision was intriguing. It did not appear to belie an ignorance of the concept of mediation, as it was clear from the questionnaires that respondents exhibited a sound understanding of the

difference between private mediation and the processes of conciliation and arbitration used by the AIRC. Arguably, the indecision represents a potential source of demand for mediation, particularly as it would appear that respondents had not yet made up their minds. However, this possibility is unlikely given the discussion on cost, below.

When asked if they preferred the AIRC to private mediation, 68 of the 128 respondents expressed a preference for the dispute resolution services of the AIRC (see TABLE 2). That the AIRC provides an enforceable decision was considered important by nearly 29 percent of respondents. Preference for the AIRC was also based on the absence of fees (21.1 percent) and that it provides public standards of behaviour rather than private agreements (21.8 percent). A further 19 percent preferred the AIRC because commissioners are statutory office holders and have legislated duties and obligations.

TABLE 2 Employer preferences for use of the AIRC (n= 68)

Reason for preference of AIRC	Number of responses	Percentage of response
Enforceable decisions	41	28.9
Commissioners statutory office holders	27	19.0
Free of charge	30	21.1
Public standards of behaviour	31	21.8
Other	13	9.2
TOTAL	*142	100.0

*Respondents were able to select multiple responses

Another source of support for the AIRC over private mediation came from those employers who had not used private mediation in the past. A total of 58 of the 127 respondents to this question had not previously used mediation with 34 providing reasons as to why they had not used the process. Of this group, support for the AIRC was strong at 61.8 percent and these respondents claimed they preferred the processes offered by the AIRC to private mediation. The comments by these respondents can be divided into five broad categories. First, respondents saw little need for private mediation as the AIRC provided an acceptable and neutral forum for resolving disputes. For instance, one commentator described the AIRC as a ‘publicly funded and publicly perceived view of neutrality in dealing with the issues’. Another argued that ‘the commission will make decisions and recommendations taking into account all facts and all relevant external information. In my experience, mediators are more concerned with solving the dispute at hand without consideration of precedent’. Indeed, some felt strongly about the lack of enforceability and standing of agreements made in private mediation. An employer association respondent wrote ‘the majority of our members are small businesses and experience shows little support for consultants to mediate – especially if they are not in the position to advise on compliance issues’. Others variously described the AIRC as more desirable than private mediation because it is ‘recognised by both parties and stakeholders as being objective and neutral’; is ‘largely viewed as an acceptable umpire to unions and employers’; and there is a ‘long tradition of the parties being disciplined in using the AIRC process’. The support of the parties for the AIRC was also given as a reason why private mediation was not supported: ‘mediation will not work in all situations. All parties have to support mediation for it to work’.

In the second category, respondents felt that the AIRC was already offering ADR services and thus felt no need for private mediation: 'the AIRC actually do help conciliate/mediate the dispute'. The political aspects of the industrial relations system also came under fire. One respondent argued that 'the traditional IR framework will continue to serve industrial agents well, providing the conservatives do not completely gut the commission'. In the same vein, one complained that the issue of private mediation would not have needed to be dealt with if the 'commission had teeth'. Another pointed out that 'parties can currently engage private mediators' and that nothing in the current IR system prevents this. However, the respondent felt it would be 'objectionable if government forces parties to promote mediation rather than the AIRC services'.

The third category of respondents felt that they had no need of private mediation as their own internal capabilities of resolving disputes was sufficient. For example, one respondent commented that the firm 'hadn't required the services' of a private mediator as their 'current grievance procedure has worked satisfactorily'. Similarly, another felt strongly about 'dealing with issues internally first then escalate to conciliation and arbitration if necessary'. Of importance to this group were the 'capabilities and skills of the HR manager' in managing the grievance procedure and the fact that the firm 'has a good working relationship with the union'. Others pointed to the fact that they receive assistance in dispute resolution from their employer association and so do not require to pay private mediators. The fourth category of respondents were concerned about the cost of private mediation and felt that cost represented a significant deterrent to its use. Of the 58 respondents who had not previously used mediation, 23.5 percent stated private mediation was cost prohibitive. The final category of respondents were those who had not used mediation in the past because they were not aware of mediation. Only 5 of the 58 respondents to this question reported that they had no knowledge of mediation as a dispute resolution process.

Preference for private mediation

Of the 69 respondents who had used mediation (internal and external) in the past, 59 indicated a preference for mediation over the services of the AIRC (TABLE 3).

TABLE 3 Employer preferences for use of private mediation (n=59)

Reason for preference for mediation	Number of responses	Percentage of responses
Less adversarial than AIRC	31	21.4
Mediators less biased than commissioners	13	9.0
Mediation removes union involvement	7	4.8
Dispute remains in workplace	36	24.8
Solutions more flexible than in AIRC	25	17.2
Mediation is quicker than AIRC	28	19.3
Other	5	3.4
TOTAL	*145	100.0

*Respondents were able to select multiple responses

The figure of 59 employers who had used mediation in the past represents significant usage of private mediation. Nearly a quarter of these respondents (24.8 percent) preferred mediation because they felt it kept the dispute in the workplace rather than in the public arena. For example, one respondent pointed out that the use of mediation was an 'issue of control of an organisation's affairs' which keeps issues out of the AIRC'. Almost as many (21.4 percent) felt it was less adversarial than AIRC proceedings. A smaller group (19.3 percent) indicated that mediation was preferable because it is quicker than the AIRC and 17.2 percent felt the solutions offered by mediation would be more flexible than arbitration. Another felt that providing further avenues for dispute resolution will invite disputation: 'providing for dispute resolution only encourages the parties, particularly the unions to create disputes. Parties should be mature enough to abide by their agreements and legal obligations, stick to them'.

Indecision and preference for the AIRC or private mediation

As there was a large group of 58 respondents who could not decide whether they preferred to have their disputes referred to private mediation or to the AIRC, their responses were considered separately. Despite stating that they did not have a preference, 31 respondents from this group ticked responses under preference for the AIRC as well as preference for private mediation. All together (given multiple responses were allowable), there were 54 positive responses for private mediation and 68 positive responses for the AIRC. Without putting too much weight on this as an endorsement of the AIRC, it provides some indication of the underlying reasoning behind those who expressed indecision. The issue was further clarified when the matter of cost was raised.

Cost and its effect on demand for mediation

When asked how much employers are prepared to pay for mediation services, nearly half of the 107 respondents to this question (47.7 percent) opted for the lowest figure provided in the questionnaire ($300 to $500 per session). Six respondents providing comments to this question indicated an unwillingness to pay anything for private mediation. 28 percent indicated they would be able to pay between $500 and $1000 per session and 18.7 percent of respondents considered themselves willing to pay between $1000 and $2000. Only 5.6 percent indicated they were able to pay over $2000.

Interestingly, the group of 58 respondents who had expressed indecision over whether they would prefer to have their disputes referred to private mediation or to the AIRC were generally reluctant to pay for mediation. Nearly half (46 percent) were prepared to pay at the lowest level, but at higher cost levels there was a marked unwillingness to pay. For instance, only 12 percent were willing to pay between $1000 and $2000 for a mediation session. The reluctance to pay for private mediation exhibited by the undecided group may indicate that despite voicing indecision over their preference for mediation, they are in fact predisposed against mediation - particularly due to its costs.

Not surprisingly, the size of the workplace determined the willingness to pay for the more expensive mediation services. For instance, no workplace with under 100 employees reported being willing to pay more than $500 for a mediation session. In contrast, 19 employers with over 200 employees were willing to pay over $1000 per mediation session. Some employers felt that cost was not the main issue to consider in a system of private mediation. For instance, one wrote that 'cost is not a consideration' and another explained that it was 'not a question of affordability – rather a fair/acceptable cost for the value of the outcome'. Others felt that the costs should be proportional to the nature of the dispute. For example, one respondent explained that costs should be 'determined by estimating the foreseeable expense and each case to be considered on its own merits'. Another stated that cost will inevitably be a function of the time taken to resolve the dispute. Overwhelmingly though, employers preferred to see costs contained: 'many parties could not afford the cost, for example small businesses'.

When considering how the costs of mediation should be set, 77 of the 116 (66.4 percent) respondents to this question believed the AIRC should remain free of charge, 27.7 percent indicated that the cost of mediation should reflect the skills and qualifications of the mediator and 20.2 percent suggested that there should be legislation for cost capping of private mediators. Only a few respondents (4 percent) felt that the AIRC should charge the same costs as private mediators. Over half the respondents (52.8 percent) stated that their workplaces would be happy to pay the full cost of mediation. Over one third (34.9 percent) suggested that the cost should be shared between employers and employees. For instance, one suggestion was that: 'there should be a fee to the employee such as currently exists with unfair dismissal claims in the IRC but the employer would pay the bulk of the cost'. A further 12.3 percent felt that the losing party should bear the costs.

Suitability of mediation for workplace disputes

Nearly one third of respondents (32.1 percent) considered that mediation would be suitable for resolving personality conflicts and just under a quarter (24.9 percent) saw the facilitating of workplace negotiations as a role for mediation (TABLE 4). 22.9 percent felt that mediation may be suitable for disciplinary matters, but only 14.1 percent considered disputes involving pay and allowances as being suitable for mediation.

TABLE 4. Employer perceptions of the suitability of mediation for certain types of dispute (n=114)

Type of dispute	Number of responses	Percentage of responses
Personality conflicts	80	32.1
Pay/allowance disputes	35	14.1
Disciplinary matters	57	22.9
Facilitating workplace negotiations	62	24.9
Other	15	6.0
TOTAL	*249	100.0

*Respondents were able to select multiple responses

One respondent pointed out the suitability of mediation for performance appraisal related disputes. Interestingly, respondents were divided between nominating the AIRC or private mediation as the best venue for complex and difficult disputes. One respondent felt strongly that serious disputes should be referred to mediation: 'extremely acrimonious disputes of any nature – incapable of being settled by way of conciliation, ie. Mediation is not the first port of call'. Similarly, another respondent claimed that while supportive of private mediation, the firm would only consider the process as a last resort 'when all other efforts of resolving a dispute have failed'. This feeling of mediation as a last resort was echoed by several respondents and is at odds with others who felt that the greatest flaw of private mediation was its inability to enforce dispute outcomes.

Qualifications and experience of the mediator

Mediator qualifications was clearly an important issue for respondents with 30.7 percent calling for mediator-specific qualifications and 29.9 percent for industrial relations qualifications. A smaller group, 22.7 percent felt that no qualifications were necessary but that significant experience in dispute resolution would suffice. Interestingly, this group far exceeded the 12.4 percent who suggested that mediators should have legal qualifications, indicating that more employers would prefer a mediator with no qualifications to a lawyer. One respondent argued that 'the most important factor in introducing private mediators into the workplace relations system is that they be qualified and experienced mediators' reflecting the general call for credibility and prior experience as vital qualifications in a workplace mediator. Others variously suggested that 'availablity at short notice' was important for the firm and that knowledge of the particular industry was vital.

Discussion

Private mediation emerged in Australia during the 1980s in a wide range of jurisdictions including as a compulsory first step in family law, consumer law, residential tenancies, and equal employment opportunity. In Australian industrial relations, where the states and federal jurisdictions have operated industrial tribunals practising conciliation and arbitration, mediation has only recently emerged as a private alternative to the publicly funded system. This study surveyed the responses of 129 medium to large employers in Victoria towards the demand and use of mediation for resolution of workplace disputes. Being larger companies, it was not surprising to find generally high unionisation rates and the presence of specialist managers. Additionally, a large percentage of respondents belonged to employer associations. As discussed earlier, these factors were associated with the hiring of consultants (Moorehead et al. 1997) and would make it more likely that the surveyed group would be amenable to the use of private mediators. Secondly, given the high level of promotion of mediation by government, industry and academics, it is likely that employers would be more aware of the strengths of mediation rather than its weaknesses and therefore more predisposed to using mediation.

The study's findings present a mixed reaction of support and reservation. First, in support of private mediation the study found that workplace grievance procedures represent a potential source of growth of private mediation and other forms of third party intervention with 35

percent of respondents indicating that their grievance procedures provided for a mediation step. This figure is high compared with the author's analysis of 1000 enterprise agreements certified in 2000 (12.3 percent) and may reflect a propensity to utilise private mediation in medium to large companies. Secondly, the study has shown that the presence of a mediation clause in the grievance procedure is more likely to occur in low to non-unionised workplaces which possibly indicates that unions exert a negative effect on the hiring of a mediator. Arguably then, non-unionised firms represent another potential source of demand for private mediation. Thirdly, prior use of mediation appears to be a good indicator of future use of the process, with the strongest support for private mediation being voiced by those who had tried it in the past.

The overall survey results show that there are three main reasons why private mediation schemes may face problems establishing themselves in Australia. First, as discussed above, private mediators will charge for their services, whereas currently, AIRC services are provided free of charge. The creation of a market for 'user-pays' or profit-driven dispute resolution will increase the cost burden (most likely borne by employers), particularly if mediation is inserted as a new 'first step' in the ladder of the dispute resolution process. The survey results indicated that there is a general reluctance to pay for fee-for-service mediation, particularly if the costs of that service exceed $1000 per dispute. Significantly, even though nearly half the surveyed group expressed indecision when asked if they would prefer private mediation to the AIRC (which could be read as a potential willingness to utilise mediation), when the issue of cost was examined, most of the undecided group expressed a reluctance to pay for private mediation.

Secondly, many employers indicated that there are issues of training, accreditation and ethics of private mediators which, as mediator qualities, cannot at this stage, be depended upon with the same confidence employers expressed in the qualities of statutory independence, expertise and knowledge of the subject-matter associated with the AIRC. Finally, many respondents believed that the uncertainty of enforceability of decisions represented a stumbling block to the future use of mediation and is an issue which would have to be resolved for private mediation to play a meaningful role in the future of workplace dispute resolution.

In summary, this study has explored the potential demand for private mediation by medium to large Victorian employers. Given the limitations of the size and distribution of the survey, it was argued that whilst there is an interest in private mediation, reflected in the extent to which the process is included in workplace grievance procedures and the enthusiasm demonstrated by employers who have used private mediation in the past, the unresolved issues of cost, training, ethics and enforceability of private mediation will likely act to suppress the demand for this service.

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