

tion Rules. There is also a sample arbitration award.

At \$210, Callahan, Bramble and Lurie, *Arbitration of Construction Disputes*, is not cheap, but it is a worthwhile library reference.

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Book Review

**Cushman, Hedemann & Tucker
 Alternative Dispute Resolution in the
 Construction Industry**

John Wiley & Sons, Inc, 1991, 727 pp, cloth, \$210

- Review by John Tyrnil

The development of alternative dispute resolution in Australia has tended to lag behind and to reflect ADR development in the United States. Accordingly, Cushman, *Alternative Dispute Resolution in the Construction Industry*, should be of general interest to those involved in the construction industry in Australia as a reference work. It should be of particular interest to construction lawyers and to arbitrators, mediators, conciliators and experts.

Cushman et al, *Alternative Dispute Resolution in the Construction Industry*, is another reference work from Wiley Law's Construction Law Library. See the review above of Callahan, *Arbitration of Construction Disputes* for contact details of the Australian distributor, Jacaranda Wiley.

Cushman, Hedemann and Tucker are the editors rather than authors of *Alternative Dispute Resolution in the Construction Industry*. Each chapter has one or more contributors. Cushman is a partner of a US law firm with an international practice in construction law. Hedemann is vice president and general counsel of Fluor Daniel, Inc. Tucker is an accountant who specialises in claim analysis, financial accounting and consulting to engineering companies. He has lectured to Stanford University Construction Executive Program and has acted as an expert witness in construction disputes.

The theme and purpose of this reference is set out in the Preface:

"The rapid growth of alternative dispute resolution (ADR) mechanisms in the construction industry is widely acknowledged. Techniques such as arbitration, mediation and minitrials are commonly used as alternatives to clogged courts, unpredictable juries, and judges of dramatically differing backgrounds and skills. Increasing numbers of dispu-

tants are attracted to the efficiencies and quality control that ADR often affords. Parties to disputes are able to select an arbitrator or mediator who is knowledgeable in construction matters, inspiring trust and confidence that may facilitate amicable settlement.

This growth of ADR activity has led to the development of an established ADR support community, including seasoned arbitrators, lawyers, engineers, accountants, and others. A considerable body of literature about construction ADR has been produced, including a number of books on the subject. Why, then, do we need another book on ADR in the construction industry? What can this book accomplish that the others do not?

The answer: practical advice and techniques from a wide spectrum of skilled, seasoned practitioners in this important area. This is not a treatise by one person setting forth one perspective. Instead, between the covers of this book are many different views and perspectives on the subject, a distillation of the experiences of dozens of lawyers and other professional as they developed their expertise in this area through the years. Each was asked to share

triumphs and disasters and to discuss areas of the law and practice that could benefit a party about to participate in an ADR proceeding."

As arbitration is treated as a category of ADR, there is some overlap with Callahan Arbitration of Construction Disputes reviewed above.

Cushman Alternative Dispute Resolution in the Construction Industry covers the advantages and disadvantages of commercial arbitration of construction disputes. Its treatment of commercial arbitration also covers arbitration under the AAA rules, arbitration under the US Federal Arbitration Act, international construction arbitration under the ICC and UNCITRAL Arbitration Rules, arbitrating in the Pacific Rim, enforcing arbitration agreements, discovery procedures and challenging and enforcing arbitral awards.

The chapters which deal with other forms of ADR might be of greater interest to Australian students of ADR for construction disputes. They include use of mediation, court-annexed ADR, court appointed experts, private judging, settlement conferences, advisory arbitration, minitrials, selection of a third party neutral, strategies and presentations for ADR, acting as an effective third party neutral, drafting ADR agreements, using experts and controlling ADR costs.

The chapter on arbitration in the Pacific Rim is a little broader than its title might suggest. It covers arbitration, conciliation and mediation (to the extent appropriate in each country) in Hong Kong, the Peoples Republic of China, Japan, Singapore, the Philippines, Republic of Korea, Malaysia and Thailand. Some of these countries are major trading partners of Australia. More relevantly to construction industry disputes, Australian design professionals, construction contractors and suppliers provide services in some of these countries. The summary presented of the position in each of these countries might be the most compelling reason for Australians to purchase this reference.

Like Callahan Arbitration of Construction Disputes, Cushman Alternative Dispute Resolution in the Construction Industry has a simple, clear and easily readable style.

The 17 Appendices provide a useful collection of references, viz:

- A. AAA Construction Industry Arbitration Rules
- B. AAA Construction Industry Mediation Rules
- C. ICC International Court of Arbitration
- D. ICC Rules of Conciliation and Arbitration
- E. ICC Pre-Arbitral Referee Procedure
- F. UNCITRAL Arbitration Rules
- G. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958
- H. Uniform Arbitration Act (US)
- I. Table of State Arbitration Statutes and the Uniform Arbitration Act
- J. Mediation Procedures (United States Arbitration & Mediation, Inc)
- K. Agreement to Mediate (United States Arbitra-

- tion & Mediation, Inc)
- L. Mediation Clause (United States Arbitration & Mediation, Inc)
- M. Steps to Take to Establish an Alternative Dispute Resolution Program (United States Arbitration & Mediation, Inc)
- N. Mediation Rules (Metro Mediation Services, Ltd)
- O. Submission Agreement (Judicial Arbitration & Mediation Services (J.A.M.S.))
- P. Agency Board of Contract Appeals, ADR Notice
- Q. General Order No. 13, Notice to Counsel and Joint Status Report (United States Claims Court).

There are 25 reference titles available in the Wiley Law Construction Law Library. They are written for the US market and there are differences in the contract legislation and case law. Nevertheless, some of them might be useful additions to the Australian dispute professional's reference library, for example:

- Architect and Engineer Liability: Claims Against Design Professionals, Cushman & Bottum
- Construction Bidding Law, Cushman & Doyle
- Construction Claims and Liability, Simon
- Construction Delay Claims, Bramble & Callahan
- Construction Engineering Evidence, Peters
- Construction Industry Contracts: Legal Citorator and Case Digest, Wiley Law staff
- Proving and Pricing Construction Claims, Cushman & Carpenter
- Sweet on Construction Industry Contracts, Sweet