

A framework for investigating participant perceptions of unfair dismissal conciliation conferences

Kim Southey, University of Southern Queensland, southeyk@usq.edu.au

Abstract

Conciliation provides a beneficial service that ultimately protects the majority of the parties from the stressful events of arbitration. As a preparatory step to pursue what has been an under-researched area of industrial relations in Australia, this paper explores a conceptual framework that captures the perceptions of different facets at play in conciliation. The conciliation experience is analysed in terms of the power position of the parties, the mindset required for conciliation to be successful, the quality of the conciliation process, the merits of the case, the settlement demands, and the cost of being involved in conciliation. This framework is then tested against a pilot case. It is proposed this framework can be used in future investigations to consider the perspectives of any participant at the conciliation table.

Introduction

Australia's federal tribunal consistently reports that the majority of unfair dismissal claims are resolved at the conciliation stage, yet limited knowledge exists in the academic literature on its benefits, drawbacks and impact on parties involved the process. Gathering this knowledge is further compounded by the closed, informal and largely undocumented conciliation process that exists under Australia's federal unfair dismissal claim process.

This paper reports early exploratory work that contends the predisposition of the parties filters their perception of the experience. Specifically this article explores, as a test case, the managerial perspective of the conciliation experience to gain preliminary insight into the major points of contention and harmony perceived by the employer. It will be analysed using a framework of topics compiled for this article, from the unfair dismissal conciliation literature - literature which to date is very limited. The dimensions investigated are the power position of the parties, the mindset required for conciliation to be successful, the quality of the conciliation process, the settlement demands, and the cost of being involved in conciliation. First, however, is a brief overview of how conciliation 'works' at the federal industrial tribunal level.

An overview of unfair dismissal conciliation by Fair Work Australia

Australia's system of a government provided, industrial tribunal service involves the tribunal providing a conciliator to hear a case at the cost of a small lodgement fee. Fair Work Australia (FWA) (2011) describes the unfair dismissal conciliation process in the following manner:

Conciliation is an informal, private and generally confidential process where a FWA conciliator assists employees and employers to resolve an unfair dismissal application by agreement. The conciliator is independent and does not take sides, but works to bring the parties to an agreed resolution. The style of each conciliator may vary but, in general, conciliation will include the following steps:

- *the conciliator explains their role and the manner in which the conciliation is to be run*
- *each side briefly outlines their story including what happened, any relevant facts and what they want*

- *the conciliator may allow or ask questions*
- *the circumstances, and any issues arising, are discussed. The conciliator may talk separately to the parties*
- *the conciliator assists the parties to reach agreement by identifying common ground, suggesting possible options and sometimes by making recommendations and assisting the parties in drafting an agreement in writing*

FWA commissioned independent research on the experiences of parties attending conciliation as part of the unfair dismissal resolution process. The resulting report states that participant satisfaction with the conciliation process was high, with satisfaction rates of 86 per cent for workers, 82 per cent for employers and 87 per cent for representatives (TNS Social Research 2010). Senior Deputy President of FWA, Jennifer Acton reported that FWA conciliators are expected to perform around 15 conferences each week, at around one and half hours each. The vast majority of these conferences are now conducted by telephone leaving only seven per cent occurring in face to face mode or by video-conferencing (Acton 2010). The successful intervention of conciliation appears to be captured in the tribunal's performance metrics. Refer to Table 1 for a summary of the last ten years of conciliation statistics achieved by the AIRC and more recently, FWA.

Table 1. *Unfair dismissal conciliation statistics in the Federal tribunal: July 2000 to July 2011*

Stage of Claim	AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION									FWA	10 year average
	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	
NUMBER OF UD CLAIMS LODGED*	8109	7461	7121	7044	6707	5758	5173	6067	7994	13054	7449
CONCILIATION STATISTICS											
Finalised at or prior to conciliation	6096	6719	5876	5763	5654	4739	4508	5282	5972	11823	6243
Finalised post conciliation but prior to arbitration	1422	1648	1209	1139	985	1143	922	930	913	780	1109
Conciliation settlement rate #	73%	75%	75%	75%	77%	73%	73%	73%	75%	81%	75%

* claims lodged are not always finalised in the same year

conciliation settlement rate reported in AIRC/FWA annual report

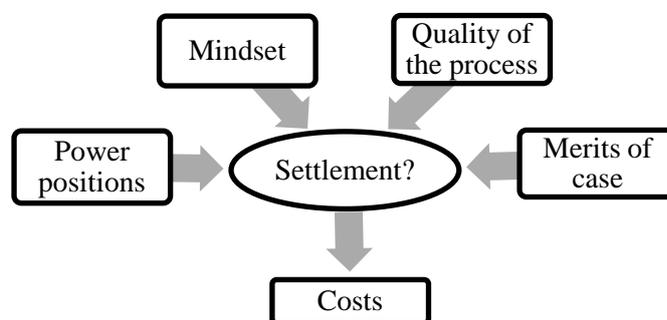
Adapted from: (Australian Industrial Relations Commission, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009; Fair Work Australia 2010)

The figures in Table 1 show that throughout the ten year period the conciliation rate remained stable. On average, 75 percent of claims were resolved as a consequence of, or subsequent to, conciliatory intervention. Separate statistics on the number of claims settled *prior* to conciliation are not reported, with pre-conciliation finalisation counted along with those claims finalised at conciliation. Annually, around 1,100 claims either settle or discontinue *after* conciliation but prior to an arbitration hearing. This suggests Australian workers are comfortable to use conciliation, but reluctant to pursue arbitration, to settle their grievance. Uncertainty, discouragement, cost or complexity of the arbitration process would be plausible explanations for why dismissed workers walk away from their claim, post conciliation (Freyens 2010; Southey 2008). Alternatively, employees may be settling with their employer after conciliation and not informing the Commission of their resolution. Therefore, qualitative investigations of participants' conciliation experience can provide much richer detail about the workings of a major aspect of our dismissal resolution system that happens behind closed doors.

Perceptions of the conciliation experience: a conceptual framework

Whilst the Tribunal reports high settlement rates in terms of circumventing costly arbitration processes, what counts as a ‘successful’ conciliation in terms of the competitive element that would exist between the parties in conciliation, is harder to define. For instance, an employee hoping for a \$10,000 settlement may be quietly disappointed with a \$5,000 settlement. Meanwhile, the employer may feel they took the harder knock because they agreed to pay a settlement. In this scenario, a sense of disappointment may exist for both parties. This leads to the question - what is the individual’s experience of conciliation where it can be anticipated each party enters with a biased perspective of the righteousness of their case?

To put a framework in place to pursue such knowledge, this paper draws on the work of Eliades (1999); Hagglund and Provis (2005) and Freyens (2010) as a framework for analysing the participants’ experiences of conciliation. Figure 1 displays the topics of interest within this framework. ‘Power positions’ take into account that whilst the employer has the greater power in the dismissal process, it may revert to the dismissed worker, at conciliation. The ‘mindset’ incorporates whether each party entered conciliation with a willingness to compromise – which is distinctly different from the arbitration mindset. The ‘quality of the process’ incorporates a party’s perception of the conciliators neutrality and management of the meeting process per se. The ‘merits of case’ addresses the perception of a conciliator’s tactical use of identifying faults in a participant’s case with a view to weakening a party’s resolve. ‘Settlement’, as the central focus of the framework, considers the actual outcome and a participant’s sense of whether they were pleased or disappointed with the settlement. Finally, ‘costs’ incorporates the actual financial impact of the conciliation meeting on a party.



Source: developed for paper

Figure 1. *Framework for analysing a participant’s conciliation experience*

Method

With ethical clearance in place, an interview was conducted with the Human Resource Manager of a medium sized business that operates in the resources industry. This ‘pilot’ interview was conducted to consider how each dimension of the framework, presented in Figure 1, could be informed by a genuine conciliation experience. Single cases can be criticised on the belief one cannot generalise its findings. However, the value of a single case was supported by Flyvbjerg (2006, p. 227) where he stated:

That knowledge cannot be formally generalized does not mean that it cannot enter into the collective process of knowledge accumulation in a given field or in a society. A purely

descriptive, phenomenological case study without any attempt to generalize can certainly be of value in this process and has often helped cut a path toward scientific innovation.

Insights gained about the employer's experience

The business in question employed around 220 staff, some working as expatriate employees in the Americas. The HR Manager reports to the CEO, and she is responsible for the development and administering of formal HR policies, including policies on performance management and dismissal. The conciliation conference arose from the firm's dismissal of a graduate engineer, on the basis of his poor work performance. A conciliation conference occurred in 2009 in Brisbane. It was attended by the applicant, an APESMA representative, the applicant's partner, the HR manager, the engineering manager and the firm's legal advisor. The conference was settled by the employer paying four weeks salary to the dismissed worker.

The power-position of the parties

Conciliators are required to manage any power imbalance between the parties along with any financial/resource disparities and gender and cultural variances between the parties (Eliades, 1999). In workplace disputes, the industrial relations literature generally echoes the stronger power of the employer in the employment relationship, and that unfair dismissal protections exist to provide the worker with an avenue to address such unjust treatment (Brown, 2004; Collins, 1992; Gray, 1994; Pittard, 1994).

However, there are situations, although less apparent, that may confer the balance of power to the weaker party (Eliades 1999). The first instance would be where the dismissed worker may have the wider sympathies of the employer's workforce. This would be particularly in the case of redundancy where the employer, if it successfully defends an unfair dismissal claim, could suffer productivity repercussions from a demoralised or deflated workforce. Another circumstance where the dismissed worker may hold the power would be if a favourable finding for the worker potentially sets an unwelcome precedent for management, such as redundancy or performance management protocols that are more resource and time-intensive than those that were being followed by management.

In this investigation, the HR Manager touched on the matter of power at two points during our conversation. She did acknowledge the greater power of the employer:

... people just don't understand or give enough value to the imbalance of power between the employer and the employee. I think when you're acting as the employer in these sort of situations that you really, really do need to be so careful about understanding the greater balance of power that you possess.

It was also evident though, that the threat of arbitration, gave the dismissed worker a greater power at the conciliation table:

... (the Commissioner) was very keen not to go to arbitration which I was too There is nothing worse than potentially seeing your company's name in a negative light in the media.- It is important to acknowledge, and I don't think people always do, that generally HR people identify very strongly with their employer and their company's reputation. The possibility that something you haven't done has resulted in the company being seen unfavourably is really upsetting too. That was something I felt very badly about. Those sorts of things aren't inconsequential - they're very very real and they do have a real effect.

The dismissed worker has latent power at conciliation, as they control whether their employers will need to endure an arbitration hearing. Having been stripped of their employment, workers have no more 'to lose' yet potentially can hope to gain, at conciliation. Whereas, employers face consequences such as paying cash settlements, re-hiring workers, or making some other form of conciliatory gesture, not to mention the threat to professional integrity. It is contended that it is only those employers, with the resolve *and* resources to defend their actions throughout the arbitration proceedings - and/or those that dare to call the workers' bluff - that will not attempt to resolve the matter at conciliation.

The conciliation mindset

Theoretically, for unfair dismissal conciliation to be successful, both parties should come to the process, willing to resolve the dispute (Eliades 1999). Such willingness to resolve a dispute is more likely if the parties have the choice whether or not to engage in conciliation, and it is likely from this perspective that FWA provides 'voluntary' conciliation. The removal of 'compulsory conciliation' and issuing of certificates is one of the reforms to the unfair dismissal resolution process of the AIRC, where conciliation was a pre-requisite for arbitration. In spite of removing its compulsory status, FWA reports that the majority of parties still submit to the conciliation process in the hope of efficiently resolving the dispute (Acton 2010).

In this investigation, the following dialogue shows how the employer accepted and then justified a revised position that involved a willingness to recognise a procedural mistake - so that the compromise was a palatable option:

I was resisting because I felt like we were compromising our ideals but then when you looked at the possibility of actually going into a full arbitration and its costs emotionally and financially compared with paying him four weeks there was no justification ... but, morally it made me feel we were being penalised unfairly when I thought we had done the right thing.

The way I reconciled that with myself was the fact that when that final incident happened I didn't sit down and document it in a letter to him and I didn't give him the opportunity to show just cause as to why he shouldn't be terminated ... I just felt duped at the time. You do need to accept that criticism and you know now, I think about it now and wonder why we didn't just have that conversation and give him the day or a night to reflect on it and then talk about it again.

Eliades (1999: 6) pointed out that conciliation 'inherently involves the parties compromising their optimum positions'. It is this point that highlights the starkly different mindsets the parties require when engaging in unfair dismissal conciliation compared to unfair dismissal arbitration. In arbitration, each party approaches it with the objective of proving they are on the higher moral ground with a view to achieving the 'winner takes it all' spoils of the arbitration decision. Quite different is the exploratory nature of the conciliation process, where each party is urged to negotiate a resolution that involves 'splitting the tab' associated with 'costs' of the broken employment relationship - be they financial or psychological.

It is from this perspective that the employer, responding to an unfair dismissal allegation, has to make the larger concession. The worker, already without a job, will end the conciliation conference, in no less a position.

Quality of the conciliation process

Perhaps the most comprehensive investigation of the unfair dismissal conciliation process in Australia was conducted by Hagglund and Provis (2005). Their investigation focused on the conciliation process within the South Australian tribunal, rather than the federal tribunal. They

found that no unfair dismissal applicant got their job back at the conciliation process and that the conciliators process involved:

... a hurried discussion of the issues, the mediator gave an opinion to each party about the merits of their case, and then concludes with some quick conciliation work to see if the parties can reach cash settlements (Hagglund & Provis 2005, p. 79).

Three concepts about the conciliation experience can be drawn from this brief quote: the quality of the process per se; merits of the case; and cash settlement. Each will now be discussed in relation to the employer's experience.

The process in itself

In order to compare the employer's experience to these previous findings, the HR Manager was canvassed initially for opinions about how the commissioner managed the conciliation process, particularly as to whether it was managed in a professional, fair and unbiased manner:

Overall yes I would have to say that. The feeling I got from the commissioner was he was certainly sympathetic, and I also think he was very keen not to go to arbitration ... The hearing took three to four hours and there was the commissioner, APESMA representative, the employee, his partner, myself, the engineering manager and our legal representative - not a lawyer – he was an advisor from a legal firm.

The inference from the above is that the HR manager felt the commissioner's process, per se, was appropriate – and with around a four-hour hearing, it probably did not feel 'hurried'.

The merits of the case

Hagglund and Provis' reference to the conciliator 'commenting on the merits of a case' aligns with Eliadies (1999: 4) suggestion that a conciliator can use the tactic of 'creating doubts' for the parties as to their respective positions in order to assist the parties move towards a settlement. As to having the 'merits' of their case scrutinised, in the HR manager's experience, it appears the commissioner presented three issues of contention with the employer's position – two of which appeared to have some influence on the employer softening its stance.

The first contentious issue was that the commissioner pointed out a procedural flaw in the employer's termination process. Whilst the employer appeared to have provided a sound history of evidence and consistently used the performance management policy, the commissioner identified that the employer neglected to afford an opportunity for the worker to respond to the last performance allegation, in the final days of the process. The HR manager summarised this missed technicality as follows:

To us the decision (to dismiss) was really a clear call. What actually triggered it was he (the worker) was asked to do some work for one of our more senior people and the work he produced for him was very substandard. Where we erred was that we didn't describe the specific incident or the specific work example, in writing to him in the context of being terminated and ask him to show just cause as to why he shouldn't be terminated. What we did was looked at all the documented performance management history and thought well OK we've documented - there shouldn't be any problem with this whatsoever, so we terminated him. ... we didn't have that final conversation and he didn't get that opportunity and that's what it all hinged on. It was a tough lesson to learn but having said that, when you look at it clearly, we could see what the commissioner was saying.

The second contentious issue pertained to the commissioner's opinion that the employer had created confusion for the worker by providing a part pay increase as per their merit pay policy. The following quote explains:

We used a corrective disciplinary approach. After three performance review meetings we had a slight improvement and gave a partial pay increase ... things deteriorated from there - after the bonus. The Commissioner said to me that he acknowledged how difficult it is but, rather than giving the fellow a partial increase we should have given him nothing. The inference or the perception that he (the commissioner) thinks the engineer drew from that was 'ok I'm back on track - I did get an increase' - even though it wasn't as much as the others. And when the Commissioner said that to me I thought well OK we didn't put in his letter everybody else received X percentage you're only receiving 3% because we are still concerned about your performance. We didn't specifically describe that in the salary review letter.

This opinion appears to have also made the employer to reflect on the potential strength of their case. It also caused consternation for the employer who had attempted a progressive disciplinary approach which involved encouraging the worker through a part-pay increase and this approach was now being identified as weakness in their case - particularly if it was scrutinised further at arbitration.

However, the final issue - which was that the employee should have been made redundant instead of being dismissed on performance grounds - was rebutted by the employer at the conference. It unfolded as follows:

The commissioner told us ... this particular concern only came out at the hearing... when we terminated him for his lack of performance we had also made five people redundant because the GFC had hit and we had some contraction in forward orders. It turned out that his (the dismissed worker) contention was rather than terminate him for non performance we should have given him a redundancy. My contention was that we had this history of counselling for performance and his position wasn't redundant. We had every expectation of recruiting and filling his position again ... so that was a bit of a blind side.

The HR Manager was clear that the commissioner was not forcing the issue of redundancy during the conversation, but through his caucus meetings with the dismissed worker, an unexpected defence had been put to him by the applicant. Using Eliadies (1999) theory that conciliators aim to 'create doubts' about the strength of a case, it was possible the commissioner was 'testing' the employer's reaction to the redundancy defence - to which the HR Manager provided strong reasons as to why it was not a redundancy situation. Perhaps an employer with less technical knowledge about redundancy to defend such an appeal may have acquiesced on this matter.

Settlement

The final point that can be drawn from Hagglund and Provis' (2005) quote is their reference to the conciliator's aim to achieve cash settlement. History shows that the promotional material produced by the Labor Government as part of the unfair dismissal reforms, indicated FWA would eliminate 'go away' payments (DEEWR Factsheet 2008). A business consultant's survey showed that apparently 30 per cent of companies pay 'go away' money to avoid speculative or vexatious unfair dismissal claims (Finch 2005). Remedies awarded through arbitration are documented and made available to the public whereas conciliation settlements are not available publicly. Such in-camera settlements allow the association of 'go away' payments to proliferate, regardless of whether such payments are a reality or myth. Turning to the matter of settlement in the case study, the HR Manager stated:

He (the commissioner) obviously didn't agree with my procedure but he did make a point of saying that basically pay him four weeks and he goes away... I guess I didn't really appreciate the inference - he used the words 'make the payment and he will go away or make it go away'. That to me dropped the level of professionalism and I didn't expect it. We talk about our ethics and while I'm not particularly on high ground as we didn't follow the correct procedure, this comment from somebody in that role or authority disappointed me.

These comments show that the employer felt, on the matter of settlement, that the commissioner became an agent of the dismissed worker with his 'go away' comment. For a graduate engineer that might earn around \$60,000, four weeks pay would have equated to \$4,600. It was perceived by the employer that the usage of words such as 'pay money' and the worker will 'go away', implied that the employer must pay a ransom to be liberated from a further claim. As the employer had been made aware by the commissioner that a procedural error occurred in the dismissal process, had the commissioner avoided words such as 'go away' – it is possible the employer may not have experienced a negative response to this aspect of the conciliation conference. That is, due to the procedural error, 'go away' money was not really the situation, however, the actual discourse that unfolded resulted in this perception from the employer.

The cost of conciliation

Freyens (2010) interest in the economic costs associated with dismissal have revealed that employers can anticipate an average cost of settling a claim via conciliation to be 18.2 per cent of the annual wage cost of the employee. The actual settlement payment average is estimated to be 9.2 per cent of the annual wage cost, whilst also to be taken into consideration are administrative, legal and time costs averaging 12.3 percent. Arbitration costs are comparatively higher, with an estimated average of 43.3 percent of the annual wage, of which the settlement costs averaged 24.5 per cent, more than double the conciliation settlement. A variation in excess of 100 per cent would be a strong motivation for employers to settle at conciliation, rather than risk the costs an arbitration hearing.

In the case under analysis, the HR Manager revealed the costs and time demands of the conciliation process as follows:

(in relation to time) ... once he made a claim, that consumed, I would say, at least three weeks of my time as well as the engineering manager's time – probably about a third of that. Travelling to Brisbane for the conciliation - we both went ... (in relation to legal and wage costs) I'd say somewhere between ten and fifteen thousand when you look at our hourly rates and what we had to pay our advisor. The advisor fee, I think, was \$6,800.

The salary and advisor costs estimates provided by the HR manager totalled between \$10,000 and \$15,000. Adding in the \$4,600 settlement amount, it is estimated the conciliation experience cost the employer between \$15,000 and \$20,000, or in the vicinity of 26 per cent of the engineer's wages cost (calculated at \$60,000 base with 14 per cent on-cost). This means the employer experienced higher conciliation costs than those reported by Freyens of 18.2 per cent. Albeit, the actual settlement amount estimates to be around 7 percent of the wages cost, which is lower than the 9.2 percent in Freyens' analysis.

Conclusion

This is an early conceptual work that provides a framework for guiding future investigations to analyse union, employee, managerial and conciliator experiences, before any 'findings' about conciliation can be considered for their wider applicability. This paper attempted, given the limited

literature on conciliation, to use real-life insight to develop this framework. What was learned, so far, is that conciliation should not be entered into under the mistaken belief that it will result in a 'quasi arbitration' decision, and that the parties need to recognise a different set of rules and cognitions apply. Thus further insights need to be gathered about the state of the participants' mindset in terms of whether or not a willingness to reflect and accept shortcomings existed, as the conciliator uses tactics to reform the respective positions of the parties. At arbitration the parties rigorously defend their position - a significant difference, procedurally and mindset-wise, from the conciliation setting where the parties are persuaded to alter their position. It is suspected that a party that enters the conciliation process with a view to being vindicated or getting what they want, will be, to some degree, 'disappointed' with the settlement, regardless of how solid their case may be. Repeat participants, such as experienced advocates and unions may be aware of this stay of play, but perhaps 'first time' employers and workers are not at this same level of awareness.

Arbitration produces a 'winner takes it all' outcome because either the employee wins a settlement or the employer is 'morally' exempted. Yet in conciliation, the employer may need to be prepared to 'pick up the tab' if they want assurance that the matter is resolved, otherwise they leave the table not knowing whether they will face an arbitration hearing. This suggests future investigations can consider whether dismissed workers have more power than may be apparent at conciliation, as they control whether their employers will need to endure an arbitration hearing. This covert power is reinforced if the employer wants to avoid putting at peril their authority or reputation.

A further point worth investigation is the impact of the language used by the conciliator to bring about a settlement and what specific words and phrases trigger an association, in a participant's mind, between making a payment with dubious 'go away' motives. Rather the language needs to reflect that the settlement addresses where the employer may have made an error in procedure and/or caused distress to the worker (notably arbitration compensation cannot take into account distress whereas there are no legislative rules governing conciliation payments). Finally, future investigations can consider the cost of conciliation. The time demands for preparing for conciliation and legal advice, as reflected in this case were extensive. And these hidden costs may be expected to far exceed the actual amount paid in settlement to the worker.

References

- Acton, P. (2010, 22 November). *From interest to rights: The work of Fair Work Australia*. Paper presented at the 9th Annual Workforce Conference, Melbourne.
- Australian Industrial Relations Commission. (2001). AIRC Annual Report 2000-2001. Available from: http://www.fwa.gov.au/documents.annual_reports/.
- Australian Industrial Relations Commission. (2002). AIRC Annual Report 2001-2002. Available from: http://www.fwa.gov.au/documents.annual_reports/.
- Australian Industrial Relations Commission. (2003). AIRC Annual Report 2002-2003. Available from: http://www.fwa.gov.au/documents.annual_reports/.
- Australian Industrial Relations Commission. (2004). AIRC Annual Report 2003-2004. Available from: http://www.fwa.gov.au/documents.annual_reports/.
- Australian Industrial Relations Commission. (2005). AIRC Annual Report 2004-2005. Available from: http://www.fwa.gov.au/documents.annual_reports/.
- Australian Industrial Relations Commission. (2006). AIRC Annual Report 2005-2006. Available from: http://www.fwa.gov.au/documents.annual_reports/.
- Australian Industrial Relations Commission. (2007). AIRC Annual Report 2006-2007. Available from: http://www.fwa.gov.au/documents.annual_reports/.
- Australian Industrial Relations Commission. (2008). AIRC Annual Report 2007-2008. Available from: http://www.fwa.gov.au/documents.annual_reports/.
- Australian Industrial Relations Commission. (2009). AIRC Annual Report 2008-2009. Available from: http://www.fwa.gov.au/documents.annual_reports/.
- Brown, W. (2004). Third Party Intervention Reconsidered: An International Perspective. *The Journal of Industrial Relations*, 46(4), 448-458.

- Collins, H. (1992). *Justice in Dismissal, The Law of Termination of Employment*. New York: Oxford University Press.
- Department of Education Employment and Workplace Relations. (2008). Fact sheet 9. A simple, fair dismissal system for small business Retrieved 30 September, 2008, from <http://www.workplace.gov.au/>
- Eliades, D. (1999). Power in mediation - some reflections. *ADR Bulletin, Vol 2* (Vol. 2, Issue 1, Article 2). Retrieved from <http://epublications.bond.edu.au/adr/vol2/iss1/2>
- Fair Work Australia. (2010). FWA Annual Report 2009-2010. Available from: http://www.fwa.gov.au/documents.annual_reports/.
- Fair Work Australia. (2011). The unfair dismissal process Retrieved 12 September, 2011, from <http://www.fwa.gov.au/index.cfm?pagename=dismissalsprocess>
- Finch, M. (2005, August). 'Go away money' regularly paid out to workers. *Human Resources Magazine* Retrieved 10 September 2011, from <http://www.humanresourcesmagazine.com.au/articles/9f/0c03599f.asp>
- Flyvbjerg, B. (2006). Five Misunderstandings About Case-Study Research. *Qualitative Inquiry, 12*(2), 219-245.
- Freyens, B. (2010). Measuring firing costs: The case for direct methods. *International Labour Review, 149*(3), 287-313.
- Gray, P. (1994). Damages for Wrongful Dismissal: Is the Gramophone Record Worn Out? In R. McCallum, G. McCarry & P. Ronfeldt (Eds.), *Employment Security* (pp. 41-50). Sydney: The Federation Press.
- Hagglund, G., & Provis, C. (2005). The Conciliation Step of the Unfair Dismissal Process in South Australia. *Labor Studies Journal, 29*(4), 65-86.
- Pittard, M. (1994). The Age of Reason: Principles of Unfair Dismissal in Australia. In R. McCallum, G. McCarry & P. Ronfeldt (Eds.), *Employment Security* (pp. 16-40). Leichhardt, NSW: The Federation Press.
- Southey, K. (2008). Forward with Unfair Dismissal Claims. *Labour and Industry, 19*(1-2), 25-48.
- TNS Social Research. (2010). Fair Work Australia Unfair Dismissal Conciliation Research Survey Results (pp. 1-60). Canberra.