

# AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

Volume 26, Number 3

August 2015

## CASE NOTES

- Reviewing a registrar's decision not to order conciliation; indemnity costs under a Calderbank offer; and mediation media watch** – *David Spencer* ..... 121

## ARTICLES

- Misattributed paternity disputes: The application of collaborative practice as an alternative to court** – *Emily Kwok and Dianna T Kenny*

This article explores the use of collaborative practice as an alternative to court in resolving parenting disputes that involve misattributed paternity. This process enables the parties to retain their legal rights to seek compensation for any financial losses, determine future child support and parenting arrangements and address any psychological damages that were incurred through the discovery of non-paternity. Collaborative practice aims to preserve the social relationships that inhere to future parenting arrangements. .... 127

- Artistry in mediator practice: Reflections from mediators** – *Kathy Douglas and David Goodwin*

Mediators practice in a variety of ways and as the mediation field matures researchers are increasingly interested in the ways mediators understand their role and practice. Some experienced mediators could be said to gain “artistry” in their practice, adjusting it to suit the needs of participants. This article reports on interview research into the reflections of 16 tribunal mediators on their practice. Analysis of this data is augmented by the authors’ extensive mediation experience. This article focuses on particular aspects of mediation practice, including what preparation mediators see as useful and whether or not mediators change their methods depending on the subject matter being mediated. The findings have implications for the education of mediators. .... 137

- The pros, cons, and maybes of telephone mediation: A conversation about the “fourth party”** – *Helen Shurven and Archie Zariski*

This article focuses on the use of technology in conflict and dispute resolution, and particularly the use of telephone communication as the “fourth party” in mediation. The two authors respectively outline the advantages and the limitations of mediation by telephone, and then provide a brief historical review of some of the relevant research, dealing with issues relating to non-verbal behaviour, the influence of culture on communication style, and how behaviour is affected by modes of communication. In the context of the authors’ experiences, and the research examined, some suggestions are made as to when telephone mediation might be particularly appropriate. .... 146

**An alternative model for the application of intervention orders in Victoria – Edward Davis**

This article proposes an alternative model for intervention orders to address some of the problems experienced by an overburdened Victorian Magistrates' Court by actively encouraging parties to engage in mediation. The model is based on one used in the family law context when applying for a parenting order. Drawing on the feminist literature, the article suggests that such a model is unlikely to be appropriate in a family violence context. However, drawing inferences from a pilot mediation program, with a few concessions, it might be appropriate in a non-family violence context. .... 156

**The child's voice in FDR: Mediation and child-informed practice – Mieke Brandon and Linda Kochanski**

In Australia there are diverse practices that involve hearing from children in family dispute resolution services. The focus of this article is about the physical and emotional safety of the separated parents and their children having a voice in family dispute resolution (FDR) mediation. How this fits with the suitability and safety of parents in mediation and the additional options of involving children in FDR offered by family dispute resolution practitioners is explored. .... 168

**Evaluating collaborative law in the Australian context – Henry Kha**

Collaborative law as a method of resolving family law disputes is a relatively recent development in Australia. Originating from the United States, collaborative law has become increasingly widespread in Australia since 2005. This article evaluates the advantages and disadvantages of collaborative law in resolving family disputes in the Australian context. A background and history of the operation of collaborative law in Australia will be presented. It shall be argued that despite the innovation offered by collaborative law, there are a number of challenges associated with the Australian system of collaborative law. In particular, this includes the cost of the collaborative law process and issues associated with the mechanism of this type of dispute resolution. .... 178