

# AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

Volume 15, Number 1

February 2004

## CASENOTES

**David Spencer**

THE ROLE OF THE NATIONAL NATIVE TITLE TRIBUNAL IN  
MEDIATION .....5

TESTING STATUTORY PRIVILEGE PROVISIONS IN COURT  
REFERRALS .....8

## ARTICLES

NEGOTIATION AT THE SMALL END OF TOWN: SOME  
NEGOTIATING BEHAVIOURS OF SMALL BUSINESS

**Dr Tom Altobelli**

This is an article about the negotiating behaviour of small business in Australia. It defines and considers the profile of small business in Australia and it examines the contexts in which small business negotiates and some impacts on them. ....14

COURT DIRECTED COMPULSORY MEDIATION –  
ATTENDANCE OR PARTICIPATION?

**Paul Venus**

This article examines the experience of mandatory mediation before the Supreme Court of New South Wales. It reviews the powers of the Supreme Court of New South Wales to order mediation, how those powers have been utilised and some of the resulting issues that

have been explored by the court.....29

#### A CENTRALISED MEDIATION DATABASE: THE VIEWS OF MEDIATORS

**Kenneth T W Yiu and Sai-On Cheung**

This paper describes a centralised mediation database system that seeks to publicise and promote the use of mediation in construction. The proposed system includes an online mediation cases library for practicing mediators and mediator trainees.....38

#### OVERCOMING ATTRIBUTION BIAS IN MEDIATION: AN NLP PERSPECTIVE

**Joel Lee**

This article deals with the application of the Meta-Model of Language from NLP to the behavioural phenomenon referred to as Attribution Bias. It provides an NLP analysis of attribution biases and explores a tool, in the form of the Meta-Model by which mediators can address attribution biases. Specific examples are provided to give readers a sense of how the Meta-Model can be used so that they may be able to immediately use it with success.....48

#### YOU CAN LEAD A HORSE TO WATER ... OVERCOMING IMPASSE IN CONSENSUS BUILDING GROUP PROCESSES

**Jane Elix**

The term impasse describes a conflict which appears to be incapable of resolution. This article reports on surveying of members of the New South Wales Regional Vegetation Committees. The respondents' views provide valuable insights into how consensus building processes might be better designed to bring about agreement and avoid impasse.....59

#### THE FINANCIAL BENEFIT FOR INSURERS: MEDIATE IN PERSONAL INJURIES DISPUTES

**Paul Harpur**

This paper demonstrates how an integratively managed process can expand the negotiation options. The potential inherent in plaintiff's emotions to resolve matters on an emotional basis, rather than an economic one, is explored. Using research, the author demonstrates how mediations are more likely to obtain integrative outcomes than unmediated conferences.....70

# Guidelines for Contributors

## Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Australasian Dispute Resolution Journal*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to [adrj@thomson.com.au](mailto:adrj@thomson.com.au), for forwarding to the Editor. Licence agreements can be downloaded via the internet at [http://www.lawbookco.com.au/authorsupport/d\\_authorJournals.asp](http://www.lawbookco.com.au/authorsupport/d_authorJournals.asp). If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

## Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

## Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere. Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 4,000 words for articles or 1,500-2,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proofs pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes cannot be accommodated at proof stage.
- Contributors of articles receive 25 free offprints of their article and a copy of the part in which the article is published. Other contributors receive a copy of the part to which they have contributed.
- Articles published are critically appraised or reviewed by an academic or professional peer of the author for the purposes of maintaining the standards of the journal.

## Style

### 1. Levels of headings should be clearly indicated (no more than four levels).

### 2. Cases:

- Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first being the authorised reference.
- Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
- “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
- Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
- For international cases best references only should be included.

### 3. Legislation should be cited as follows: *Trade Practices Act 1974* (Cth), s 51AC. The full citation should be repeated in footnotes.

### 4. Books should be cited as follows: Cairns B, *Australian Civil Procedure* (5th ed, Lawbook Co., 2002) p 52. In footnotes do not use *ibid* or *op cit*. The following style is preferred:

4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
5. Austin, n 4, p 56.

### 5. Journal articles should be cited as follows: Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220. Wherever possible use official abbreviations not the full name for journal titles. In footnotes do not use *ibid* or *op cit*. The following style is preferred:

6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
7. Sheehy et al, n 6 at 221.

### 6. Internet references should be cited as follows: Watson RS, *Federal Offences* (Lawbook Co., subscription service) at [5.11130], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed. For further information visit <http://www.lawbookco.com.au> or contact the Production Editor.

## SUBSCRIPTION INFORMATION

The *Australasian Dispute Resolution Journal* comprises four parts a year.

Customer Service and sales inquiries:

**Tel: 1800 650 522**

**Fax: 61 2 8587 7200**

**Web:** [www.lawbookco.com.au](http://www.lawbookco.com.au)

**Email:** [service@thomson.com.au](mailto:service@thomson.com.au)

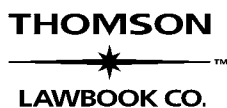
Editorial inquiries:

**Tel: (02) 8587 7000**

### HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 1441-7847

Typeset by Lawbook Co., Pyrmont, NSW  
Printed by Ligare Pty Ltd, Riverwood, NSW