

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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ARTICLES

FINAL AND BINDING EXPERT DETERMINATION AND THE
DISCRETION TO STAY PROCEEDINGS

Logan Campbell

The growing use of expert determination to resolve questions of contractual rights, obligations and grievances highlights the finality of the expert's decision and on what grounds it may be attacked or enforced. Practitioners must be aware of the limited review of an expert's decision available to a disgruntled party. As with arbitration, de facto enforcement of the agreement to abide by expert determination and the determination itself can be obtained by a stay of court proceedings. These issues were examined in the recent NSW Supreme Court decision in *Ipoh v TPS Property No 2* [2004] NSWSC 289. By examining apparently conflicting authorities in the area, principles on which the exercise of the court's discretion should be based are identified.104

CHILDREN OF THE 21ST CENTURY: ARE THEY SKILLED IN THE ART OF NEGOTIATION?

Maxine Evers

Children negotiate on a daily basis with parents, teachers and their peers. Their need and ability to learn negotiation skills has increased in acceptance. Programs, such as anti-bullying and peer mediation, are provided by many schools. Do children have the capacity to understand the process of negotiation? Can we provide a framework in which negotiating can be learned and practised in a safe and nurturing environment?.....116

THE IMPACT OF ADMINISTRATION AND LIQUIDATION ON DOMESTIC AND INTERNATIONAL ARBITRATIONS UNDER THE CORPORATIONS ACT 2001

Phil Blaxill

Sections 440D, 471B and 500(2) of the *Corporations Act 2001* (*Cth*) (*Corporations Act*) provide that when an administrator or liquidator is appointed to a company, certain proceedings against that company are stayed. Such a stay is only lifted with the consent of the court or administrator. Section 467(7) of the *Corporations Act* allows an application to be made to the court for a stay of certain proceedings brought against a company that is subject to a pending winding-up application. This article explores whether or not a domestic arbitration is stayed by virtue of those provisions; and the extent to which those principles extend to international arbitrations both under the *International Arbitration Act 1974* (the Act) and otherwise. In this article ss 440D, 471B, 467(7) and 500(2) of the *Corporations Act* are referred to together as “the Sections”.....124

CONFIDENTIALITY

Amber Bernauer

This article critically analyses the prevalence of confidentiality as a basic philosophical tenet of mediation. In particular, it canvasses the contemporary proliferation of statutory and common law principles imposing limitations upon the absolute application of non-disclosure. However, despite the recognition of a vast array of confidentiality exceptions, it is the adoption of a balance between such exclusionary principles and the complex privilege of confidentiality which will allow the success and integrity of dispute resolution to prevail.135

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5. Austin, n 4, p 56.

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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.

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