

# AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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**David Spencer**

## ARTICLES

THE USE OF A DECISION SUPPORT TOOL IN  
CONSTRUCTION DISPUTE NEGOTIATION

**Sai On Cheung, Kenneth TW Yiu and Ryan KH Chung**

Negotiation is an indispensable part of dispute resolution in the construction industry. Disputants should be well prepared before the process begins. To achieve this, one of the prerequisites in preparing construction dispute negotiation is to understand one's case, in particular, the bottom line. The decision-maker can conduct self-analysis and prepare alternatives before any resolution process begins. This article aims to introduce the use of a decision support tool, modelled on the technique of a decision tree, to achieve such purposes. The tool operates on a computing environment provided by a software called "Precision Tree". The operation procedure of the analysis shall include three stages: (1) issue identification, (2) outcome identification and (3) analysis. A hypothetical case is used to illustrate the working of this tool. As such, a decision-maker can identify the probability of success and the expected profit for each alternative in this case. With the use of sensitivity analysis, the bottom line figure of each issue can be identified. It is suggested that using such a decision support tool enables a systematic and rational self-analysis in preparing for construction dispute negotiation. ....170

## DISPUTES OVER ACCESS TO “DECLARED” SERVICES: EVALUATING THE NEGOTIATE-ARBITRATE FRAMEWORK IN PART IIIA OF THE TRADE PRACTICES ACT

**Brenda Marshall**

Part IIIA of the *Trade Practices Act 1974* (Cth) contains a legislative regime governing third party access to the services of essential infrastructure facilities. Under the regime, an important mechanism by which access seekers may gain access to particular infrastructure services is to have those services “declared”. Declaration imposes an obligation on access seekers and facility owners to negotiate shared use of a service, supported by binding arbitration of disputes. The negotiate-arbitrate framework established by Pt IIIA is critically evaluated in this article.....187

## SOLO MEDIATING CIVIL CLAIMS

**Dr Peter O’Brien**

The New South Wales’ Community Justice Centres (CJC) reintroduced mediation into a Local Court in the Sydney region after an absence of some years. With significant support from the Court Registrar, mediation was accepted as an alternative to litigation in at least one case listed on each weekly civil claims day. Mediation was conducted by a single mediator, in contrast to the CJC approach in every other Local Court in the Sydney region where all mediation was conducted under the co-mediation model. Mediation resulted in a written agreement for 56% of the 16 mediations conducted during the trial of solo mediation. Matters reaching agreement were withdrawn from the court lists. In other matters, a statement of unresolved issues was developed to assist both the parties in litigation and the court to define precisely what the court was to consider. The trial of solo mediation was judged a success and the New South Wales’ CJC now plans to develop a small team to undertake solo mediation at the Local Court.....199

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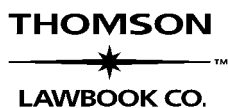
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