

# AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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## CASENOTES

*David Spencer*

Enforcing dispute resolution clauses in contracts in New Zealand and Hong Kong – plus a postscript on “reasonable chances of success” ..... 5

## ARTICLES

### **“Family” or savages? Enhancing relationships at work: An approach to conflict resolution of bullying**

*Fleur Piper and Lydia Smith*

This article explores the resolution of bullying issues using an alternative approach. It examines in depth a single case study in which a small group meets with both the perpetrator of prolonged bullying, and with a facilitator from their own staff, who is deemed acceptable for this role by both parties. Key issues to be overcome in this meeting were: a culture of fear, defensiveness by all involved, and issues of power. To resolve these, the facilitator drew on the concepts of double-loop learning, reframing to challenge previously held assumptions, and the Maori concept of korero tahi. The expression of emotions by those previously bullied, since the bully was constrained to listen, allowed staff for the first time to share what this experience had been like for them. The approach adopted in this case study is not presented as a final answer to the extremely complex issue of bullying but, rather, as an alternative approach which may suit some contexts and staff groups. .... 12

### **Negotiation in the news: The role of newspaper reporting in the broader social acceptance of principled negotiation**

*Mary R Power*

This article investigates how the concept of negotiation is represented in newspaper stories. The Factiva database of Australian and New Zealand newspapers was searched over a period of two years using “negotiation” as a search term. Two hundred and eighty-five stories relating to negotiation were categorised by the content of the headline and first paragraph by two coders. Over 90% of the stories could be classified under eight categories. These were, in order of frequency of occurrence: business negotiation; trade negotiation; government and political negotiation; industrial negotiation; real estate; terrorist, hostage and war negotiation; international negotiations; and negotiations with indigenous people. Most uses of the word negotiation could be classified as “haggling” rather than “principled negotiation”. The Diffusion of Innovations Model is applied to help explain the persistence of a “haggling” rather than a “principled negotiation” frame in newspaper reports of negotiation. .... 20

## **Mediation where a party represents the Australian government: Are there limits to confidentiality?**

*Gabrielle Hurley*

Protection of confidential information and communications related to mediation proceedings generally arise from the common law, relevant statutory provisions and confidentiality clauses in a mediation agreement. When the Australian government enters into the mediation process as a party, there are additional and unique restraints upon the capacity of the government representative to maintain confidentiality. These limitations relate to the nature and structure of government as it carries out the business of governing and the fundamental principle of responsible government. The extent to which confidential information is protected requires the balancing of the public interest in protecting or disclosing information. ....29

## **Voluntary arbitration? The Victorian “experiment”**

*John F Bourke*

This article investigates an “experiment” by Victoria to use voluntary arbitration in industrial relations. The maritime, mining and pastoral industries disputes in the 1890s led to the inclusion in the *Conciliation and Arbitration Act 1904* (Cth) of Australia’s “highly distinctive” systems of compulsory conciliation and arbitration. The Wages Boards existed in Victoria until 1992 when a Labor government abolished them with the enactment of the *Industrial Relations (Enterprise Bargaining) Act 1992* (Vic). The Kennett Government then swept to power with radical industrial changes, earning for themselves the sobriquet “experiment”. Alas, the whole box and dice were thrown away in 1996 when Victoria referred most of its powers to the Commonwealth pursuant to s 51(37) of the *Constitution*. Nonetheless the Victorian experience is of interest, particularly in the context of the radical approach to industrial relations demonstrated in 2005 by the Howard-led federal government. This article considers the changes of the 1990s against the historical background of Victoria’s industrial relations system. ....38

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5. Austin, n 4, p 56.

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Editorial inquiries:

**Tel: (02) 8587 7000**

### HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

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



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