

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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Tribunals enforcing mediated agreements 65

ARTICLES

The foundation and contemporary history of negotiation theory

Leib Leventhal

This article explores the foundations and recent historical developments in the theory of negotiation. The key issue discussed in this article is the difference between distributive and integrative negotiation. Within the context of this discussion, a historical basis for each model of negotiation is presented as well as key characteristics of each type of negotiation defined. Before exploring these issues, the article will begin with a general discussion of negotiation, including characteristics of negotiation, usage throughout history, the concept of interdependence of the parties. A general model of the negotiation process and the merging of the two models will then be examined. 70

Confidentiality: An ethical dilemma for marketing mediation?

Rachael Field and Neal Wood

Issues of ethical marketing practice are becoming more important as the popularity of mediation grows, and as its use as a dispute resolution option of first resort increases. Potential parties to mediation are relying on marketing and promotional material to make decisions about the appropriateness of the process. Therefore, the mediation profession must be clear, accurate and ethical about how mediation is marketed. This article considers the issue of ethical marketing practice in the context of mediation through a focus on confidentiality. First, the article explores the theory of confidentiality and its use in the marketing information of key Australian mediation service providers. Second, the reality of confidentiality in mediation is critiqued. Third, it is argued that confidentiality is insufficiently assured in the mediation environment to allow for its ethical use in a marketing context. Finally, two key reasons why ethical considerations may be compromised in terms of marketing mediation on the basis of confidentiality are considered. ... 79

Reframing and beyond: Lessons for mediators from the school of brief therapies

Jennifer Thompson

Mediators have borrowed, to great effect, a number of techniques from various schools of psychotherapies. Reframing is one of these. Teachings from the school of brief therapies offer insight into the power of reframing and the psychological foundations of its effectiveness. Beyond reframing, there is much for mediators to learn from the school of brief therapies. It is the primary intent of this article to explore the techniques employed by brief therapists and the applicability of these to mediation practice. 88

Lawyers as mediators: More responsibility?

Mary Anne Noone

[I]t is possible to imagine a case where the parties chose a mediator with particular expertise in the subject matter of their dispute to advise them as to the terms which they might adopt to settle it. It is possible, too, to imagine a case where the parties, lacking advice as to the legal aspects of their dispute, retain a lawyer to mediate it. In such a case, it may be put that the mediator contractually assumes an obligation to proffer advice to them as to the legal implications of the settlement that they are minded to reach. 96

New approaches to adversarialism in business and politics – three facilitative tools in use in Australia

Dr Jane Elix

This article explores the opportunities for embedding facilitative techniques and approaches within the fabric of our institutions. There are, however, a number of barriers to their adoption, including the adversarial nature of political life, policy development processes and, at times, the relationships of businesses with their communities. Governments, businesses and the community generally bring different needs and expectations to facilitated processes, which impact on their expectations of the facilitation process and on the facilitators themselves. The author and her colleagues have developed a range of tools and techniques to align expectations more closely, and to meet participants' needs more effectively. This article outlines the framework within which the tools and techniques should be considered, and provides information about three tools that are currently being used in a range of settings in Australia. 105

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