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ARTICLES

Judicial mediators: Is the time right? – Part I – David Spencer

The issue of the appointment of judicial mediators has once again been raised – this time by the Victorian Attorney-General. But is the appointment of judicial mediators necessary at a time when managerial judging through active case management and lawyer led settlements are leading to the efficient disposition of cases in the civil courts? Part I of this article deals with defining judicial mediation and then discusses why the judicial promotion of settlement is vital to the functioning of the judicial system. The article then commences the detailed argument about the constitutional validity of the appointment of judicial mediators and the legal and philosophical arguments that stem from that discussion. Part II of this article will appear in the next edition of this Journal and will conclude the discussion on constitutional validity and discuss the positives and negatives of the appointment of judicial mediators. Finally, the conclusion will raise the issue of whether or not we need judicial mediators. 130

A generational change in family dispute resolution in Australia – Dr Tom Altobelli

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) (the Amendment Act) has been described by the Attorney-General's Department as representing "a generational change in family law and aim to bring about a cultural shift in how family separation is managed – away from litigation and towards co-operative parenting solutions". The Amendment Act will also bring about a generational change in family dispute resolution in Australia. The first part of this article explains the changes implemented by the Amendment Act in descriptive terms. The second part explores the specific impacts on family dispute resolution and how these changes might alter the way in which it is practised in Australia. 140

Breaking the dispute resolution deadlock: Civil litigation and ADR in the United Kingdom and beyond – Arthur Marriott QC

In England, the *Legal Aid Act 1949* (UK) led to large increases in lawyers and expenditures on legal fees, a major issue raised by the present government in a policy paper of July 2005. Burgeoning costs have also afflicted commercial litigation and arbitration, both domestic and international. Reforms have been attempted through new civil procedure rules, and the *Arbitration Act 1996* (UK). However, more radical use of alternative dispute resolution, including mandatory referrals and encouraging arbitrators to mediate disputes, is essential to break the dispute resolution deadlock in the United Kingdom – and other jurisdictions facing similar challenges. 157

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