

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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- Lawyers failure to comply with pre-mediation orders lost client's chance to settle and breaching a mediated agreement** 69

ARTICLES

The Land and Environment Court of New South Wales: Moving towards a multi-door courthouse – Part I – *Hon Justice Brian J Preston*

The concept of a multi-door courthouse is of a dispute resolution centre offering intake services together with an array of dispute resolution processes under one roof. The idea is to match the appropriate dispute resolution process to the particular dispute. This addresses the demand for individualised justice – but it also improves the effectiveness of the system of the administration of justice. This article explores the concept of a multi-door courthouse. Part 1 recounts the history of the development of the concept and elucidates its elements. Part 2, to be published in the next issue of this Journal, will provide a case study of the Land and Environment Court of New South Wales, implementing elements of the multi-door courthouse concept by institutionalising a panoply of dispute resolution processes within the court, offering intake services, and matching one or more dispute resolution processes to each particular dispute. 72

Franchise mediations: Experience, problems and solutions (reflections of a franchise mediator) – *John Levingston*

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Models of mediation: Dispute resolution design under the Owners Corporation Act 2006 (Vic) – *Kathy Douglas, Robin Goodman and Rebecca Leshinsky*

The introduction of the *Owners Corporation Act 2006* (Vic) provides the opportunity to design a dispute resolution system for those who reside in owners corporations or, as they were previously known, bodies corporate. This article argues that a range of diverse models of mediation should be utilised in the internal dispute resolution systems of large owners corporations. In particular, a transformative model should be adopted where community, emotion and relationship issues are important concerns in a dispute. Selected associated design issues are also canvassed. 95

Non-adversarial advocates and gatekeepers: Lawyers, FDR practitioners and co-operative post-separation parenting – Donna Cooper and Mieke Brandon

The compulsory dispute resolution requirements in family law parenting cases create new roles and obligations for both lawyers and family dispute resolution (FDR) practitioners. This article will discuss how the legislative provisions impact on both sets of professionals in practice. It will also highlight the increased non-adversarial role of lawyers and a new role for FDR practitioners as “gatekeepers” to family courts in cases requiring FDR certificates. 104

The disconnect between transformative mediation and social justice – Mary Anne Noone

Proponents of transformative mediation claim that it holds out great promise for changing the way individuals relate to one another. However, the approach taken by the transformative mediator could be construed as amoral and/or insensitive to issues of discrimination and bias. This apparent disconnect between transformative mediation and social justice is explored through an analysis of both the premise and practice of transformative mediation. Particular social justice concerns about mediation are detailed before discussing some approaches that might address these concerns. It is suggested that the mediator needs to ensure that parties come to the mediation informed and advised, not only about the mediation process, but also about their rights. Equally, the mediator should be cognisant of the complex nature of communications and should have considered the ethical implications for their/his/her practice. 114

The merits of the Victorian government’s proposed councillor conduct panels from an ADR perspective – John Chu

The Victorian government, as part of its Better Local Governance initiative, proposes the establishment of a councillor conduct panel (CCP). As an alternative dispute resolution (ADR) mechanism, the CCP proposal presents a number of issues which need to be addressed with room for enhancements. This article offers an analysis of the pros and cons of the concept and recommends ways to improve the scheme. It is suggested that the CCP should be modified from a “one size fits all” determinative process to a flexible multi-process system; a “one stop shop” that offers approaches (ADR or otherwise) most suitable to the councillors’ disputes at hand, thereby greatly enhancing its acceptance by, and value to, disputants. 124

Arcane or Arkansas: International arbitration and prohibitive state laws – Tim Griffiths and Thao Tran

As Australians we like to consider ourselves as outward looking and very much a part of the international community. We eschew what we perceive as parochial or xenophobic. So how did a defunct 100-year old New South Wales law palm-off the New York Convention on Arbitration to which Australia is a signatory and sidestep the mandatory provisions of the *International Arbitration Act*? It was in this way in the New South Wales Supreme Court decision in *HIH v Wallace*, that an arbitration clause in an international reinsurance contract was rendered inoperative. Meanwhile, in Arkansas, the New York Convention is said to be the “highest law of the land” and an arbitration provision in a similar international agreement has been upheld. 129

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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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