

# AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

Volume 19, Number 3

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## ARTICLES

**The Land and Environment Court of New South Wales: Moving towards a multi-door courthouse – Part II** – *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, in order to address 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 I, published in the previous issue of this Journal, recounted the history of the development of the concept and elucidated its elements. Part II provides a case study of the Land and Environment Court of New South Wales which is 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. .... 144

**Australian universities in court: Causes, costs and consequences of increasing litigation** – *Hilary Astor*

Concerns have been burgeoning about the increasing number and complexity of disputes involving Australian universities, their extensive monetary costs and the damage they cause to the reputation of those universities. However, there is very little empirical data about disputes in universities to show whether or not these concerns are well founded and, if they are, to suggest what may be causing the increase. In the absence of data, it is not known whether there is a problem or, if there is, how to remedy it. This article reports results from a survey of litigation involving Australian universities from 1985-2006. It demonstrates that litigation involving universities has indeed increased significantly; reveals who litigates with universities; and confirms the assertion that many of these cases are very complex. It discusses the factors that appear to have contributed to the increase. .... 156

**Family dispute resolution and family violence in the new family law system** – *Deborah Kirkwood and Mandy McKenzie*

Under the new family law system in Australia, it is compulsory for separating parents to attempt family dispute resolution (FDR) prior to taking their parenting dispute to court. There is an exemption for family violence. However, this article will argue that there are several reasons why many victims of violence will undertake FDR in the new family law

system. Due to a number of well-documented concerns with FDR in the context of family violence, it is imperative that FDR service providers can effectively respond to clients affected by family violence. Specific policies and practices are outlined that can enhance the safety of clients and their children. .... 170

**The ethics of collaborative practice – Maxine Evers**

Collaborative practice is emerging as a legitimate option in family law disputes. Its impressive growth over almost two decades indicates that it is likely to continue as a form of dispute resolution, both in terms of the numbers of practitioners and clients practising under the collaborative law framework and the expansion of areas of law suited to this process. One of the fundamental principles of collaborative practice is the engagement of professionals to assist and support the parties in resolving disputes. This article considers the role of legal and non-legal professionals in collaborative practice. An analysis and assessment of ethical issues in collaborative practice demonstrates the benefits of an ethical framework for a coherent set of protocols based on both lawyers’ and non-lawyers’ common objectives and shared values. The article concludes with a recommendation that there needs to be continuing discussion concerning the intersection of ethics and collaborative practice. .... 179

**Communication and culture: Implications for conflict resolution practitioners – Lola Akin Ojelabi**

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**Elements of a “good practice” Aboriginal mediation model: Part I – Dr Loretta Kelly**

This article sets out the author’s view of the elements of good practice mediation service delivery for Aboriginal communities. Although not exhaustive, it provides a useful checklist of important elements of an Aboriginal mediation model, based on the author’s experience and the experience of Aboriginal mediators interviewed. .... 198

**The rule of law, adjudication and hard cases: The effect of alternative dispute resolution on the doctrine of precedent – Julian Gruin**

There is a tension inherent within any legal system between resolving disputes efficiently and ensuring that justice is achieved in the resolution of disputes. In the context of this greater tension, this article examines the common law doctrine of precedent in order to evaluate its worth as a public good, and then seeks to determine whether or not alternative dispute resolution (ADR) serves to devalue or destroy this public good. It argues that there is a tripartite correlation between “hard cases”, the public value of precedent achieved through adjudication, and the tendency of parties to desire a third-party determination. Thus, those ADR processes that provide third-party determination will attract hard cases, with a corresponding decline in both adjudication and the doctrine of precedent. .... 206

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