

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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CASENOTES

- Problems with deeds of settlements and media watch** – *David Spencer* 71

ARTICLES

Should judges be mediators? – *The Hon Marilyn Warren AC*

This article was originally presented by Chief Justice Warren at the Supreme and Federal Court Judges' Conference in 2010. In it, her Honour advocates the pursuit of direct judicial involvement in alternative dispute resolution, but rejects the proposal that judges should act as mediators. Her Honour's primary concern is to protect the integrity of the judicial role from actual or perceived dilution. 77

Mediators' authentic presence: Ways of knowing our primitive selves – *Pauline Collins*

New advances in neuroscience, together with considerations of emotional intelligence, hold considerable significance for mediators within the context of mediation practice. It is important for mediators to engage in reflective self-awareness practices in order to increase their understanding of personality type and emotional triggers. This article encourages mediators to explore the possibilities for improvement through such methods as the enneagram (an ancient comprehensive symbol of the human psyche), the use of metaphor, and non-verbal communication, together with specific sensory inputs, such as colour. Existing research and theories of the emotional, non-verbal communication capacities of the limbic brain offer many possibilities for mediators to consider in their management of communication. 85

The importance of self awareness and self development to mediator effectiveness – *Mark Dickinson*

What qualities do effective mediators possess, and how important is self awareness and self development to a mediator's practice? This article seeks to answers these questions by considering the significance of the mediator's personal qualities to the practice of mediation. The seminal work of Bowling and Hoffman provides a useful vantage point for discussion. Their work will be considered in the context of studies identifying the qualities of effective mediators and core theories of mediation practice; including neutrality, emotion and spirituality. This article suggests that a personal orientation towards ongoing self development is a necessary attribute of the effective mediator. 97

Mediation in the People's Republic of China: History and recent developments – Dr Sarah E Hilmer

In the People's Republic of China mediation was traditionally perceived as the main way of solving disputes between individuals. It is a Chinese tradition to avoid formal court proceedings where possible. Litigation is generally considered to be too legalistic to comprehend and too rigid to accommodate the needs of business people. It seems that the recent mediation endeavours by the government reflects the modern approach of mediation practice with respect to a substantial as well as procedural approach conducting and engaging in mediation. On 24 July 2009, the Supreme People's Court Opinion clarified various dispute resolution methods, mainly mediation and arbitration methods. This article refers to the issue of mediation settlement agreements and court-annexed mediation mentioned in the Opinion. 104

Dispute resolution in rural and regional Victoria – Frances Gibson and Francine Rochford

The National Alternative Dispute Resolution Advisory Council has identified several barriers for people in rural, regional and remote areas accessing alternative dispute resolution (ADR) processes. Confidentiality and privacy, neutrality, cultural difference, power imbalance, lack of knowledge and lack of services will potentially limit the availability or effectiveness of ADR in these areas. This article is a result of a review of relevant literature and interviews with dispute resolution practitioners working in rural and regional areas. The results of this preliminary research indicated that there are systemic issues in relation to the provision of ADR services in rural areas which may impact on the availability and effectiveness of ADR provision. 111

The continuing role of the State Supreme Courts in domestic and international arbitration in Australia – Peter Megens and Beth Cubitt

The proposed reforms to Australian arbitration legislation must do more than adopt the Model Law. Three recent decisions by Australian State Supreme Courts demonstrate judicial ingenuity in surmounting arbitration clauses. These decisions do not indicate whether the outcome would differ if the International Arbitration Amendment Bill 2009 (Cth) was enacted or the UNCITRAL Model Law was adopted. Reform of the arbitration legislation needs to ensure the courts' role in arbitral proceedings is limited. The legislation must specify that, in the absence of compelling reasons to the contrary, the court must enforce arbitration clauses, stay relevant court proceedings and give effect to arbitral awards. There is ample evidence to support the proposition that the federal government should legislate at both international and domestic levels to create one Australian Arbitration Act administered by the Federal Court. This would promote a more disciplined and consistent approach by courts and a nationally consistent approach to this area of law. 124

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