

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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ARTICLES

Beyond the paradox of neutral intervention: Towards a situated theory of mediator neutrality – Tony Bogdanoski

Mediator intervention in the power relationships of disputants often leads to claims that, in practice, mediators are breaching their theoretically “neutral” status in the mediation. This article contends that mediator intervention in the power relations of negotiating disputants should not be seen as being paradoxical to the mediator’s neutral role. It argues that the meaning attributed to “neutrality” is ultimately dependent upon the individual parties and the particular circumstances of each dispute and therefore cannot be perceived in absolute terms. The result of accepting the inherent “situatedness” of the concept of neutrality would be to allow multiple meanings to be ascribed to the state of being neutral, thus opening up a space for affirmative mediator intervention to prevent unfair outcomes without mediators necessarily renouncing their neutral role in the process. 146

Harnessing the legal and extralegal benefits of mediation: A case for allowing greater client participation in facilitative mediation – Alison Finch

This article examines the trend for lawyers to play a dominant role in mediation and suggests that lawyers need to acknowledge mediation has different goals and philosophies to the rest of the litigation process and therefore demands a change of approach. The article advocates that a supportive professional approach should be taken, where lawyers encourage disputant participation to harness the benefits that can be gained from facilitative mediation such as control of the process, self-determination, self-transcendence, moral development and ultimately greater commitment and compliance to mediation outcomes. 155

Hearing the voices of Victorian conferencing practitioners – views on neutrality – Kathy Douglas, Nadia Sager and Rachael Field

Conferencing is a restorative justice process that is used in the criminal justice system in Australia to deal with a variety of offences. In this article, the authors analyse research into the understandings of conferencing practitioners regarding the issue of the neutrality of the third party in facilitating the process. The research was conducted using a qualitative methodology with a small group of practitioners in Victoria. In the semi-structured interviews the practitioners described and discussed their understandings of the concept of neutrality in conferencing and their thoughts regarding practice issues. The analysis of the study results indicates a need for further research in this area. 163

Group facilitation and multi-party mediation – Mieke Brandon

Individuals within an organisation are dependent on each other in some way in order to perform their work. The performance of any team or group is strongly dependent on the morale and general satisfaction of the individuals that make up that group, the amount of conflict that arises and the effectiveness with which it is handled. Because the sources of conflict are not always visible or obvious, it can remain latent for some time. Such conflict can occur at several levels: intra-personal, interpersonal, and inter-group. This article addresses a range of issues facing dispute resolution practitioners who facilitate small teams or larger groups in conflict. 171

Responding to resolve: Considering pre-action requirements in relation to ADR – Dr Rhain Buth

This article explores the terrain canvassed by the National Alternative Dispute Resolution Advisory Council's report titled A Resolve to Resolve – Access to Justice in the Federal Jurisdictions, which identifies a range of strategies to increase the use of alternative dispute resolution (ADR). In particular, this article considers a range of policy and practical issues that are relevant to using pre-action ADR, arguing that many questions about its use remain unanswered, specifically when such use of ADR is seen to satisfy a broader requirement that parties take genuine steps to resolve the matter prior to commencing legal action. 179

FDR and victims of family violence: Ensuring a safe process and outcomes – Rachael Field

Family dispute resolution (FDR) is a positive first-stop process for family law matters, particularly those relating to disputes about children. FDR provides the parties with flexibility within a positive, structured and facilitated framework for what are often difficult and emotional negotiations. However, there are a range of issues that arise for victims of family violence in FDR that can make it a dangerous and unsafe process for them unless appropriate precautions are taken. This article discusses the nature of FDR and identifies the many positive aspects of it for women participants. The article then considers the nature and dynamic of family violence in order to contextualise the discussion that follows regarding concerns for the safety of participants in the FDR process. Finally, it offers some suggestions about how Australia could approach FDR differently to make it safer for victims of family violence. 185

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