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CASE NOTES

- United Kingdom: Enforcing dispute resolution clauses; costs orders against a successful party unwilling to mediate?; Mediation media watch – Christmas present for family law lawyers – David Spencer** 71

ARTICLES

Farm debt mediation 18 years on – Geoff Charlton

This article provides a potted history of the Farm Debt Mediation Act 1994 (NSW) based on the author’s involvement from the outset. The process involved, statistics from its administration by the Rural Assistance Authority, and the shift in mediated outcomes over time are discussed. The recent High Court decision in *Waller v Hargraves Secured Investments* is discussed in terms of its practical limitation on future mediated outcomes under the Act. Finally, a call for the amendment of the Act to restore its stated object of efficient and equitable resolution of farm debt disputes. 77

Towards a history of mediation in New Zealand’s legal system – Grant Morris

The history of mediation in New Zealand reflects a number of influences and developments. While prototypes of mediation can be found in New Zealand’s early industrial relations, the modern mediation movement is primarily a result of state-led reform in a variety of legal areas. Much of this reform has been influenced by overseas models emphasising New Zealand’s role as a “fast-follower” of alternative dispute resolution trends rather than an initiator. The rise of mediation in New Zealand has been ad hoc and pragmatic with a distinct lack of systematic development. This pragmatic change was a response to pressures such as the cost and delay involved in litigation, and major social trends challenging traditional ways, including traditional approaches to resolving disputes. Mediation continues to play a vital role in the New Zealand legal system but the exponential growth of the 1980s and 1990s has slowed as mediation begins to clearly locate and confirm its “territory” in the New Zealand legal system. 86

Resolving federal age discrimination complaints: Where have all the complainants gone? – Therese MacDermott

This article examines the available data on federal age discrimination complaints over the past five years and critiques the case law for this jurisdiction. It explores why very few federal age discrimination complaints proceed beyond the alternative dispute resolution phase, and why none of those that have been litigated in the federal judicial arena have been successful. This article assesses whether the proposals in the Human Rights and Anti-discrimination Bill 2012 (Cth) are likely to change this and what reforms are necessary to enhance the prospects of just, efficient, timely and cost-effective resolution of federal age discrimination complaints. 102

Protect, respect and remedy: The multiple roles for mediators in the United Nations business and human rights framework – Christopher Halburd

The United Nations Guiding Principles on Business and Human Rights represent a significant opportunity for mediators and other dispute resolution professionals to explore new areas of work, research and teaching. The relationships between corporations, in particular multi-national corporations, and the societies in which they operate are coming under increasing scrutiny and pressure. It is an area that is ripe for the increased involvement of the dispute resolution community but before that can happen this community needs to be aware of the opportunities that now exist as well as the global framework in which they operate. This article is directed at raising that awareness by explaining the global business and human rights framework and suggesting areas for further involvement of the dispute resolution community. 112

Making the invisible visible in family dispute resolution: The elephant in the room – Mieke Brandon and Tom Stodulka

In this article, the authors first describe their experiences with common external challenges in the mediation room, in particular unexpected issues related to absent parties, or facing “the elephant” in the room. Secondly, they address the particular challenges practitioners face when external pressures invisibly infiltrate the discussions and how to manage these by making them visible so that, when safe and appropriate, more transparency assists the outcomes. Thirdly, using a case study, some principles and practices are considered as ways to assist in ongoing development in managing what lies beneath the surface. 121