

# AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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## CASE NOTES

- Developments in the USA – Contractual damages from a breach of a confidentiality clause in a mediation agreement; a lack of good faith in mediation; and mediation media-watch** – *David Spencer* ..... 3

## ARTICLES

- Broadening the traditional use of mediation to resolve interlocutory issues arising in matters before the courts** – *Adele Carr*

It is common in commercial dispute resolution processes for mediation to be a step undertaken before the commencement of litigation. Mediation, however, should not be limited to resolving the entire dispute. The core objectives and approaches to mediation can be used more broadly to effectively resolve interlocutory issues in commercial disputes as a complementary mechanism to the overall dispute resolution process. Using mediation to address interlocutory issues may assist with the overall conduct of the dispute resolution process by narrowing the issues at final hearing and ultimately reducing time and costs spent in court. It also has the potential to preserve the parties' relationship that existed prior to the dispute commencing. .... 10

- Should mediation be the first step in all Family Law Act proceedings?** – *Judge Joe Harman*

Since the 2006 amendments to the Family Law Act 1975 (Cth) (FLA) and especially the introduction of s 60I, mediation (or Family Dispute Resolution (FDR)) is often referred to as and assumed to be “compulsory” in family law proceedings. Indeed, the Civil Dispute Resolution Act 2011 (Cth) excludes proceedings under the FLA on the basis that the FLA makes adequate provision for dispute resolution. But are either of these propositions true? This article considers data collected from three months of duty lists before the Federal Circuit Court of Australia to ascertain the extent to which parties, in fact, attend FDR before commencing proceedings. The article then analyses this data to explore the impediments to attending FDR before filing as well as the rates of settlement once parties attend conciliation and FDR. Finally, the data collected is used to discuss the proposition that mediation should be the first step in all FLA proceedings. .... 17

- Facilitating systemic outcomes through anti-discrimination conciliation and the role of the conciliator in this quest** – *Rosalie Poole*

This article addresses the initial question of the extent to which it is possible and appropriate for an anti-discrimination alternative dispute resolution (ADR) process to attempt to make social changes through the achievement of systemic outcomes. This article explores this question primarily in the context of the dispute resolution process currently in place at the Victorian Equal Opportunity and Human Rights Commission under the Equal Opportunity Act 2010 (Vic). This article will then consider the role of the conciliator in light of these findings, including exploring potential strategies and

techniques that could be used by the conciliator to facilitate systemic outcomes. .... 49

**Encouraging dialogue between large and diverse groups: the emerging field of facilitation** – *John Woodward*

The development of technology over the last twenty years has brought with it the globalization of humanity and the demand for innovation in diplomacy, communication and problem solving at all levels of human interaction. As the world population continues to grow the challenge to find peaceful solutions to national and international problems becomes greater. This article explores the possibility of participatory and inclusive dialogue as a means to bring a solution to the unresolved American gun control problem through the emerging field of Facilitation. .... 58

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