

# AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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## CASE NOTES

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## ARTICLES

**Will ADR improve the Australian Taxation Office's dispute resolution processes?** – *Christopher Budd*

Focusing on individual taxpayers, this article sets out the Australian Taxation Office's (ATO's) approach to dispute resolution and finds that the approach would be improved by better incorporating alternative dispute resolution (ADR). Consequently, this article sets out how the ATO should incorporate ADR into its current approach to dispute resolution. .... 76

**Accommodating common mental health issues in mediation** – *Rebekah M Doley*

Mediators have a responsibility to maximise an individual's ability to effectively participate in the decision-making process, including supporting procedural fairness where equality and balance in the parties' contributions to the process is expected. Capacity to participate effectively is affected by the presence of mental health concerns. Various means of screening for psychological distress in mediation participants have been discussed, however, there is limited training available to mediators from non-clinical professions in evaluating mental health issues. An alternative approach is to consider ways in which the mediation process could be modified to enhance an individual's capacity to effectively participate, especially when the mental disorder is not chronic, stable, or severe, but is a temporary incapacity. This article will consider commonly occurring mental health concerns in Australia and will explore ways in which mediators might seek to support parties effectively under such conditions. .... 84

**Mediation in the coal-seam gas industry: Improvements made for local stakeholders to grant a social licence** – *Danella Gagliardi*

The coal-seam gas industry in Queensland and New South Wales has exploded with economic prosperity since 2012, but what prosperity will reach the local people if the drilling activity associated with it is largely unsupported? Local stakeholders have reacted strongly to the coal-seam gas industry, and the State governments have provided no platform upon which to voice local concerns. Coal-seam gas companies are made to look like unbridled corporate actors when in actuality they bring jobs and economic growth to the local communities in which they drill. In order to quell local hostility and ensure that coal-seam gas companies gain a social licence to operate, mediation should be mandated by the state governments in resolving coal-seam gas-related disputes for landholders, community members, and all local stakeholders. Mediation is the most effective vehicle available to communicate local concerns, resolve contentious issues, and finally allow local stakeholders and companies to unite around the benefits of the coal-seam gas industry. .... 94

**Was that said with a smile? Factors influencing effective online negotiations** – *Claire Holland and Dr Donnalee Taylor*

Communication and negotiation skills are vital in day-to-day business and social operations and play an important role in interpersonal aspects of daily life. In terms of negotiation, the ability to express oneself in daily communication and interactions with co-workers and clients is important for success. Increasingly, people are involved in collaborative teams that span vast geographical locations and online trading and commerce are common practice. If users increase their understanding of the differences across computer mediated communication (CMC) and face to face (FTF) mediums of communication then negotiators can increase their ability to make conscious choices with their communication style and recognise how to adapt their negotiation skill set to better suit the medium being used. The inability of CMC users to directly observe body language and facial cues in addition to the lack of explanation or ineffective descriptions of nonverbal behaviours may lead to greater misinterpretation of communication by the receiver, particularly in online negotiations. The following is a review of literature on the factors influencing effective online and CMC negotiations and outlines the potential for further research. .... 103

**Should you “lay bare your soul”? The shifting landscape of mediation privilege in New Zealand** – *Nina Khouri*

Confidentiality is a cornerstone of the mediation process. It enables disputing parties exploring the possibility of settling their dispute out of court to speak with candour, secure in the knowledge that any admissions against interest cannot be used at trial if the matter does not settle. A proposed amendment to the relevant section in the Evidence Act 2006 (NZ) is making its way through the legislative process. This article describes the problem the proposed amendment is designed to fix, considers whether it achieves that objective and outlines the implications for dispute resolution professionals – both mediators and lawyers – of this shifting landscape for mediation privilege in New Zealand. .... 111

**Competing dispute resolution clauses: Arbitration over litigation in Singapore?** – *Jasmine Sze Hui Low*

With the increasing prevalence of arbitration today, contracting parties often inadvertently incorporate both an arbitration clause and a jurisdiction clause within the same contract in relation to resolving disputes arising out of or in connection with the contract. This article explores the approach taken by the Singapore Courts when dealing with such competing dispute resolution clauses. It begins with the applicable principles to competing dispute resolution clauses before turning to two related issues, namely, (i) circumstances warranting a departure from the general applicable principles, and (ii) the Courts’ powers to stay legal proceedings in favour of arbitration. .... 119

**ADR in VCAT’s guardianship and residential tenancies lists: Room for improvement?** – *Claire Thurstans*

This article evaluates the effectiveness of Appropriate Dispute Resolution (ADR) at the Victorian Civil and Administrative Tribunal (VCAT) and considers whether there is scope to extend the use of ADR into the Guardianship and Residential Tenancies Lists. It is suggested that introducing transformative mediation may be beneficial in some matters where there is significant family conflict. It is suggested that introducing Small Mediation and Hearings (SMAH) in limited residential tenancy matters may be an effective way to address this power imbalance and ensure fairness for tenants and landlords. .... 125