
Index

Acceptance and commitment therapy
adoption of, 27–34

Access to Justice Inquiry
recommendations, 203–205

Accreditation of dispute resolution practitioners
working across cultures, 43–50

Agricultural industry
farm business debt mediation, 79–80

Alternative/appropriate dispute resolution
lawyer-assisted mediation, 160–161

Alternative/appropriate dispute resolution (ADR)
Australian infrastructure, 152
court-connected, 135–142
expert determinations in, 196–205
financial services industry, 191–195
improving outcome acceptance, 181–190
Pakistani legislation, 148
principles for workplace disputes, 67
process design for, 121–128
Senior Executive Appraisals, 241–242

Arbitration
arbitrator breaches procedural fairness, 220–222
blocks group law suits, 213–214
expert determination vs, 201–202
failure to provide adequate reasons, 227–229
in international commercial disputes, 149–150
international arbitration in Australia, 216–223
international tax treaties, 162–169
investor–state dispute settlement, 227–229
religious, sporting and cultural frameworks, 253–260
right to appeal against, 227
setting aside awards, 210–213

Asia
ADR practitioner outreach to, 152

Australian Centre for International Commercial Arbitration
Protocol for decisions, 234
Tribunal Secretary Panel, 234

Australian Football League
decisions of not enforceable in law, 258–259

Balanced narrative
in mediation, 103

Base erosion
OECD Action Plan, 165–169

Bias *see* **Impartiality**

Buddhism
concepts in ADR, 27–34

Burma–Thailand border
conflict resolution on, 45

Canada
pharmaceutical claim brought against, 246–247

Central African Republic
conflict resolution in, 44–45

Certificates in family dispute resolution
confidentiality issues, 115

Children
rights of to culture, 19–26
welfare of overrides confidentiality issues, 109, 114–115

China
internet court launched in, 214–215

Cisgenderism
impact on conflict behaviour, 37–38

Class actions
blocked in arbitration contracts, 213–214

Clients of dispute resolution
factors in perception of fairness, 183–188

Clients of dispute resolution – *continued*

- in tribal villages and refugee camps, 47–48
- non-attendance by, 145–146
- preparing for mediation, 51–56
- sexuality/gender diversity in, 35–42
- taking feedback from, 121–122

Collaborative practice groups

- practitioners of ADR, 12–18

Commercial Arbitration Act 2013 (Qld)

- setting aside awards under, 210–213

Commercial dispute resolution

- cultural issues in NZ, 175–176
- emotional displays in, 56
- investor–state dispute settlement, 229–234
- not appropriate for community disputes, 257–259
- Senior Executive Appraisal, 236–244

Common law

- judiciary’s role in developing, 135–142

Communication modes *see also* Online dispute resolution

- adapting to situation, 122
- direct vs indirect, 94–95

Community arbitration

- facilitating, 253–260

Conferencing

- domestic violence cases in mediation, 161

Confidentiality issues

- development applications, 146
- in tribal villages and refugee camps, 49–50
- mediation, 78–79, 106–120

Conflict management

- in government employment, 64–71
- in hierarchical organisations, 261–268
- in volunteering sector, 57–63
- role of culture in, 89–97
- with sexuality/gender diverse clients, 37–38

Conflicts of interest

- in tribal villages and refugee camps, 48–49

Congo, Democratic Republic of

- contested application to annul ICSID award, 233–234

Constitutional function of the judiciary

- court-connected ADR and, 135–142

Constructivist view of culture

- in conflict resolution research, 90–91

Consumer complaints

- finance ADR fails to address, 192

Contracts

- class actions blocked by, 213–214
- dispute resolution via mini-trials, 236–244
- expert determination clauses, 196–205
- Senior Executive Appraisal in, 242–244

Costs

- of investor–state dispute settlement, 87–88
- of judicial vs community-based dispute resolution, 254

Court-connected ADR

- and constitutional function of the judiciary, 135–142

Credit and Investments Ombudsman

- recommended reforms to, 191–195

Cultural issues

- children’s rights to culture, 19–26
- inter-cultural assessment instrument, 89–97
- NZ dispute resolution, 170–180
- working across cultures, 43–50
- working with sexuality/gender diverse clients, 37

Defusion

- in family dispute resolution, 30–32

Democratic Republic of the Congo

- contested application to annul ICSID award, 233–234

Development applications

- confidentiality issues, 146

Direct communication

- in inter-cultural mediation, 94–95

Disclosure issues

- statutory compulsion of disclosure, 114

Disputants *see* Clients of ADR

Dispute resolution *see* Alternative/appropriate dispute resolution; Arbitration; Clients of dispute resolution; Commercial dispute resolution; Conflict management; Family dispute resolution; International dispute resolution; Investor–state dispute resolution; Mediation; Training in dispute resolution

Domestic violence cases

mediation in, 155–161

Double-taxation agreements

enforcement of, 162–163

Emic vs etic paradigms

in conflict resolution research, 90–91

Emotional displays

dealing with, 55, 122

Employee disputes

conflict coaching in, 261–268

Empowerment

in mediation, 98–105

Energy industry

investor–state dispute settlement, 233

Enforcement

expensive and unwieldy nature of, 253–260

Environmental issues

investor–state dispute settlement and, 251–252

Essentialist view of culture

in conflict resolution research, 90

Etic vs emic paradigms

in conflict resolution research, 90–91

Europe

costs of unmanaged conflict, 65–66

Evaluative mediation

vs facilitative mediation, 129–130

Evidence

admissibility of statements made at mediation, 75–78, 111

no rules of in expert determinations, 199–200

Expectations

perception of fairness and, 184–186

Expert determinations

power inherent in, 196–205

External dispute resolution *see* Alternative/appropriate dispute resolution

Face, saving

in inter-cultural mediation, 95–96

Facilitative mediation

vs evaluative mediation, 129–130

Fair process effect

improving outcome acceptance, 181–190

Fairness

in expert determinations, 201–202

Faith-based arbitration

facilitating, 253–260

Family dispute resolution

changes over time, 27–34

children's rights to culture, 19–26

collaborative practice in, 12–18

confidentiality issues, 106–120

cultural issues in NZ, 173–174

impact of violence on mediation, 155–161

sexuality/gender diversity of clients, 35–42

solution-focused, 4–11

Federal Court

imbalance between ADR and constitutional function, 139–141

upholds ICSID award, 233–234

Financial issues

costs of unmanaged conflict, 64–71

Financial Ombudsman Service

recommended reforms to, 191–195

Financial services industry

dispute resolution schemes in, 182–183

improving dispute resolution, 191–195

Finessing the tension

in mediation, 133–134

Four-way meetings *see* Collaborative practice groups

Future focus *see* Solution-focused dispute resolution

GLBTIQ issues *see* Sexuality/gender diversity

Goals
in solution-focused ADR, 8–9

Government employment
conflict management in, 64–71

Grievance management
conflict coaching in, 261–268

Group law suits *see* Class actions

Harrison, Amber
attempt to mediate case against Seven Network, 148

Heterosexism
impact on conflict behaviour, 37–38

Hierarchical organisations
conflict coaching in, 261–268

High Court decisions
child welfare overrides confidentiality, 109

Holistic practitioners
becoming, 17

Impartiality
in mediation, 103–104
with sexuality/gender diverse clients, 38–39

Independent Children’s Lawyers
confidentiality of communications with, 114–115

India
reluctant to adopt double-taxation agreement, 166–167

Indonesia
mining licences revoked in, 231–233

Industry-based dispute resolution
financial services industry, 191–195
promoting trust in, 181–190

Informal conflict resolution
overseas approaches, 43–50

Informed consent
in mediation, 102–103

Inter-cultural assessment
prior to mediation, 89–97

International Centre for the Settlement of Investment Disputes
Federal Court upholds ICSID award, 233–234

International Council for Commercial Arbitration
Sydney to host 2018 Congress, 234

International dispute resolution
Australia proposed hub for, 149–154
international arbitration in Australia, 216–223
tax treaty arbitration, 162–169

Investor–state dispute resolution
public health issues and, 245–252
trade negotiations, 229–234
Trans-Pacific Partnership and, 81–88

Judicial issues
arbitrator breaches procedural fairness, 220–222
China launches internet court, 214–215
constitutional function of the judiciary, 135–142
costs of judicial vs community-based dispute resolution, 254
finding costs against non-attending parties, 145–146
improving access to justice, 203–204
perception of fairness, 185–186
statements in mediation cannot be used in litigation, 75–79, 115–116
support for international dispute resolution, 151

Language use

children's rights to culture, 19–26

Law reform

to support international dispute resolution,
151

Legal practitioners *see* Practitioners of ADR**Mandatory dispute resolution**

tax treaty arbitration, 163–164

Mandatory reporting

child welfare issues, 114

Māori peoples

in NZ dispute resolution, 170–180

Mediation

admissibility of statements made at, 75–79,
115–116
confidentiality issues, 106–120
cultural issues in NZ, 170–180
family disputes involving violence, 155–161
how practitioners work, 129–134
in solution-focused ADR, 8
in volunteering sector, 57–63
inter-cultural dimensions, 89–97
lawyer-assisted, in domestic violence cases,
160–161
media watch, 78–79
neutrality and empowerment in, 98–105
non-attendance by parties to, 145–146
preparing for, 51–56
reasonableness required in, 147
working with sexuality/gender diverse
clients, 36

Medicines, access to

under investment chapter of TPP, 246–247

Mindfulness

in family dispute resolution, 27–34

Mining industry

claim for breach of BIT, 231–233

Mini-trials

Senior Executive Appraisals, 236–244

Multinational corporations

investor–state dispute settlement, 82

Mutual agreement procedure

double-taxation agreements, 162–164

National Mediation Accreditation System Standards

role in working across cultures, 43–50

National Mediation Conference

overview, 3

Natural justice

not a requirement in expert determinations,
199

Neutrality

in mediation, 98–105
settlement proposals and, 129–134

New Zealand

cultural issues in dispute resolution,
170–180
renegotiates double-taxation agreement, 164

Non-attendance

by parties to mediation, 145–146

NSW Government

conflict coaching initiative, 69–70

Online dispute resolution

internet court launched in China, 214–215

Organisation for Economic Cooperation and Development (OECD)

Model Tax Convention, 163–167
proposes multilateral tax treaty, 168–169

Outcome acceptance

improving, 181–190

Pacific area

ADR practitioner outreach to, 152

Pakistan

alternative/appropriate dispute resolution
(ADR), 148

Parenting matters

children's rights to culture, 19–26
solution-focused ADR for, 10–11

Parties to ADR *see* **Clients of ADR;**
Practitioners of ADR

Power issues *see also* **Empowerment**

in inter-cultural mediation, 96–97
in tribal villages and refugee camps, 47–48
with sexuality/gender diverse clients, 39–40

Practice groups *see* **Collaborative practice groups**

Practitioners of ADR

approach to cultural issues, 19–26
balancing neutrality and empowerment, 98–105
collaborative practice groups, 12–18
confidentiality issues in family dispute resolution, 106–120
expert determinations by, 196–205
in Senior Executive Appraisal, 239–241
in volunteering sector, 59
Independent Children's Lawyers, 114–115
outreach to Asia-Pacific, 152
preparing for mediation, 51–56
process design for, 121–128
solution-focused, 4–11
training for domestic violence cases, 159
working across cultures, 43–50
working methods, 129–134
working with sexuality/gender diverse clients, 35–42

Pre-ADR preparations

family dispute resolution, 111
inter-cultural assessment instrument, 89–97
value of meetings, 51–56

Process design

for ADR, 121–128

Professional learning communities

establishing, 15–17

Profit shifting

OECD Action Plan, 165–169

Psychological wellbeing

in family dispute resolution, 27–28

Psychotherapy

solution-focused, 7–8

Public health issues

investor–state dispute settlement and, 245–252

Public interest

corporate interests prioritised over, 85–86

Public service *see* **Government employment**

Reasonableness

required for court proceedings and mediation, 147

Refugees

on Thailand–Burma border, 45

Regulatory issues

financial services industry dispute resolution, 191–195
regulatory power restricted by investor–state dispute settlement provisions, 86

Resolution

metaphors for, 28–29

Review of the Financial System External Dispute Resolution and Complaints Framework

recommendations by, 191–195

Risk management strategies

domestic violence cases in mediation, 159–160

'Safe space'

cultural issues in establishing, 49–50

Safety issues

with sexuality/gender diverse clients, 41

Samoan culture

dispute resolution in, 176–177

Screening

domestic violence cases in mediation, 158

Senior Executive Appraisal

development of, 236–244

- Settlement proposals**
neutrality and, 129–134
- Seven Network**
Amber Harrison case, 148
- Sexuality/gender diversity**
in clients of ADR, 35–42
- Social comparison effect**
perception of fairness and, 184
- Solution-focused dispute resolution**
family dispute resolution (FDR), 4–11
- Sovereignty issues**
investor–state dispute settlement and, 82
- Sporting arbitration**
facilitating, 253–260
- Statements made at mediation**
admissibility of, 75–78, 111
- Statutory law**
exceptions to confidentiality in family ADR, 112
- Stress-related work disputes**
conflict coaching in, 261–268
- Superannuation Complaints Tribunal**
recommended reforms to, 191–195
- Tax treaties**
international arbitration, 162–169
- Teams**
for collaborative practice, 17
- Technology**
China launches internet court, 214–215
- Telephone dispute resolution**
domestic violence cases in mediation, 160
- Tension in mediation**
finessing, 133–134
- Thailand–Burma border**
conflict resolution on, 45
- Tobacco control regulations**
investor–state dispute settlement and, 248–250
- packaging case found against Philip Morris, 230–231
- Trade agreements and negotiations** *see*
Commercial dispute resolution
- Training in dispute resolution**
in tribal villages and refugee camps, 45–46
in volunteering sector, 60
mediating domestic violence cases, 159
need for scrutiny of, 56
- Transformative mediation**
in workplace disputes, 67–68
- Trans-Pacific Partnership**
investor–state dispute settlement and, 81–88
- United Kingdom**
costs of unmanaged conflict, 65
- United Nations**
Model Tax Convention, 164–165
- United States**
arbitration contracts block group law suits, 213–214
costs of unmanaged conflict, 66
- Victoria**
costs of unmanaged conflict, 66–67
formal requirements for arbitration in, 256
- Violence issues**
domestic violence cases in mediation, 115–161
with sexuality/gender diverse clients, 40–41
- Volunteering sector**
conflict management in, 57–63
- Workplace disputes**
conflict in government employment, 64–71
- World Trade Organization**
dispute settlement mechanism, 83–84
investor–state dispute settlement and, 247

