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COVID-19, Remote Court Hearings, Automated Decision-making and Access to Justice – *The Hon Michael Kirby AC CMG*

Audiovisual links hearings, prompted by COVID-19, are not necessarily a major change from the present way that courts are operating. They may be no more than a supplementary facility that leaves the basic character of the judiciary and court proceedings untouched. As presently organised, the changes that have already been adopted would not have much impact on Professor Susskind's third change concerning "access to justice". Radically redrafting the arrangements for public institutions identified as "courts" afford special difficulties in countries operating under written constitutions. It is not easy to convert such courts into a "helping" agency of the executive government. Constitutionally, courts must be kept separate from the Executive. Law reform also cannot be performed successfully without a deep knowledge of our legal history; an appreciation of its values that go beyond efficiency and cost saving; and an understanding of the role of the courtroom in the whole-of-government institutional tapestry. The constitutional and historic barriers to the introduction of Professor Susskind's ideas for change to improve access to justice suggest that there is a continuing future for Australian Dispute Resolution, particularly mediation and arbitration. 256

COVID-19, Technology and Family Dispute Resolution – *Tania Sourdin, Bin Li, Stephanie Simm and Alexander Connolly*

The COVID-19 pandemic has caused unparalleled disruption to the Australian legal system, particularly in the family law domain. Those commencing or considering commencing the separation process are experiencing heightened levels of financial and emotional disruption. In a bid to support and facilitate family dispute resolution (FDR) during the pandemic period, Online Dispute Resolution (ODR) methods have been viewed as potential supportive solutions. The authors of this article argue that two principal ODR innovations have emerged at the forefront of enabling FDR processes to adapt appropriately to the impacts of the pandemic, viz videoconferencing technology and justice apps. This article explores the advantages and disadvantages of employing such technologies to facilitate FDR given traditional modes of face-to-face dispute resolution are unavailable. In addition, there is a focus on how the recent growth in justice apps may support more viable forms of ODR both during the pandemic and into the future. 270

A Call for a Multi-framework Approach to Family Dispute Resolution – *Joshua Taylor*

Under the *Family Law Act 1975* (Cth), Family Dispute Resolution Practitioners (FDRPs) have broad discretion about how to offer Family Dispute Resolution (FDR). Despite this, most service providers predominantly offer a facilitative model of mediation as FDR. This article challenges the conventional wisdom that this is necessarily the best and most appropriate model of FDR, identifying when facilitative mediation model is unlikely to be appropriate, and discussing alternative frameworks of FDR. The article suggests that the overarching goals of the FDR system would be better served if FDRPs assessed the dispute to actively identify which framework of FDR best fits the dispute, and suggests Nadja Alexander's Mediation Meta-Model as a useful tool for practitioners to use. The article concludes by considering how the Mediation Meta-Model may be applied in practice. 284

A "Curious Order" and the Inherent Power to Order Stays Pending Arbitration: Rex International Holding Ltd v Gulf Hibiscus Ltd – *Benjamin Teng and Hannah Williams*

Superior courts in common law jurisdictions possess an inherent power to stay proceedings pending the resolution of related arbitrations, in the interests of higher order case management principles. In *Rex International Holding Ltd v Gulf Hibiscus Ltd*, the Court of Appeal of Singapore was called upon to reverse the exercise of such a power in respect of a stay which had been imposed by the High Court. Upon the Court's closer examination, it was revealed that the arbitration which was the basis for the stay ordered below was "largely illusory". The Court elucidated in what circumstances stays pending arbitration will be ordered, which is an area which has received limited judicial attention in Australia. After an analysis of the judgment and the error in the first instance decision, this article draws out useful guidance for Australian and Singaporean practitioners applying for stays pending arbitration. 295

Cause to Complain? Consumer Experiences of Internal and External Dispute Resolution in the Context of General Insurance – *Evgenia Bourova, Ian Ramsay and Paul Ali*

The provision of "fair, timely and effective" mechanisms for the resolution of consumer complaints is "a central part" of the regulatory framework for financial services including general insurance in Australia. Insurers are required to have in place internal dispute resolution (IDR) processes through which policyholders can complain if their insurance claim is subject to delays, or if they are unhappy with its outcome. Insurers must also be members of the recently established Australian Financial Complaints Authority, to which policyholders may escalate complaints that are not resolved through IDR. This article draws upon the findings of a survey of building, home contents and comprehensive car insurance policyholders to shed light on the experiences of consumers who make or escalate complaints in relation to their claims; issues with compliance with the regulatory frameworks governing complaints; and the barriers that can deter consumers from making use of these complaints mechanisms. 302

Relevance of First Offers in Distributive and Integrative Negotiation – *Garvita Sethi*

"In cases when you are not hopelessly uninformed, seriously consider going first." Numerous studies have recognised the importance of making first offers and the ensuing anchoring effect in negotiations. However, the matter central to debates is whether it is wise to move first, despite evidence against it. Lax and Sebenius suggest that if information asymmetry exists, and a party has substantial knowledge, going first can indeed be favourable. Where the authors do recognise the risk associated with making opening offers, they suggest making them nevertheless but with caution and flexibility. Using some practical examples as references, the present article attempts to analyse the components of

the authors' aforementioned statement in question and to further discuss their relevance in the context of distributive and integrative negotiations. 317

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