AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

Volume 31, Number 3

2021

EDITORIAL – *Co-General Editor: Ruth Charlton* 183

ADR CASE NOTE – *David Spencer*

Native Title Mediation and COVID-19 185

ARTICLES

The Characterisation of, and Recourse against, Negative Jurisdictional Decisions in Australia – *Alexander du Maurier*

Neither the *International Arbitration Act 1974* (Cth) (*IA Act*), nor Australian courts, have clarified with any degree of certainty whether negative jurisdictional decisions are awards. It is thus unclear whether such decisions may be enforced in Australian courts. Additionally, although the *IA Act* provides a mechanism for judicial review of positive jurisdictional decisions in the courts of the seat, it does not provide such a mechanism for negative jurisdictional decisions. The uncertainty created by the *IA Act* and Australian courts begs two questions: first, should negative jurisdictional decisions be recognised as awards; and second, should negative jurisdictional decisions be capable of judicial review in the courts of the seat? This article explores both issues in turn and suggests that negative jurisdictional decisions should be enforceable as preliminary awards and capable of judicial review, akin to positive jurisdictional decisions. 192

Measuring Effective Complaint Handling by Government – *Tania Sourdin, Jamie Carlson, Martin Watts, Christine Armstrong, Tanya Carlyle and David McGeoch*

Effective complaints management should be a significant consideration for government. It offers a range of benefits including improved community attitudes towards government and public sector entities, reduced escalation costs and the opportunity for service process improvements. Despite a growing body of research about the benefits of effective complaints management, little is known about how complaints currently progress through government organisations and how effective complaints handling can produce a Return on Investment (ROI) for government. This article analyses how ROI measurements can benefit the government complaints sector. In addition, Social Return on Investment (SROI) measures that are part of a ROI calculation are explored. This article discusses the costs and benefits of effective complaints management by government organisations in a society where the environmental, social and economic impact of government action is increasingly relevant. 210

Lessons and Opportunities for Negotiation Teachers Following the COVID-19 Pandemic – *Ana Lenard*

In 2020–2021, and resulting from the COVID-19 pandemic, I taught and studied university negotiation courses online. In this article I reflect on my experiences of teaching and learning online, ground them in pedagogical research, and distil key lessons and

opportunities for negotiation teachers across three topics (creating inclusive classrooms, the role of technology, and equipping our students to meet the demands of the modern world). Teaching online has led to a collective upskilling in our understanding of our students, of what matters in life, and of how technology can enhance our teaching. We have agency in our classrooms to help create a more equitable world, as we indeed need to, if we are going to be transformational teachers and serve all of our students as best as we can. 223

Teaching FDR in Law School Clinical Programs: The Lawyer-Assisted Family Dispute Resolution Clinic – *Dr Jacqueline Weinberg and Jennifer Lindstrom*

Over recent years, family dispute resolution (FDR) has become an integral part of Australian family law practice. In a university law clinic, students are taught what lawyers actually do in practice, including ways in which to advise clients about options for resolving their disputes. In this article, we show how the lawyer-assisted family dispute resolution (LAFDR) clinic within the Monash University Clinical Program provides students with the opportunity to expand their knowledge of family law and FDR principles, processes and practices. Students are encouraged to think critically about contemporary and systemic issues in FDR and areas for law reform. This article highlights the structure and steps taken to develop the LAFDR clinic and the ways in which the clinic is conducted. Finally, this article outlines how the LAFDR clinic enables students to develop the professional and practical legal skills to become successful future lawyers, adept at family dispute resolution practice. 235

Order out of Court: Insights on the Lawyers' Role in the Success and Failure of Mediation in Cebu City, Philippines – *Francis Michael C Abad*

To address the problem of overwhelming cases pending before the judiciary, mediation has been sought as a means to settle disputes speedily and amicably. This article argues that much of the success or failure of a mediator to reach a settlement among litigants is owed to the role of lawyers who assist the parties in mediation conferences. Lawyers' lack of training in the theory of mediation, non-consideration of traditional Filipino traits in settling disputes, improper behaviour during conferences, and overconfidence in their legal positions have influenced their clients' willingness to see mediation as a swift and favourable alternative to lengthy court trials. In sum, a successful mediation is not only dependent on the competence of the mediator but also on the proper training of lawyers in negotiation and mediation theory, as well as the empowerment of mediators by granting them greater authority in controlling their proceedings. 243

Home Run or Strikeout? Is Baseball Arbitration a Viable Dispute Resolution Procedure for Australia? – *Myles Bayliss*

In an effort to address perceived inequalities in bargaining power between digital platforms, such as Google, and traditional media businesses, a mandatory bargaining code was introduced compelling digital platforms to bargain with these businesses. A key feature of the Media Bargaining Code (the Code) is what is referred to as "baseball arbitration". Baseball arbitration is largely unknown in Australia, giving rise to some uncertainty in respect of the procedure's operation and effectiveness. Using the Code as a case study, this article undertakes an examination of Baseball Arbitration, drawing on the vast experiences of the procedure's jurisdiction of origin: America. 253