

# AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

Volume 30, Number 1

2019

EDITORIAL – *Ruth Charlton*

**NMC2019: Articles, Observation, and Data** – *Alysoun Boyle and Dr Susan Douglas* ..... 3

CASENOTES – *David Spencer*

**Advocate Immunity in Mediation; and Setting Aside a Mediated Settlement Agreement for Vitiating Factors** ..... 6

ARTICLES

**Is There a Place for Restorative Justice in Civil Mediation?** – *Mary Riley and Susan Douglas*

This article examines the suitability and defensibility of mediation based on restorative justice principles for the resolution of civil disputes in Australia. The use of restorative justice practices in healing the harms caused by wrongdoing is not new. Countries, including England and the United States, have embraced restorative justice practices at various points throughout their criminal justice systems. In most Australian jurisdictions, legislative changes over the past three decades have resulted in the use of restorative justice principles in youth and adult justice processes. The movement toward mediation to resolve civil law disputes grew at the same time. While mediation involves negotiation toward a collaborative resolution, the relationship between parties often remains damaged. However, restorative justice principles add empathy and reparation to the process. The possible synergy between mediation and restorative justice is discussed in this article through an examination of their use in the resolution of disputes between the police and citizens. .... 14

**Walking the Tightrope: Exploring the Relationship between Confidentiality and Disputant Participation** – *John Woodward*

Confidentiality, though rarely straightforward or well understood in the court-connected context, has been widely perceived as a core defining characteristic of mediation. The limits of mediation confidentiality and the uses to which confidential information may be put has created uncertainty in the legal profession and operates as a disincentive to active disputant participation in mediation sessions. Drawing on empirical research interviews conducted for a doctoral research project, this article explores the relationship between confidentiality and active disputant participation. It argues that a greater degree of certainty around confidentiality would enhance the opportunity for active disputant participation in the court-connected mediation process and reduce the level of adversarialism which remains evident in mediation events. .... 23

**Does Mandatory ADR Impact on Access to Justice and Litigation Costs?** – *Ummey Sharaban Tahura*

This article argues how far mandatory alternative dispute resolution (ADR) would ensure access to justice and impact on the litigation cost. The ADR mechanism saves money and time which is still fact-finding. Mandatory ADR narrows down the litigant’s choice to

resolve dispute through the statute. It dominates litigants through imposing the future threat of financial penalty. The unsuccessful ADR imposes an additional cost. Moreover, forcing ADR would affect the beauty in it. How limiting access to court, legal remedy, and leaving options as “ADR only” would ensure justice has been argued here. .... 31

**Online Dispute Resolution in the Domain Name Space – *Alpana Roy***

The Uniform Domain Name Dispute Resolution Policy (UDRP) and the .au Dispute Resolution Policy (auDRP) provide the legal framework for resolving domain name disputes on the internet. It has been acknowledged that the UDRP is one of the most well-known online dispute resolution (ODR) systems and has experienced considerable success in resolving disputes in cyberspace. Indeed, both policies have proven to be highly effective for resolving domain name disputes using online arbitration processes, and since their inception some 50,000 or so decisions have been decided under the international UDRP, while 400 or so have been decided under the Australian auDRP. This article will provide an analysis of the UDRP and the auDRP as one of the most well-known ODR systems both internationally and nationally. .... 39

**UNCITRAL Convention – Mediation’s Big Bang: Can Mediation Challenge Arbitration’s Dominance? – *Sala Sihombing***

In August 2019, 46 countries signed the United Nations Commission on International Trade Law Convention on International Settlement Agreements Resulting from Mediation (“Singapore Convention”). The Singapore Convention may provide mediation with an opportunity to challenge the hegemony of arbitration for the resolution of international commercial disputes. This development presents mediators with an opportunity to provide a differentiated process to arbitration with the same level of credibility for the outcome. This article examines some of the issues that mediators may wish to consider, including: what challenges may mediation encounter and how could mediation positively embrace this development. .... 51

**The Role of International Mediation in Data Protection and Privacy Law – Can It Be Effective? – *Sinta Dewi, Robert Walters, Bruno Zeller and Leon Trakman***

The role of international mediation and mediation more generally in data protection and privacy law can be an effective tool to resolving data disputes. This article will examine the data protection laws of Indonesia, Australia, Singapore, the Philippines, European Union and China. This comparative examination is timely, with the creation of the Convention on Enforcement of International Settlement Agreements Resulting from Mediation (Singapore Convention) which opened for signing on 7 August 2019 and the associated Model Law. If implemented and utilised, the Singapore Convention has the potential to become an effective legal mechanism to assist in resolving cross-border personal data disputes. .... 61

**Advanced Practice Issues for Family Dispute Resolution Practitioners – *Danielle Jaku-Greenfield, Miriam Ziegler and Nicole Ash***

This article aims to assist Family Dispute Resolution Practitioners primarily in private practice. Our observation is that training rarely involves case management outside of the mediation room, and our experience with peer supervision is that the same issues arise time and time again. We would like to support practitioners with our thoughts on, and experience of, these issues. These include the issuing of s 60I certificates, the day-to-day practice management of parties and questions about suitable processes. .... 74

**BOOK REVIEWS**

**Mediation Quest – Making Sense of Loss, by Dr Katherine Pavlidis Johnson – *Reviewed by Lola Akin Ojelabi*** .... 80