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ARTICLES

Judicial mediation, the judicial process and Ch III of the Constitution – *Iain Field*

What is judicial mediation, and is it something that Australian judges can or should be doing? A number of commentators have addressed these questions, and a variety of conflicting views have been expressed. This article re-examines judicial mediation from a constitutional perspective. It demonstrates that judicial mediation will ordinarily satisfy the procedural requirements implied by Ch III, and that judges may therefore mediate as a function incidental to the exercise of judicial power. Even to the extent that judicial mediation might not, in practice, satisfy these requirements, it is argued that a constitutional challenge to legislation or rules of court implementing judicial mediation is unlikely to succeed. 72

Providing online decision support for owners corporation disputes – *Peter Condliffe, Brooke Abrahams and John Zeleznikow*

This article describes the development of an online decision support guide to relevant case law decisions for owners corporation disputes in Victoria, Australia. The rate of growth of owners corporations (also known as body corporate or strata title properties) has increased significantly in the last two decades. Because of this growth, and the need to manage a rapidly expanding population, the governance and management of these entities has become an important concern for government, particularly regarding managing conflict, yet existing legal remedies are an inadequate way of responding to many of these disputes. The online system aims to provide negotiation decision support for relevant case law decisions determined by the Victorian Civil and Administrative Appeals Tribunal to help guide disputants through the grievance process. 84

The importance of transformative mediation to the internal workplace mediation program – *Mark Dickinson*

Transformative mediation is described as relational mediation and may be distinguished from the facilitative model on the basis that its primary objective is to improve the quality of the relationship between the disputants rather than to seek an agreement or settlement of the dispute. The question is asked: how relevant is transformative mediation to resolving workplace disputes, particularly in the context of an internal workplace mediation program? This article seeks to answer this question by considering Bush and Folger's transformative mediation model and the nature of workplace conflict. The application of transformative mediation in resolving workplace disputes here in Australia and abroad is considered. It is submitted that transformative mediation has particular utility in resolving workplace disputes and an internal transformative mediation program may be an effective means of more broadly managing and improving workplace culture in larger organisations. 95

FDR practitioners working in the FRC system: Issues and challenges – *Dr Pamela Henry and Dr Karine Hamilton*

The recent establishment of Family Relationship Centres (FRCs) and compulsory alternative dispute resolution for separating families in Australia has given family dispute resolution (FDR) practitioners working in the FRC system considerable responsibility in the management of family separation. This article reports on the experience of FDR practitioners working in an FRC in Midland, Western Australia. Interviews with the practitioners revealed that they faced a variety of issues and challenges in their roles including the handling of “high-conflict” cases and screening for domestic violence. The other key concern raised by the practitioners was how to make FDR more relevant and accessible to marginalised communities, such as Indigenous people, grandparents, and step-parents. 103

Community legal centres’ views on ADR as a means of improving access to justice – Part I – *Lola Akin Ojelabi*

This article reports on views of community legal centres (CLCs) in Victoria on alternative dispute resolution (ADR) as a means of improving access to justice for disadvantaged members of the community. ADR is a less costly alternative for disadvantaged clients but CLCs are sceptical about its potential to deliver justice. Concerns raised include power imbalances, limited availability of legal assistance to disputants, lack of knowledge of the law on the part of some ADR facilitators and the impact of ADR processes on public interest litigation and test cases. Addressing these concerns will make ADR a better choice for disadvantaged parties. 111

The construct of neutrality and impartiality in Chinese mediation – *Siew-Fang Law*

This article argues that discourses on mediation practice and theory, particularly regarding the concept of neutrality in mediation, are predominantly Western oriented. Although there is emerging criticism on the Western conceptualisation and definition of mediation practices, many non-Western mediation models are often denied or rejected. This article presents one of the “other” mediation models: a Chinese approach. Interviews of three practising Chinese mediators in Australia reveal extensive cultural implications relating to mediation. These mediators discussed Chinese cultural concepts such as *guanxi*, *mianzi* and *renqing*, as well as the challenges of neutrality in Chinese mediation. Finally, the article proposes the inclusion of culturally reflexive mediation training as part of the second generation mediation pedagogy. 118

Resolving financial disputes in the context of Australian and Canadian civil justice reform – *Shahla Ali and Felicia Lee*

In recent years, many countries have increased their use of alternative mechanisms of dispute resolution to resolve a growing number of financial and commercial disputes. This trend has been supported by civil justice reforms taking place throughout the world, including those within Australia, and Canada. Such reforms have aimed at encouraging cost-effective, expeditious and amicable case handling within the civil justice system. This article will analyse the increasing use of mediation to resolve financial and commercial disputes in countries undergoing civil justice reform, review the scope and nature of these reforms and examine lessons learned. 125

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