

JOURNAL OF CIVIL LITIGATION AND PRACTICE

Volume 2, Number 2

July 2013

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ARTICLES

The objectives, scope and focus of mediation legislation in Australia – *The Honourable Justice PA Bergin*

The author, Bergin CJ in Eq, commences this important article by observing that mediation over past decades has become a central feature of the Australian dispute resolution landscape. Her Honour then proceeds to review recent trends in court-referred and court-annexed mediation, as well as mediation that takes place pursuant to a statutory requirement to take steps to resolve a dispute prior to commencing court proceedings. The article then discusses empirical evidence concerning the “ripe time” for mediation, as well as certain additional issues relating to mediation in Australia including mediator accreditation and immunity. Her Honour discusses the controversial practice, in some Australian States, of judges conducting mediations. Her Honour concludes by observing that long gone are the days when mediation could be accurately described as “alternative” dispute resolution. 49

Cost and time hurdles in civil litigation: Exploring the impact of pre-action requirements – *Tania Sourdin and Naomi Burstyner*

Pre-action requirements, including protocols, obligations and schemes, exist in various forms across Australia and are intended to encourage the early resolution of disputes without the need to commence proceedings in a court or tribunal. Whilst the capacity of pre-action requirements to reduce the cost and time of dispute resolution has served as one of the major reasons for their introduction, they have also been the basis of concern relating to cost and time. These concerns have been raised by those within the legal profession, as well as others, and have centred around the potential burden that these requirements might place on would-be litigants and disputants. It has been argued that pre-action requirements could increase the cost (and indeed time taken) of resolving a dispute because of the work that may be required to be done by a lawyer at an early stage, before litigation commences. It has also been suggested that they may impose a hurdle and prevent access to courts. This article discusses recent research undertaken that explored whether pre-action requirements do place cost and time hurdles on parties to a dispute, and what support or recommendations would assist in minimising these, where they exist. 66

May it tweet the court: Ethical considerations involving Australian lawyers' social media use – Marilyn Krawitz

Social media has changed the way that millions of people communicate, including lawyers. Lawyers' use of social media poses some important ethical issues, such as unintended or faulty retainers on social media and how lawyers' social media use can affect their duty to the court and their duty of confidentiality. Whilst some Australian law societies and similar organisations have released ethical guidelines for lawyers about this issue, others have not. This article argues that uniform, standalone national guidelines about lawyers' social media use are necessary.

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