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SPECIAL FEATURE: CELEBRATING 25 YEARS OF LEADR

Introduction – the story of the first 25 years of LEADR: The personal, the practical, and the principled – Margaret Halsmith	131
Recollections of LEADR’s beginnings – Alan Limbury, Gerald Raftesath, Harold Werksman and Michael Klug	133
Principles and practicalities – Gerald Raftesath	139
Beginnings of the Perth and New Zealand chapters – Oscar Shub	146
Training – Sue Duncombe and Joanna Kalowski	148
New Zealand training – Anna Quinn and Carol Powell	152
LEADR today – Fiona Hollier	156
A personal ADR retrospective – LEADR and other things – Ruth Charlton	160

CASE NOTES

Arbitration application stayed without adjudication of the merits; Power of the Federal Court of Australia to enforce an arbitral award	163
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ARTICLES

Settling sexual harassment complaints – what benefits does ADR offer? – Dominique Allen

Sexual harassment complaints are predominantly resolved through confidential alternative dispute resolution (ADR) processes rather than a tribunal hearing, so very little is known about the type of complaints which are made or how they are being resolved. This secrecy has created problems for the law’s development and its effectiveness. This article compares settlement agreements negotiated through ADR with tribunal orders, so as to identify whether ADR offers any additional benefits to the process of addressing sexual harassment and to identify changes to the process which would increase the law’s effectiveness while maintaining the benefits of ADR. Very little is known about the type of settlements negotiated in this jurisdiction, so the secondary purpose of the study is to provide information about how sexual harassment is being addressed.

169

The “new advocacy” and the emergence of lawyer representatives in ADR – Donna Cooper

This article traces the emergence of the “new advocacy” role for lawyers, that of “dispute resolution advocacy”, describing the role of legal practitioners when representing clients in negotiation, mediation and conciliation processes. The dispute resolution models they may encounter and the different types of assistance that lawyers can provide to their clients in such contexts will be discussed. Whether dispute resolution advocacy falls under the umbrella of non-adversarial practice or is a separate and distinct role will also be explored in light of the professional obligations of lawyer representatives, particularly the duty of loyalty to their clients. 178

Confidentiality, public interest and the mediator’s ethical dilemma – Dominik Leimgruber

Generally, mediation’s confidentiality is warranted. Yet it is not absolute. Some statutes require the mediator to disclose information in case of crime or fraud. However, there exist further public interests that may justify disclosure but which are not legislated expressly. Therefore, mediators may find themselves in an ethical dilemma: upon learning that people could get harmed, should they disclose information to the public or not? Concluding that the various sources enshrining confidentiality obligations and the broad meaning of public interest creates much legal uncertainty for a mediator, this article proposes, first, the implementation of a new and uniform ethical standard and, secondly, the establishment of an ethics advisory committee. In terms of uniformity and consistency, both propositions should be introduced upon federal initiative. 187

Issues and barriers to the provision of FDR in prisons – Pamela Henry and Karine Hamilton

Reforms to the family law system in Australia have encouraged parents to attempt family dispute resolution (FDR) before approaching the court and to consider the right of children to have meaningful relationships with both parents. FDR occurs in a national network of family relationship centres (FRC) strategically placed in a range of geographical locations. This article reports on the findings of research into the extension of a Western Australian-based FRC service to a group of atypical clients: prisoners. Western Australian is the only State or Territory which offers FRC services to prisoner clients. Interviews with prisoners who had used the FRC service and with staff involved in its administration revealed that the FDR goal of maintaining meaningful relationships with both parents post-separation involves unique challenges for families with an incarcerated parent, specifically due to the high prevalence of family violence concerns. 195