

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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- Mandatory mediation for only part of a dispute; costs awarded for an unreasonable act; and mediation media watch – David Spencer** 203

ARTICLES

- International arbitration in Australia: 2012/2013 in review – Albert Monichino SC and Alex Fawke**

This annual article updates readers on the most important developments in international arbitration in Australia in the past year. It surveys legislative, case law and other developments since 1 September 2012. 208

- FDR in prisons: Meeting the needs of Aboriginal clients – Karine Hamilton and Pamela Henry**

The family law system in Australia encourages parents to attempt family dispute resolution (FDR) before approaching the court. FDR occurs in a national network of family relationship centres (FRCs) located in a variety of geographical locations. This article reports on the findings of research into the extension of a Western Australia-based FRC service to a unique group of FDR clients: Aboriginal prisoners. Interviews with Aboriginal prisoners and with staff involved in the administration of FDR to prisoners revealed certain barriers to the uptake of FDR by this client group, such as language difficulties and a mistrust of mainstream services given past experiences with forced family separations. The article discusses possible strategies for overcoming these barriers and developing “culturally responsive” forms of FDR. 224

- The AFL Tribunal System – an insider’s perspective on early neutral evaluation, arbitrary power and judicial intervention – Andrew Coffey**

The procedural and substantive means of punishing elite Australian Football League (AFL) players for the most serious forms of unacceptable conduct – so-called “reportable offences” – has changed over time. Significant reforms were made to this system of punishment following a spate of incidents that found their way to the Supreme Court of Victoria in the 1990s. Those reforms were further shaped by the advent of the Match Review Panel in 2005, but still the prospect of judicial intervention looms over the modern AFL Tribunal System. This article looks at how AFL players are subject to punishment for reportable offences, how the system of punishment has changed throughout AFL history, whether the present system is vulnerable to judicial intervention, and the consequences, if any, that might await an AFL player or club who tests that vulnerability. 230

- Assisting future lawyers to conceptualise their dispute resolution advocacy role – Donna Cooper**

This article discusses the key concepts that underpin an elective subject, Dispute Resolution Practice, offered in the Queensland University of Technology undergraduate

law curriculum. They were conceptualised during a teaching fellowship when research was conducted into how to assist future lawyers to conceptualise their dispute resolution advocacy role. The unit also contains the majority of content recommended in the recent National Alternative Dispute Resolution Advisory Council Report, Teaching Alternative Dispute Resolution in Australian Law Schools. The environments in which lawyers operate and the knowledge and skills they require to represent clients in negotiation, mediation and conciliation processes will be examined. 242

Elder mediation – Lise Barry

This article considers the need for mediators to adopt a more proactive approach to providing accommodations for elders in mediation in order to fully promote their decision-making capabilities. The author suggests that assessing capacity is outside of the expertise of mediators and that from a philosophical and a human rights perspective, the better approach is to screen parties in to mediation by providing accommodations, rather than screening them out with capacity assessments. The author recommends that for the field of elder mediation to grow, mediation standards must reflect the requirement for accommodations, rather than a process of exclusions based on ad hoc capacity assessments. 251

Settlement outcomes in sexual harassment complaints – Paula McDonald and Sara Charlesworth

This article examines the dispute resolution process of conciliation through a detailed study of Australian workplace sexual harassment complaints. It links two data sets: settlement details of a census of conciliated complaints lodged under all federal, State, and Territory anti-discrimination laws in a six-month period; and interviews undertaken with 71 professionals who have extensive, first-hand experience of conciliation processes in anti-discrimination jurisdictions. The article provides a critique of the effectiveness of conciliation as a form of ADR within the individualised constraints of current anti-discrimination laws. 259

A quantitative analysis of practitioners’ knowledge of fathers and fathers’ engagement in family relationship services – Richard Fletcher, Emily Freeman, Nicola Ross and Jennifer St George

Recent reforms to the Australian family law system have altered the ways in which parenting disputes following separation are resolved, with a preference to direct separating parents to community-based services rather than the legal system. However, the ability of human services staff to effectively engage men in addressing child-related issues has been questioned. The purpose of the current study was to conduct a quantitative assessment of the father-related knowledge and competence among practitioners working in family relationship services. Practitioners around Australia were asked to complete an online survey (the Knowledge About Fatherhood Checklist) that covered aspects of both competency and knowledge in relation to father engagement and fatherhood. Overall, the majority of practitioners were confident in their abilities when working with fathers; however, there were clear gaps in their knowledge about father-related issues. This study demonstrates a clear need for father-inclusive training for practitioners working with separated parents in the family relationship services. 270

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