

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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CASE NOTES

- Whether a referee should allow the costs of a negligent solicitor; and mediation media watch** – *David Spencer* 69

ARTICLES

Mediation developments in the Australia/Pacific region – *John A McGruther*

- This article discusses the increased use of alternative dispute resolution (ADR), particularly mediation, in the Pacific region, as well as recent developments in Australia, including mandatory dispute resolution and access to justice, ADR's place in legal education, specialised mediation, and support for Australia-based international arbitral hearings. 73

Resolving or escalating disputes? Experiences of the NSW Police Force complaints process – *Jane Goodman-Delahunty, Alan Beckley and Melissa Martin*

- In 1997 the NSW Police Force implemented a complaints process on the recommendation of the Wood Royal Commission. Client advocates and legal practitioners who represent disadvantaged clients reported client avoidance of the complaints process as a form of dispute resolution and, when it was used, dissatisfaction with the outcomes. Using a mixed-method survey with input from Community Legal Centres New South Wales Inc, the experiences and perceptions of 493 New South Wales practitioners about the complaint process were examined. Results revealed widespread dissatisfaction and mistrust in the process, more extreme among those with personal experience using the system. Reasons for avoiding the system included a perceived lack of independence in complaint investigation, ineffective communication between police and complainants and experiences of victimisation by the police after making an official complaint. Recommendations to improve the use of the process include creating more opportunities for informal dispute resolution. 79

An introduction to the challenges and possibilities of faith-based arbitration in Australia – *Nadav Praver, Nussen Ainsworth and John Zeleznikow*

- Formalised faith-based dispute resolution is a growing and important mechanism for implementing the principles of alternative dispute resolution (ADR) and offers particularised arbitration and mediation outcomes, serving needs not met by traditional approaches to conflict resolution. Recent developments in Australian case law have exposed limitations in the operation of faith-based dispute resolution and in the understanding that courts and other arbitration bodies have about its operation. This article explores the nature and principles of faith-based arbitration and highlights its ability to solve disputes through the application of principles held by the parties and through integrated relationships, as well as its cost efficiency, speed and flexibility. It also considers the limitations arising from the cultural and legal dissonance between faith-based dispute resolution and the legislative regimes governing ADR in Australia. 91

ADR in legal education: Evaluating a teaching and learning innovation – *Judy Gutman, Silvia McCormack and Matthew Riddle*

A film about the mediation process, *The Scholarship Dispute*, was incorporated into the teaching and learning program of the first-year compulsory law subject *Dispute Resolution* in 2012 at La Trobe University Law School. This article describes and reports on two studies evaluating the teaching and learning effect of the film. 100

Compensation through conciliation: Payments made through the Office of the Health Services Commissioner – *James Cameron and Grant Davies*

The Victorian Office of the Health Services Commissioner (OHSC) uses methods of alternative dispute resolution to resolve complaints made about health service providers. This study reviews five years of data collected by the OHSC to assess the factors that contribute to the compensation payments arising from conciliation. The conciliation process at the OHSC is voluntary and any compensation payment is arrived at through mutual agreement, so the expectations of the interested parties were also assessed. Each of the factors assessed appeared to have some bearing on the compensation received. Further analysis suggested that the most significant factor in receiving a larger compensation payment was the likely legal outcome of a medical negligence claim. Other factors, such as the type of health service provider, were more indicative of the likely seriousness of the harm caused. In any negotiation process there is a danger that a stronger and more experienced party may overbear the other. However, there was little evidence of this occurring in the process at the OHSC. The research suggests that alternative dispute resolution is an effective means of resolving medical negligence complaints as long as complainant expectations are managed from an early stage. 109

Mandatory mediation: A positive development in most cases – *Krista Mahoney*

Alternative dispute resolution processes such as mediation run alongside and complementarily to the courts and tribunals. Mediation can be court-annexed and mandated with or without parties' consent, through statute, regulation or other judicial procedures. The most likely referrers of mediation will be judicial officers, court staff or a dispute resolution provider. This article will set out and critically analyse the arguments for and against mandatory mediation. The types of matters and situations where it is appropriate to order mandatory mediation will then be evaluated. 120