

# AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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## CASE NOTES

- Whether a court should wait for discovery to be concluded before ordering mediation and mediation media watch** – *David Spencer* ..... 131

## ARTICLES

**Information, power and relationships: Minimising barriers to access to justice for end of life disputes** – *Katherine Curnow*

Disputes about the withdrawal or withholding of life-sustaining treatment from incompetent adults may have a profound and lasting impact on the individuals affected by such decisions. This article describes the unique dispute resolution processes of the Queensland Adult Guardian for resolving end of life disputes and analyses those processes from an access to justice perspective. Ultimately, the article argues that a statutory officer providing expert information and advice, as well as non-adversarial and adjudicative dispute resolution, may reduce three key barriers to accessing justice for end of life disputes: lack of information or advice, power differentials, and concerns about damage to an ongoing relationship. .... 137

**Representing clients from courtroom to mediation settings: Switching hats between adversarial advocacy and dispute resolution advocacy** – *Donna Cooper*

In the vast majority of cases, legal representation in mediation can provide many advantages for clients. However, in some, progress can be thwarted when lawyers do not understand the goals of the mediation process and their dispute resolution advocacy role. This article will explore some of the similarities and differences between the knowledge and skills that lawyers can draw upon when representing clients in adversarial court hearings as compared with non-adversarial settings, such as in mediations. One key distinction is the different approaches that legal representatives can use to effectively act in the best interests of clients. This article will highlight how an appreciation of such distinctions can assist lawyers to “switch hats” between their adversarial and non-adversarial roles. In particular, an understanding that the duty to promote the best interests of clients in mediation is consistent with a collaborative and problem-solving approach can greatly assist in the resolution process. .... 150

**Court connected dispute resolution – whose interests are being served?** – *John Woodward*

This article explores the role of alternative dispute resolution (ADR) within the context of the traditional position-based process of litigation and the determination of disputes by judicial decree. It identifies the interests being served by court connected ADR and concludes that, inevitably, some of those interests will be in conflict with each other. It is argued that the dichotomy between the voluntary, flexible and confidential nature of ADR on the one hand, and the public, regulated and litigious nature of litigation on the other,

tends to draw an artificial distinction between what is nothing more than the polarised extremes of a continuum in which participants freely elect to sacrifice some elements of one process in order to gain benefits which might not otherwise be available from the other. .... 159

**Multiple party mediation: Complexities and strategies – Helen Shurven**

This article will focus on the resolution of multiple party disputes, using the background of the Native Title Act 1993 (Cth), and will explore the differences between two party and multiple party mediation in that context, as well as exploring what the mediator can do to assist parties bring such conflicts to resolution. A number of macro and micro strategies which may be useful in multi party mediation are outlined. The article suggests a combination of factors which may assist to resolve a multiple party conflict through mediation. .... 166

**Loss and hope in family dispute resolution – Mieke Brandon**

Many parents who separate experience a range of losses which may need to be acknowledged in family dispute resolution (FDR) before they can move on. When practitioners fully tune into the grief and loss that many parents feel, they may be able to reframe these emotions into behavioural goals to create hope for a changed future. In such a process the children’s reactions to their parents’ grief cannot be forgotten. Before practitioners can fully be “with” their clients and understand the emotional turmoil some parents feel when commencing FDR, parents first need to develop trust in both the FDR process and the practitioner. Only then can a respectful relationship be forged between the practitioner and the parents – and between the parents themselves – so that change can occur in their current situation. By using a range of techniques, practitioners may be able to facilitate the discussions towards individual and joint goals for parental collaboration that fulfils their hopes for a changed future different from any current difficulties and animosity between them. .... 172