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EDITORIAL – *General Editors: Ruth Charlton and Geoff Charlton* 3

ADR CASE NOTES – *David Spencer*

Calderbank Offer after Mediation; Duty of a Prosecutor to Disclose Confidential Information from Mediation; and, Mediation Media Watch 6

MATTERS OF INTEREST

Connecting Even More Dots – What Next for Conciliation Research? 14

ARTICLES

Conciliation and Mediation in Australia – *Laurence Boulle*

ADRAC has delivered a substantial report on Australian conciliation. It uses thorough methodology to disclose important information about the practice and those who conduct it. Its recommendations on the identity and status of conciliators are invaluable in a context in which mediation has tended to be the favoured system of the two. Against the background of current thinking in cognate disciplines, however, its recommendations on conciliation’s definition and conciliators’ identity may be more than can be delivered. The author makes recommendations on what parts of the report might be cultivated and what might best be left fallow. 23

Successful Mediation Advocacy – *Michael Mills*

The measure of a successful outcome in mediation is not just whether an agreement is reached to resolve the dispute (and legal proceedings). It is whether the agreement (or settlement) reached is the optimal outcome for the client in all the circumstances. Successful mediation advocacy therefore is not just about persuading the other person/ party to settle the dispute, but doing so on terms which reflect the best or optimal outcome for your client. 35

Defining Construction: Can a Contract for “Non-physical” Works Be a Construction Contract in New Zealand? – *Shane Campbell and Jordan Halligan*

Establishing that a contract is a “construction contract” – “a contract for carrying out construction work” – is a jurisdictional hurdle that must be overcome by any party that wishes to have recourse to the provisions of the *Construction Contracts Act 2002* (NZ) (CCA). Although the definition of “construction work” is wide, there is considerable uncertainty around the exact ambit of this term, in particular, whether a contract for non-physical works can amount to a construction contract? This article seeks to answer this question by means of a close reading of the legislation and relevant case law, and applying a critical lens to the range of extrinsic material available as an aid to interpretation. We

conclude that confining “construction work” to physical works is a distinction incapable of adequately precise definition and inconsistent with the plain words, and broad and inclusive purpose, of the CCA. 57

Relationship Mediation: Based on a Systemic Perspective for Legal and Family Dispute Resolution Practitioners – Mieke Brandon AM

In Australia legal practitioners and family dispute resolution practitioners (FDRPs) have obligations under the *Family Law Act 1975* (Cth) to provide their clients, inquiring about separation, information about Family Counselling and Family Dispute Resolution services. Clients, who may want to consider reconciliation, as a preferred option, can now choose to participate in relationship mediation to explore if the relationship can be rekindled or not. Relationship mediation is a facilitative process, offered by trained practitioners who have added this to their Family Law or FDR practice. This article discusses how to provide relevant information and referral, about how reconciliation mediation may benefit some couples, reluctant to progress towards a separation, without discussing it with each other first. Facilitative mediation is voluntary and offers a safe environment in which couples perhaps not quite ready to separate can make their decisions with mutual understanding of their interests to separate or continue to share their hopes and goals for their togetherness. 68

BOOK REVIEW

International and Australian Commercial Arbitration, by Clyde Croft, Drossos Stamboulakis and Marilyn Warren – Reviewed by Tom Clarke 78