

# AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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## ARTICLES

**The Australasian Dispute Resolution Journal: Past, Present and Future** – *David Spencer and Pauline Collins*

The first edition of the Australasian Dispute Resolution Journal was published in February 1990. This article will recount its history and honour its founders and others who had the foresight to create a scholarly journal which has made and continues to make a significant contribution to the development of dispute resolution throughout the Indo-Pacific Asia region. The article advocates that the need to continue research and the sharing of knowledge remains given dispute resolution is still relatively young in its development but so widely adopted in the community, business and the administration of justice. This article will inform readers of the journal’s plans to continue to support those working in this field. .... 210

**Facilitative Mediation: An Exploration of Mediator Effectiveness, Interventions and Available Evidence** – *Sophia Richards*

The use of mediation to work through disputes in various sectors has greatly increased, as has the interest in the success of mediation as a process, though to a much lesser degree. With the continued expansion of mediation programs and services, it is timely to consider how a mediator can positively impact the outcome and participant’s perceptions of the mediation process. In order to explore the facilitative model of mediation and its associated interventions, this article reviews a selection of current available writings and studies on what makes a mediator effective. It is concluded that an effective mediator must have high emotional intelligence, the trust of the parties, and be able to facilitate conversations between the parties, while some researchers report that participants themselves saw empathy, integrity, and a lack of bias as vital qualities required of the mediator. However, large knowledge gaps exist, and further research and definition building is still required to inform effective mediation practice. .... 222

**The “Non-Signatory” Dilemma in International Commercial Arbitration: An Inconsistent International Landscape** – *George Napier*

It is generally accepted that a party who has not signed an arbitration agreement cannot be compelled to arbitrate; they have not provided the requisite consent. However, courts and tribunals internationally conflict and divide on this principle and applicable exceptions to it. This division is undesirable as it erodes the commercial certainty offered by arbitration

and confidence by commercial parties that the bargain they have struck will be enforced as intended in relevant jurisdictions where they operate. Cross-border commercial participants who choose international arbitration as the means of resolving their disputes, particularly participants who operate within a corporate group, should develop their dispute resolution strategies with a clear understanding of how the jurisdictions relevant to them will approach consent. If insufficient attention is paid to this issue, divergences might impact unfavourably on a successful party and its ability to enforce an arbitral award in a desired jurisdiction. .... 232

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