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Current developments in ADR

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ADR update

Current developments in ADR

Guide for ADR users

The Victoria Law Foundation has produced a booklet entitled *Working it Out — a user's guide to dispute resolution processes* (Victoria Foundation Publishing, 1999).

The booklet has been authored by Louise Kyle and Keith Jackson, who brought together the ideas and guidance of four reference groups: the Victorian Civil and Administrative Tribunal, the Dispute Settlement Centre of Victoria, the Victorian Equal Opportunity Commission and the Health Services Commission. Other ADR organisations provided comment, and a representative group of potential users was consulted to ensure practicality and accessibility.

The result is one of the few publications in Australia dedicated to the ADR consumer. In its 50 pages the booklet deals with all the potential concerns and queries which parties might have about ADR processes:

- how to assess the dispute and the strength of your case;
- self-help in dispute resolution;
- making use of lawyers, when and how;
- using mediation, from selecting the correct mediator through to dealing with substandard mediation service; and
- dealing with the outcomes of the ADR processes.

Inevitably the main focus is on mediation and conciliation, though there is some reference to other ADR processes. There is also a useful list of services and resources in ADR.

The plain English and popular style of the booklet will make it attractive to ADR consumers. It is also a useful resource for ADR practitioners who require another way of explaining the nature of ADR processes to prospective clients. ●

Court rules on admissibility

Chapman & Ors v Allan & Draper
Judgment No S460 [1999] SASC 460
4 November 1999

This was an appeal by Mr Draper from

a decision of a judge of the District Court in South Australia who awarded the Chapmans the sum of \$50,000 each and an amount by way of interest in an action for defamation.

One of the issues before the Full Court of the Supreme Court was the admissibility of a document containing an apology by Draper to be printed as a condition of settlement if it occurred, which had been produced for a case evaluation conference and given to the Chapman's solicitors on a without prejudice basis. The Chapmans wished to admit the document to show that Draper had spoken the words of which the complaint had been made.

The Court held that the document was inadmissible under s 67C of the *Evidence Act 1995* (Cth), which provides that evidence of a communication made in connection with an attempt to negotiate the settlement of a civil dispute is not admissible in any civil or criminal proceedings, unless it falls within one of the exceptions contained in subs 2.

The main issue was whether the parties consented to the admission of the evidence. The Court required that the consent be mutual. In the pleadings, Draper's counsel impliedly consented to the admissibility of the document as Draper intended to rely on it. The Chapmans did not consent in their pleadings; however, during the trial they attempted to introduce the document. At this time Draper's counsel objected to the evidence on the basis that he no longer intended to rely on it and did not consent to its admission.

The Court thus held that, despite the fact that both parties consented, there was at no time *mutual consent*. The Court did comment, obiter, that there may be circumstances in which a party would be prevented from withdrawing a consent given earlier, particularly when the other party has acted to its prejudice upon the basis of that consent. ●

New Practice Note

*The Supreme Court of
New South Wales
Practice Note Number 106 —
22/12/99*

On 1 February 2000, a Possession List was established within the Common Law Division in NSW. This list is to contain all proceedings which include claims for possession of land.

The Practice Note states that any defended proceeding in the List will be managed by way of status hearings, to be held fortnightly.

Prior to a status hearing the parties' solicitors must have discussed the possibility of setting the dispute by mediation or other ADR processes. Additionally, at a status hearing, the Court will, if it considers the proceeding suitable for ADR, endeavour to secure the consent of the parties for referral to mediation or neutral evaluation and may issue directions regarding statements from parties to enable the parties to be prepared for such processes. ●

Contributions

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Contributions to the ADR BULLETIN are welcome. Major articles are refereed.

Please submit articles or notes (between 1000 and 4000 words) for publication to:

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