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## Foreword

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### **Abstract**

This special edition of the Bond Law Review brings you a selection of scholarly papers presented at the bi-annual National Mediation Conference held in September 2016 at the Gold Coast, Queensland. Presentations included discussion of the latest research and developments across the spectrum of forms of dispute resolution. The content of the conference, and of this special edition, is of interest to mediators, dispute resolution and restorative justice practitioners, facilitators, conciliators, educators, trainers, conflict coaches, arbitrators, adjudicators, academics, researchers, managers, administrators and anyone else who is interested in and involved in helping people in dispute.

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This special edition of the *Bond Law Review* brings you a selection of scholarly papers presented at the bi-annual National Mediation Conference held in September 2016 at the Gold Coast, Queensland. Presentations included discussion of the latest research and developments across the spectrum of forms of dispute resolution. The content of the conference, and of this special edition, is of interest to mediators, dispute resolution and restorative justice practitioners, facilitators, conciliators, educators, trainers, conflict coaches, arbitrators, adjudicators, academics, researchers, managers, administrators and anyone else who is interested in and involved in helping people in dispute.

The 2016 conference brought together more than 500 participants and many delegates from across Australasia and the world. The theme for the conference was: ‘Thought, Innovation and Creativity: The Next Decade’. Key focuses included what practitioners know and how they know it; thinking about thinking; reflecting on how innovation, education and training of practitioners occurs in self-determinative through to determinative processes; and considering how flexibility and creativity can be observed in response to the diverse needs of clients in order to provide a future of best practice in managing conflict. In contemporary times, it is vital that practitioners consider standards, professionalism, ethical practice and self-care in order to continue to meet the challenge of their working environment. Mindfulness and reflective practice were prominent considerations — the importance of remaining mindful of and reflecting on our own reactions and the reactions of the participants within the dynamics of their communication about their dispute was highlighted, particularly in terms of minimising potential complaints, as well as in relation to avoiding practitioner burn out.

The workshops and presentations discussed many diverse ways for managing a range of processes contributing to a variety of outcomes, such as settlement, resolution, healing, forgiveness, rebuilding relationships, renewing relationships or respectfully severing a relationship. Matters at the forefront of participants’ concerns included how to demonstrate creative techniques and innovative practice approaches by thinking ‘outside the square’, together with ethical guidelines and best practice standards in diverse practice applications.

This special edition begins with Jonathan Crowe’s conference keynote address on ‘Mediation Ethics and the Challenge of Professionalisation’. Jon discusses the regulatory and practice models of mediation ethics in the context of their suitability to address the challenge of professionalisation. He argues in favour of the practice model, concluding that the mediation profession should aim to strike a balance between the two models, while generally emphasising practice over regulation. Next, Olivia Rundle addresses the important issue of ‘Including Trans and Gender Diverse, Intersex and/or Non-Heterosexual People in Mediation Service Delivery’.

Olivia's article argues that mediators should be informed about historical as well as current legal treatment of individuals, couples and families who are trans and gender diverse, intersex and/or non-heterosexual, and be alert to the dynamics of power that arise as a result of legal non-recognition of certain family relationships. The third article in the special edition is Judge Joe Harman's piece entitled: 'An Imperfect Protection: Attitudes of Family Dispute Resolution Practitioners to Confidentiality'. Judge Harman discusses the utility of the confidentiality and inadmissibility of oral and written communications in Family Dispute Resolution, highlighting the tension between the confidentiality of dispute resolution processes and the desire of Courts to have access to all available evidence. The article presents and analyses a 2014/15 survey of practising Family Dispute Resolution Practitioners from private, government and community based contexts regarding their attitudes to confidentiality and its importance in Family Dispute Resolution. The final article for the special edition is by Kathy Douglas and Jennifer Hurley entitled 'The Potential of Procedural Justice in Mediation: A Study into Mediators Understandings'. Kathy and Jennifer discuss the theory of procedural justice as a way of explaining why disputants who experience validation and respect in a decision-making process are more likely to accept the outcome of a process even if they do not agree with the result. They argue that the Australian legal system, and mediators, are not yet adequately recognising or harnessing the potential of procedural justice. They present a qualitative study exploring the practices of mediators conducted at the Victorian Civil and Administrative Tribunal, concluding that a majority of mediators endorse the theory of procedural justice.

The special edition also contains 2 practice notes (3 in the online version) and a book review. The first practice note by Meriel O'Sullivan considers 'The Structural Causes of Workplace Conflict: Understanding the Implications for the Mediation of Workplace Disputes'. Meriel uses a case study of a grievance to explore theories on the sources and resolution of workplace conflict. The case study highlights what happens when there is a mismatch between the sources of conflict and the conflict resolution intervention, and how this can be addressed by broadening the range of interventions utilised in a workplace. The second practice note by Keryn Foley considers the always topical issue of co-mediation in her piece 'To Co-Mediate or Not to Co-Mediate — That is the Question'. Keryn explores the practical benefits and challenges of co-mediation, offers a new way of defining co-mediation, argues that the method requires a specific skill set, and offers several practice tips. Keryn argues that preparation is key in successfully co-mediating, as is the practice of debriefing. The third practice note, by Louisa Roughsey, Frank Watt and Berry Sontag, is entitled 'Indigenous Mediation – Is That Different?' It is only available in the online version of the journal due to its extensive pictorial content. The practice note discusses the history, practice and challenges of the Mornington Island mediation service. Finally, the special edition concludes with a book review by Linda Fisher and Frances De Biasi of Samantha

Hardy, Olivia Rundle and Damien Riggs' book, *Sex, Gender, Sexuality and the Law: Social and legal issues faced by individuals, couples and families*. The review praises the work as a valuable resource, providing insight and extending understanding in ways that have not been achieved elsewhere.

We trust that this impressive special edition, which is a new initiative for the Conference, and has been generously supported by the *Bond Law Review*, brings together a collection of papers on a range of topics that will inspire you.

Special editors:

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