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.

IN THE BEGINNING …

There was nothing. Except litigation. And then *Calderbank* offers.[1] And informal settlement negotiations. Then there was dispute resolution (often called alternative, assisted or additional dispute resolution).

Notwithstanding that people have been negotiating disputes since time immemorial, the formalisation of dispute resolution in its many forms dates back over four decades. While the exact moment of the formalisation and recognition of Western[2] dispute resolution is not a single event akin to the "the big bang", it can be argued that a preponderance of events sparked the arrival of dispute resolution as a process, adjunct to litigation, both overseas and in Australia.[3]

Boulle traces the origins of dispute resolution, through the lens of mediation, from ancient times through a wide spectrum of religious traditions to its formalisation in developed industrial societies and suggests that:

> The modern mediation systems have arisen predominantly out of economic imperatives, out of social commitments to participation and empowerment, and out of the influence of the peace movements. They were also a reaction against the destructive features of the adversarial legal system and products of a

* David Spencer: Solicitor and Senior Lecturer-in-Law, Thomas More Law School, Australian Catholic University and Co-General Editor of the *Australasian Dispute Resolution Journal* (Thomson Reuters). Pauline Collins: Professor of Law, School of Law and Justice, University of Southern Queensland and Co-General Editor of the *Australasian Dispute Resolution Journal* (Thomson Reuters). This article is based on a presentation at the National Mediation Conference 2023 Wellington, New Zealand.

[1] *Calderbank v Calderbank* [1975] 3 WLR 586; [1975] 3 All ER 333 set the common law rules for offers of compromise and how the courts make costs orders where an offer of compromise was made. Offers of compromise have now been codified in the various rules of court; see, eg, *Supreme Court (General Civil Procedure) Rules 2015* (Vic),Ord 26; See further Bernard Cairns, *Australian Civil Procedure* (Thomson Reuters, 12th ed, 2020) 567–571; Stephen Colbran et al, *Civil Procedure: Commentary and Materials* (LexisNexis Butterworths, 8th ed, 2022) 822–829.

[2] It must be noted that most commentators in the field of dispute resolution acknowledge that First Nations people in Australia practised and still practise various forms of customary dispute resolution in their communities. See Hilary Astor and Christine Chinkin, *Dispute Resolution in Australia* (LexisNexis Butterworths, 2nd ed, 2002) 11–12; Pauline Collins, Dalma Demeter and Susan Douglas, *Dispute Management* (CUP, 2021) 72–73; David Spencer, *Principles of Dispute Resolution* (Thomson Reuters, 3rd ed, 2020) 88-89; David Spencer, Lise Barry and Lola Akin Ojelabi, *Dispute Resolution in Australia: Cases, Commentary and Materials* (Thomson Reuters, 4th ed, 2019) 2–3; Rachael Field, *Australian Dispute* Resolution (LexisNexis, 2022) 173–178; and, David Spencer, "Mediating in Aboriginal Communities" (1996-1997) 3 *Commercial Dispute Resolution Journal* 245.

[3] See generally: Astor and Chinkin, n 2, Ch 1; Collins, Demeter and Douglas, n 2, Ch 3; Spencer, *Principles of Dispute Resolution*, n 2, Ch 1; Spencer, Barry and Ojelabi, n 2, Ch 1; Field, n 2, Ch 6; and, Tania Sourdin, *Alternative Dispute Resolution* (Thomson Reuters, 6th ed, 2020) Ch 1.

> strong intellectual impetus for more constructive alternatives. Within a relatively short period of time they had become integral parts of legal systems to which they had commenced life as alternatives.[4]

Dewdney and Charlton suggested that a major contributor to the development of dispute resolution in the United States and then globally, was the creation during the 1970s of the American Bar Association's Special Committee on Dispute Resolution who worked on alternatives to litigation.[5] A further significant event in the United States was Harvard Professor Frank Sander's address at the 1976 Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (the "Pound Conference"), where he suggested:

> [T]hat citizens might be referred to a Dispute Resolution Centre rather than to a court with a screening clerk channelling disputants to the most appropriate process for their particular type of dispute. Different processes for dispute resolution would be carried out in a number of rooms available at the Dispute Resolution Centre.[6]

Collins, Demeter and Douglas suggest that dispute resolution became prominent after the United States established in 1977, the Centre for Public Resources (now known as the International Institute for Conflict Prevention and Resolution) whose aim is to promote the prevention and resolution of conflict.[7]

> These dispute management processes became transposed into many Western countries through the 1970s and 1980s, including Australia. The changes arose with parties looking for more peaceable ways of addressing disputes that could be achieved quickly, cheaply, and without destroying relationships.[8]

Spencer, Barry and Ojelabi suggest that the term "alternative dispute resolution" was first used by American lawyer Eric Green when he conducted a "mini-trial" in a large commercial patent dispute in the 1970s that sought to exchange information between litigants and have representatives from the senior management of the litigants seek to resolve the dispute.[9]

> There are several possible reasons why there has been a dearth of innovative ideas aimed at devising alternative dispute resolution mechanisms for large case litigation. Perhaps the corporate litigation bar should be blamed for a lack of imagination, for an unwillingness to take risks, and for a failure to apply careful cost benefit analysis to their activities on behalf of their clients.[10]

Sourdin suggests that theories of conflict resolution date back to the early 1900s with reference to the work of pioneer, Mary Parker Follett and that the emergence of a more formal and newer paradigm of dispute resolution arrived in the 1980s with reference to Fisher and Ury's work on interest-based bargaining.[11] Field suggests that some of the influence surrounding the rise of dispute resolution in contemporary society can be attributed to the access to justice movement who fought, and continue to fight, for equal access to justice via dispute resolution that can address the pecuniary inequality and disempowerment inculcated by litigation.[12] This movement suggests "that the might of the formal justice system was not necessary to resolve many types of disputes, which could be better managed or resolved by ordinary people empowered by the new methods of ADR".[13]

Numerous authors note Australia's early foray into dispute resolution with the passing of the *Conciliation and Arbitration Act 1904* (Cth) that provided a non-litigious way to settle disputes in the industrial space

---

[4] Laurence Boulle, *Mediation: Principles, Process, Practice* (LexisNexis Butterworths, 3rd ed, 2011) 59–62.

[5] Micheline Dewdney and Ruth Charlton, "Editorial" (1990) 1(2) ADRJ 59, 59.

[6] Dewdney and Charlton, n 5, 59.

[7] Collins, Demeter and Douglas, n 2, 74.

[8] Collins, Demeter and Douglas, n 2, 74.

[9] Spencer, Barry and Ojelabi, n 2, 7–12.

[10] Spencer, Barry and Ojelabi, n 2, 8, citing E Green, J Marks and R Olson, "Settling Large Case Litigation: An Alternative Approach" (1978) 11 *Loyola of Los Angeles Law Review* 493, 496.

[11] Sourdin, n 3, 15–18.

[12] Field, n 2, 178–198.

[13] Field, n 2, 179.

over the making of awards between employers and employees.[14] Astor and Chinkin suggest that there are a number of factors that gave rise to the formalisation of dispute resolution in Australia including the history of dispute resolution among First Nations peoples. Further, the early development of conciliation and arbitration and the creation of the New South Wales (NSW) Community Justice Centres in the early 1980s, followed in other states soon after, which was based on similar models used in the United States to empower the community to seek consensual solutions to community-based disputes.[15]

> The CJC's, however, trace an important source of their development to the powerful "people" movements of the 1960s and early 1970s which saw communities and groups within communities reacting against state control and regulation of people's lives, particularly people who felt themselves to be relatively powerless in the face of institutionalised forces.[16]

Numerous commentators acknowledge the establishment of the Australian Commercial Disputes Centre (now known as the Australian Disputes Centre (ADC)) as a key moment in Australia in the development of dispute resolution.[17] In 1986, the NSW Government commissioned a survey on the dispute resolution needs of the business community in Sydney. From the results of that survey the then Attorney-General of NSW, the Honourable Terry Sheahan, and the then Chief Justice of New South Wales, the late Sir Laurence Street, suggested a centre be opened that could develop a speedier method of resolving disputes outside of the court system that would be cheaper than the ever-increasing cost of arbitration.[18]

The culmination of these and other events largely in the 1970s and 1980s created the impetuous for the formalisation of dispute resolution in the private and public spheres in Australia and in the Indo-Pacific Asia region. So accepted is dispute resolution in the management and resolution of disputes that, "[c]ivil disputes which are resolved by curial adjudication are a minute fraction of the civil disputes which arise in our (or any) society".[19] Under these conditions, it is little wonder that a scholarly journal, recording the empirical, anecdotal and learned analysis and synthesis of academics and practitioners on the discipline of dispute resolution, came into being.

And So Unto Us, A Journal Was Born

The first edition of the *Australasian Dispute Resolution Journal* (the journal) (then known as the *Australian Dispute Resolution Journal*) was published in February 1990. It featured a Foreword by the Chief Editorial Consultant, the late Sir Laurence Street, who stated:

> Alternative Dispute Resolution procedures operate in aid of the court system by assisting in filtering out a multiplicity of disputes before those disputes progress to the stage of calling for the intervention of the adjudicative authority of the courts. As such they fill a legitimate place in society's armoury for the resolution of disputes. They are being recognised as part of our jurisprudence and the study of court procedures has been expanded in many law schools to cover the whole field of dispute resolution in theory as well as in practice.
>
> This journal will service that topic. I welcome its advent within the literature of the law in Australia. Its range is intended to extend to the theoretical as well as the practical aspects of dispute resolution. It will include articles of value to lawyers and non-lawyers alike. So far from it being merely one more journal

[14] Astor and Chinkin, n 2; Collins, Demeter and Douglas, n 2, 256; Spencer, *Principles of Dispute Resolution*, n 2, 12–13; Spencer, Barry and Ojelabi, n 2, 4: Sourdin, n 3, 22; Field, n 2, 116.

[15] Astor and Chinkin, n 2, 11, 14–16.

[16] Astor and Chinkin, n 2, 14–15.

[17] Spencer, *Principles of Dispute Resolution*, n 2, 15; Spencer, Barry and Ojelabi, n 2, 4; Sourdin, n 3; Astor and Chinkin, n 2, 20.

[18] Spencer (2020), n 2, 15.

[19] Wayne Martin AC KC, "Alternative Dispute Resolution – A Misnomer?" (Speech delivered at the Australian Disputes Centre – ADR Address, Perth, 6 March 2018) 4. "In the Supreme Court of Western Australia, less than 2% of the cases initiated in our court are resolved by adjudication. This is fairly typical of Australian courts. Professor Peter Murray estimates that in the United States the percentage of civil disputes commenced that are actually decided by adjudication by a court is probably less than 2%. A table provided by Dame Professor Hazel Genn QC in her Hamlyn Lectures 2008 shows that between 1990 and 2000, trials as a percentage of proceedings initiated in the Queen's Bench Division of the High Court of England and Wales hovered at around 0.5%".

> competing for the subscription dollar, I share the hope of the editors and publishers that it will prove sufficiently comprehensive to satisfy the need and interest of those in our society with a requirement to keep up to date our knowledge in this field.[20]

The first editorial by foundation Editors, Micheline Dewdney and Ruth Charlton did not appear until the second edition of volume one and in part, stated:

> We should be wary of having unrealistic expectations and of making over-ambitious claims for the potential of the growing range of dispute resolution processes. A growing body of research in the United States has resulted in a healthy scepticism towards many of the claims. In Australia, research is at an embryonic stage, having been largely confined to the evaluation of community and family mediation programmes. However, two important steps have been taken which should avoid some of the dangers referred to and should foster collaboration in exchanging information and encouraging experimentation and research – the first is the formation of the Australian Dispute Resolution Association with a very broad membership (including lawyers and non-lawyers), the second is the very timely and unusual initiative which The Law Book Company has taken in association with ADRA in publishing this quarterly journal.
>
> We are encouraging contributions to the journal from countries outside Australia in order to benefit from overseas research and programme development in dispute resolution, including court adjudication. We hope that the journal will play some part in the dissemination of information and the encouragement of research in the whole range of dispute resolution processes.[21]

The editorial board at the journal's inception consisted of three representatives of statutory authorities practising in the field of dispute resolution; three academics; two lawyers; and two practitioners from the United States, one a member of a statutory authority and the other employed in the provision of private dispute resolution. Notably, all the Australian members of the editorial board, the General Editors and the Chief Editorial Consultant were from the east coast of Australia, predominantly Sydney.[22]

The journey to the first edition was a long and windy one that started in 1986 with the formation of a professional organisation now known as the Australian Dispute Resolution Association (ADRA). In a recent tribute to the foundation Co-General Editor, the late Ruth Charlton, the current President of ADRA stated, "Ruth [became] a committee member of the very first Board … was very active in that first committee of volunteers and participated in developing ADRA's Constitution … [and] the publication of the first newsletter".[23]

The ADRA newsletter was the forerunner of the journal and as a result of that, the late Professor Jennifer David and Ruth Charlton commenced negotiations with Lawbook Company (LBC) (now generally known as Thomson Reuters) to publish a quarterly scholarly journal on dispute resolution.

On 11 January 1989, Charlton and Dewdney met to draft a proposal regarding the editorial structure and format of the proposed journal and presented it to the LBC. The two-page proposal, as approved by the Executive of ADRA, suggested that the title of the journal should be the "Dispute Resolution Journal of Australia and New Zealand", which was designed, "to ensure as broad a perspective on dispute resolution as possible and consequent wide readership of the journal".[24]

Further, the proposal suggested that the editor or in the case where there is more than one editor, at least one of the editors, should be an ADR practitioner. It was further suggested that state-based editorial committees should be established to ensure, "interstate input and collaboration in this rapidly developing

[20] Sir Laurence Street, "Foreword" (1990) 1(1) ADRJ 3, 3–4.

[21] Dewdney and Charlton, n 5, 60.

[22] Today the editorial board of the journal has expanded to 23 who hail from Australia, India, Singapore, United Kingdom and New Zealand. Their vocational and professional expertise include dispute resolution practitioners working in the field of the provision of dispute resolution; lawyers; academics; architects and psychologists.

[23] Dr Katherine Pavlidis Johnson, "Tribute to Ruth Charlton" (2022) 32(2) ADRJ 92, 93.

[24] From the original, "Proposals [sic] for a National Journal on ADR as approved by the Executive of the Alternative Dispute resolution Association of Australia on 11.1.1989." The authors thank Mr Geoff Charlton for sending the original documentation and correspondence on the establishment of the journal to the current Co-General Editor, David Spencer.

area of professional activity", except for Tasmania because it was "doubtful whether ADR is sufficiently developed in that state to warrant a committee".[25] The proposal further recited:

> In view of the rapidly developing and changing field of ADR, it is important that the following areas be represented either as members or consultants to state editorial committees:
>
> - Commercial disputes (e.g. Australian Commercial Disputes Centre)
> - Law Society
> - Lawyers Engaged in Dispute Resolution
> - Building disputes
> - Family disputes
> - Neighbour disputes (e.g. Community Justice Centres)
> - Academics.[26]

Finally, the proposal addressed what the first edition would look like when it stated:[27]

> The first issue of the journal will contain a general article on ADR developments focusing on legal implications in each state. This will allow for a broad comparative overview of ADR in Australia and New Zealand.
>
> ADR will be defined as broadly as possible to include any alternative to court adjudication in order to attract a wide readership from the outset, including overseas academic and practitioner organisations and individuals. Illustrations of dispute resolution by way of actual case reports will also be included in the first as well as subsequent issues of the journal. Subsequent issues of the journal can then focus on specific dispute resolution processes including negotiation, mediation and arbitration.

The response from LBC on 14 February 1989 to the proposal confirmed the agreement with the Editors and stated that the words, "Australia and New Zealand" should be removed from the title of the journal as English and American journals do not refer to their country of origin. Further, the then Managing Editor of LBC stated, "I think it is time we stood on our own feet and stopped qualifying ourselves".[28]

The LBC agreed to pay a $5,000 annual editorial fee to the editors (to be split between them) and contributors would receive $60 per article and $30 for case notes and other short stories.[29] The Managing Editor concluded his response by stating, "May I say how much I have enjoyed our discussions and I very much look forward to working with you and with Ruth towards the launch of what I am sure will be a fascinating journal and one of enormous importance to a wide range of people".[30]

An update on the development of the journal in August 1989 named the journal as, "*The Dispute Resolution Journal of Australia and New Zealand*" and somewhere between that time and the first advertising brochure in January 1990, the title of the journal changed again to the "*Australian Dispute Resolution Journal*". Subscribers were able to subscribe to the first edition of the journal for $75 per annum rising in 1993 to $155 per annum.

In April 1990, barely two months after the first edition was published, a letter in response to the then Honourable Secretary of the Institute of Arbitrators, disclosed a request by the Institute for inclusion of

[25] In relation to Tasmania, this rationale is clearly no longer relevant.

[26] Papers provided by Geoff Charlton, n 24.

[27] Papers provided by Geoff Charlton, n 24.

[28] Papers provided by Geoff Charlton, n 24.

[29] It has been a convention in Australia and overseas for many years that authors are not paid for contributions to scholarly journals. In some journals (mainly in the science disciplines), authors are required to pay to have their research published and such a fee usually forms part of their initial research grant. It should be further stated that not all editors of Australian and international journals receive a stipend to perform their roles. For academics, publication of their research is a component of their work and for academics and practitioners there is some kudos attached to the publication of their research in their field of endeavour. Academics sometimes receive money in kind because of research publication from their universities' central research office to be spent on research related activities (such as employing research assistants or attending conferences) because of Commonwealth funding arrangements.

[30] Papers provided by Geoff Charlton, n 24.

arbitration in the journal. The Editors assured the Institute that, "arbitration is an important [some would say the original] alternative to traditional litigation".[31]

A letter from the Editors to LBC in March 1991, stated, "alternative dispute resolution is about to thrive in the UK" and suggested that complimentary copies of the journal be sent to the Law Society of England and Wales. In a meeting with LBC, Dewdney noted that at the 1992 LEADR Conference she, "met a well-known US Mediator, Frank Sander and gave him all her available copies of the journal for the Harvard Law School Library. He agreed to put a notice about the journal in the Harvard Law School's publication 'Negotiation'".[32]

Since those early years, the journal has found its place in the abundance of scholarly journals and remains the pre-eminent periodical on the issues surrounding dispute resolution in the Indo-Pacific Asia region.

The Journal's Impact and Quality

According to the Australian Research Council (ARC), "[t]here is an increasing focus on showcasing or measuring the societal benefits from research, and a need for better coordination in reporting and promoting the impact of these research outcomes".[33] Impact is now a significant measure of the value of research in Australia as it explains how the outcomes of research benefit society and how the cost justifies the outcome.

In Australia, the ARC defines the term "impact" as, "[t]he contribution that research makes to the economy, society, environment or culture, beyond the contribution to academic research".[34] The United Kingdom's "[r]esearch Excellence Framework", similarly defines impact as, "[t]he effect on, change or benefit to the economy, society, culture, public policy or services, health, the environment or quality of life, beyond academia".[35] According to the Excellence Framework:

> Impact includes, but is not limited to, an effect on, change or benefit to the activity, attitude, awareness, behaviour, capacity, opportunity, performance, policy, practice, process or understanding of an audience, beneficiary, community, constituency, organisation or individuals in any geographic location whether locally, regionally, nationally or internationally.[36]

Measuring a journal's impact and quality is a contested space in academia and the professions with opinions on what constitutes impact varying from discipline-to-discipline and within disciplines. This article does not seek to provide an exhaustive commentary on the various ways to measure a journal's impact and quality and neither do its authors profess expertise, above and beyond their time as academics, in the complex field of assessing a journal's impact and quality.

In recent times, the traditional way to measure the impact and quality of scholarly journals is via journal evaluation metrics (sometimes known as "bibliometrics") which, with some exceptions, measure the number of times journal articles are cited in other journal articles.[37] Those same bibliometrics are

---

[31] Papers provided by Geoff Charlton, n 24.

[32] Papers provided by Geoff Charlton, n 24.

[33] Australian Research Council, *Research Impact Principles and Framework* (5 May 2023) <https://www.arc.gov.au/about-arc/strategies/research-impact-principles-and-framework>.

[34] Australian Research Council, n 33.

[35] Research Excellence Framework 2021, *Index of Revisions to the "Guidance on submissions" (2019/01) October 2020* (5 May 2023) 68 <https://www.ref.ac.uk/publications-and-reports/guidance-on-submissions-201901/>.

[36] Research Excellence Framework, n 35.

[37] See, eg, the *Journal Impact Factor* which is calculated by dividing the total number of citations in the previous two years by the number of articles published the following year; *Journal Citation Indicator* which measures whether journal articles were cited on average the same as other journals in the same discipline category; *Eigenfactor Score* which measures the number of times articles from a journal over the past five years have been cited in the year being measured weighting more highly cited journals; *SCImago Journal Ranking* which weighs citations according to the prestige of the journal citing the work (uses data from SCOPUS, Elsevier Publishing's citation data base); *SCImago H-Index* which measures the number of journal articles (h) that have been cited at least h times (also uses SCOPUS data); Google Scholar which calculates an H5-index for journals based on the number of articles in the last five years with at least five citations.

often used to assess journal quality and to rank journals within discipline categories.[38] The ranking of a particular journal is often used for evaluative purposes both from an author's perspective (choosing a journal to publish in) and the perspective of their respective institution and/or professional body (the value of an academic's research).

However, the use of bibliometrics has and continues to be criticised as an accurate way to measure impact and quality. The *San Francisco Declaration on Research Assessment* (Declaration)[39] addresses the need to improve the ways in which the outputs of scholarly research are evaluated. Recommendations 1 and 5 of the Declaration state:

> 1. Do not use journal-based metrics … as a surrogate measure of the quality of individual research articles, to assess an individual scientist's contributions, or in hiring, promotion, or funding decisions.
> 5. For the purposes of research assessment, consider the value and impact of all research outputs (including datasets and software) in addition to research publications, and consider a broad range of impact measures including qualitative indicators of research impact, such as influence on policy and practice.[40]

Recently, the Council of Australian Law Deans commissioned Professor Kathy Bowrey to research and write a report entitled, "A Report into Methodologies Underpinning Australian Law Journal Rankings" (Bowrey Report).[41] Recommendation 1 of the Report states:

> Metrics remain insufficiently developed to provide a credible and robust proxy to assess law journal quality. None of the available lists are currently appropriate to adopt as a measure to assess the quality of law journals, or by extension, to inform measurement of institutional or individual research performance.[42]

Another measure of journal quality and impact is the system of journal rankings used throughout various disciplines. The criteria used for ranking journals, for those disciplines still ranking journals, is an amorphous process with disciplines themselves determining what they consider to constitute impact and quality. The Australian Business Deans Council (ABDC) states the following factors for determining journal quality:

---

[38] See, eg, journal ranking lists published by: Excellence in Research Australia (ERA) (the research evaluation conducted by the federal government's Australian Research Council (ARC) every three years. ERA dispensed with its journal rankings list in 2010 as a measure of research excellence. The federal government announced on 30 August 2022, that the 2023 ERA evaluation will not be conducted rather, the ARC will develop a plan to transition ERA to a modern data driven approach in line with the Minister for Education's "Statement of Expectations" dated 26 August 2022, which focuses on the impact of university research and its contribution to areas of national importance); Council of Australian Law Deans ("The Washington & Lee Law Library (W&L) is well known to most Australian law researchers. It generates journal ranking lists based upon citation data from Thomson Reuter's Westlaw Journals and Law Reviews (JLR) database (primarily U.S. articles), and Westlaw's ALLCASES database (U.S. federal/state cases)"); Kathy Bowrey, "A Report into Methodologies Underpinning Australian Law Journal Rankings. Prepared for the Council of Australian Law Deans (CALD)" (University of New South Wales Faculty of Law Research Series, Paper No 2016-30, 2016) 24; Australian Business Deans Council (ABDC) ("The ABDC Journal Quality List is distinctive because it is a peer assessment of journal quality informed by relevant metrics … a formulaic adoption of metrics is counter to the purpose of the list." See ABDC, *ABDC Journal Quality List: Latest Review Recommendations* (8 May 2023) <https://abdc.edu.au/abdc-journal-quality-list-review-of-frequency-methodology-and-scope/>); and other discipline-based journal rankings lists.

[39] The *2012 San Francisco Declaration on Research Assessment* (Declaration) has, at the time of writing, been executed by 2,814 international organisations and 23,063 individuals. Twenty-three Australian organisations have signed the declaration, most of which are scientific and medical research organisations with the University of Melbourne being the only Australian university to sign it.

[40] DORA, *San Francisco Declaration on Research Assessment* (5 May 2023) <https://sfdora.org/read/>. The Declaration relies on case studies which found that journal evaluation metrics can be highly skewed, field-specific and can be manipulated (or "gamed") by editorial policy and that the data used to calculate the evaluation metrics are often neither transparent nor openly available to the public. The drafters of the DORA are not the only organisation to cast doubt on the use of citation-based metrics; see Cornell University, *Measuring Your Research Impact: Journal Impact* (5 May 2023) <https://guides.library.cornell.edu/impact/journal-impact>; University of California Berkley, *Measuring Research Impact: Journal Impact* (5 May 2023) <https://guides.lib.berkeley.edu/researchimpact/journal-impact>; and, Cambridge University Press, *Journal-level Metrics* (5 May 2023) <https://www.cambridge.org/core/services/authors/journals/measuring-impact>.

[41] Bowrey, n 38.

[42] Bowrey, n 38, 60.

> The ABDC JQL [journal quality list] is distinctive because it is a peer assessment of journal quality informed by relevant metrics. While Expert Panels should be informed by quantitative measures of journal quality, a formulaic adoption of metrics is counter to the purpose of the list.
>
> The Steering Group believes that the ABDC should publish guidance about the role of both metrics and peer judgment in assessments of journal quality. This guidance could identify examples of quantitative and qualitative variables considered by Expert Panels in exercising judgment about journal quality.
>
> Recommendation
>
> Communications from the ABDC should emphasise that the purpose of Expert Panels is to exercise judgment about journal quality, guided by available metrics and impact factors where these are informative.[43]

Further, the Bowrey Report found:

> There is considerable external and, in at least some universities, internal pressure to adopt law journal ranking lists. With few resources and little access to relevant expertise it is not surprising that "quick and dirty" lists, cobbled together from existing datasets, have proliferated. That some law lists in existence were not forwarded for consideration in this report suggests that deficiencies of these productions are well recognised.
>
> Poorly conceived law journal ranking lists applied to Faculties, Schools, Research Centres and individuals have the capacity to do real harm.
>
> The earlier decision of the Australian Research Council to not rely on rankings has been restated by the current Chief Executive Officer Aiden Byrne:
>
> ERA hasn't made use of journal rankings since 2010, and while some universities have continued to use them internally, it is the ARC's firm view that this should stop.[44]

So, there is some doubt over the effective use of journal rankings as an indicator of journal impact and quality. Given this, the question remains, "[h]ow do we measure the impact of a journal without wholly relying on bibliometrics, altmetrics and rankings?"[45]

The task is a little easier in the discipline of law where tracing the impact of research and publication can be mapped via law reform, manifest in the activities of the various state-based and federal Law Reform Commissions, and legislative and common law citation that initiates a change to the law. This type of measure addresses the ARC definition of "impact" more directly as it evidences the contribution that research publication makes to the economy and society by assisting the Parliament and the courts to better define the parameters and operation of the law. The journal has been cited with authority in the work of various state and federal Law Reform Commissions.[46] These citations evidence the impact of the journal on the important task of law reform that directly impacts the dynamic structure of the law and the functioning of society.

Given the doctrine of *stare decisis*, courts in Australia are required to follow precedent and are therefore loathed to engage with secondary sources. Notwithstanding this, courts occasionally invoke secondary sources as persuasive or interpretative resources that assist the process of adjudication. In its short existence, the journal has been cited on numerous occasions in cases where the court has been called upon to adjudicate on the developing law surrounding dispute resolution.[47]

---

[43] See ABDC, n 38.

[44] ABDC, n 38, 59 (reference omitted).

[45] A variation of the bibliometric method which measures impact through online interactions such as social media.

[46] A cursory search of the Commonwealth, NSW and Victorian Law Reform Commission data bases on AustLii produced 18 such citations. Australian Law Reform Commission Report, *Family Violence – A National Legal Response*, Report No 114 (November 2010); Australian Law Reform Commission Report, *Legal Risk in International Transactions*, Report No 80 (October 1996); Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report 89 (February 2000); NSW Law Reform Commission, *Dispute Resolution*, Report No 146 (June 2018); Victorian Law Reform Commission, *Neighbourhood Tree Disputes*, Report (July 2019); Victorian Law Reform Commission, *Civil Justice Review*, Report No 14 (March 2008).

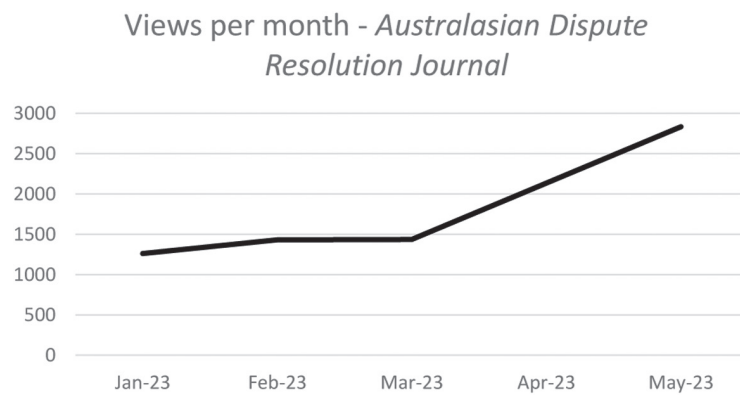
[47] A cursory search of Australian case law on AustLii, produced citations from the journal in the following cases: *Triarno Pty Ltd v Triden Contractors Ltd* (1992) 10 BCL 305, 306; *Hooper Bailie Associated Ltd v Natcon Group Pty Ltd* (1992) 28 NSWLR 194;

The journal's reach is another measure of its impact and quality. According to the journal's publisher, Thomson Reuters, the institutional subscriber mix of the journal is largely the following: barristers' chambers; firms of solicitors; government including the courts; and, universities.[48] Of those subscribers, approximately half of them are firms of solicitors and barristers' chambers. Large scale professional publishers tend to "bundle" their subscriptions, particularly their institutional subscriptions, to include journals, looseleaf services, web pages and sometimes ebooks. Thomson Reuters bundles the practice area "Dispute Resolution" with the journal and the following products:

(1) Australasian Dispute Resolution – looseleaf service (hard and electronic);
(2) Australian Legal Principles & Institutions – education unit (electronic);
(3) Commercial Arbitration Law and Practice – looseleaf service (hard and electronic);
(4) Dispute Resolution – book (hard and electronic);
(5) Ethics & Justice in Mediation – book (hard and electronic);
(6) International Commercial Arbitration in Australia – looseleaf service (hard and electronic);
(7) Magistrates Court Practice SA – looseleaf service (hard and electronic);
(8) NSW Civil Practice and Procedure: Local Courts Practice – looseleaf service (hard and electronic).

This bundle currently has over 500 subscribers. With the vast majority of subscribers being institutional it should be kept in mind that the bundle of resources is available to their employees who work in the areas relevant to the bundle. So the potential readers of the journal are well in excess of the 500 largely institutional subscribers.

Like most mainstream professional publishers today, most Thomson Reuters products consist of online subscriptions, with paper/print subscriptions decreasing each year.[49] In the internet age, one measure of reach is the number of "clicks" (views) a product web site achieves in a given period. At the time of writing, between May 2022 and May 2023, the journal received a total of 18,375 clicks/views. Since January 2023, there has been a steady increase in views per month reflected in the following diagram.



While an imprecise measure, although no more imprecise than academic citation metrics, the citing of the journal in the courts and law reform sectors, the calibre of its editorial panel and its subscription base

The Green Team (WA) Pty Ltd v Sachse [1995] FCA 1124; *Prestia v Aknar* (1996) 40 NSWLR 165; 132 FLR 180, 211; *Aiton Australia Pty Ltd v Transfield Pty Ltd* (1999) 153 FLR 236, 250; [1999] NSWSC 996; *Morrow v Chinadotcom Corp* [2001] ANZ ConvR 341, [46]; [2001] NSWSC 209; *Idoport Pty Ltd v National Australia Bank Ltd* [2001] NSWSC 427, [21], [41]–[43]; *The Heart Research Institute Ltd v Psiron Ltd* [2002] NSWSC 646; *Straits Exploration (Australia) Pty Ltd v Murchison United NL* (2005) 31 WAR 187; [2005] WASCA 241; *John Holland Pty Ltd v Kellogg Brown & Root Pty Ltd* [2015] NSWSC 451; *Madsen v Fancher* [2016] FCCA 142; *Hancock Prospecting Pty Ltd v DFD Rhodes Pty Ltd* (2020) 55 WAR 435; [2020] WASCA 77; *Aversa v Transport for New South Wales (No 2)* [2023] NSWSC 892.

[48] Subscriber data supplied by Mr Adam Dallas, Publishing Editor, Legal, Tax and Accounting Australia, Thomson Reuters as at 30 June 2023.

[49] According to Mr Dallas, notwithstanding the popularity of electronic publishing, "Thomson Reuters is still committed to print products at this time".

evidence the journal's impact in the developing body of law surrounding the use of dispute resolution and the education of its users and potential users. The impact and quality of the journal has been an important element of its existence over the last 32 years with its future continuing this contribution to the body of law and practice surrounding dispute resolution.

A Vision for the Future

The co-general editors, Spencer and Collins, enjoy modelling working in the collaborative way, sharing the load and their insights. They describe the experience as highly rewarding. They seek to bring subscribers and their audience the latest in knowledge in the dispute discipline world. The development of an opinion piece section is designed to engage readers by provoking new thinking and dialogue that stretches the boundaries and can only enrich the domain.

The journal looks to grow the expertise on the reviewer panel and to broaden the specialised areas covered as they have developed from what was understood as alternative options to litigation in the early 1990s. This acknowledges both the changes over the last 32 years and encourages the dialogue and learning in this domain as it stretches known boundaries. Some of these areas include welcoming articles on the developments in restorative justice, therapeutic jurisprudence, collaborative practice, conciliation, conflict coaching, use of government inquiry mechanisms, wise counsel mediations and the expanding knowledge of human dispute gained from neurosciences advances.

Many of the established areas such as negotiation, mediation, and arbitration have provided and continue to provide challenges and changes. The recent developments in arbitration law are signified by the High Court in *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl*[50] further embedding support of arbitration as a means of managing international dispute through its acknowledgment of the enforceability of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. As such Australia is now recognised as a country that is supportive of arbitration internationally.

Similarly, the *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation 2018* ("Model Law") is designed to assist nation states in reforming and modernising their laws on mediation. It provides uniform rules for mediation and aims at encouraging the use of mediation by ensuring greater predictability between the nation states who are signatories to the convention. The Model Law complements the *United Nations Convention on International Settlement Agreements Resulting from Mediation* ("Convention") which has been designed to assist the efficient conduct of international trade and in the promotion of mediation as an alternative and effective method of resolving trade disputes. The Convention ensures that an international mediated settlement agreement is binding and enforceable on the parties to the Convention. The Convention strengthens access to justice, maintains the rule of law, and promotes certainty and stability in the field of international commerce and commercial mediation.

The National Mediation Standards have just undergone a significant review producing a new draft code and standards.[51] These now acknowledge the many models of mediation, including a welcome addition of the wise counsel mediation model.[52] The changing landscape presents a rich field for continued research and scholarly writing in what still is a newer discipline of dispute management.

Over the journal's life, we have seen processes such as mediation become ubiquitous. Both the courts and the legislatures have supported this change.[53] Most matters are required to follow some process designed to privately manage a dispute before admission to litigation.[54] It is now generally unlikely for

[50] *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl* (2023) 97 ALJR 276; [2023] HCA 11.

[51] See The Draft Code, A voluntary code for the non-determinative dispute resolution industry. NMAS Review Hub 2020-22, Resolution Resources <https://nmasreview.com.au/>.

[52] The Draft Code, n 51,15.

[53] See, eg, The Hon Chief Justice TF Bathhurst, "The Role of the Courts in the Changing Dispute Resolution Landscape" (2012) 35(3) *UNSW Law Journal* 870.

[54] See, eg, *Civil Dispute Resolution Act 2011* (Cth).

parties in dispute to go straight into litigation without first having tried some other process to manage their dispute. The Singapore International Dispute Resolution Academy (SIDRA) survey 2022 of international commercial and investor state disputants, noted a high level of satisfaction with mediation (67%) compared to litigation (42%).[55] Participants reported the factors most influential in choosing mediation "were the preservation of business relationship (94%) and confidentiality (89%)".[56] In 2023 the UK Centre for Effective Dispute Resolution survey of civil and commercial mediators[57] reported an historic growth of around 17,000 mediations a year. However, when placed against over 247,000 contested civil law cases in England and Wales each year there is considerable opportunity for growth in dispute management processes.[58] The positive success rate for those who use mediation remains encouraging at 92%.[59] Some interesting challenges continue and were found in provocative comments in the survey such as:

> As with most things they touch, the lawyers are spoiling it through self-interest, if nothing changes mediation will go the same way as adjudication - not delivering what was intended and something many people would rather avoid.
>
> There are still far more mediators than mediations and some training bodies do not properly explain this to participants on their courses, which leads to disillusionment. [60]

The need for continuing education of both dispute practitioners and the public remains a priority. The journal seeks to provide a service in this regard. Our changing world, however, presents constant challenges providing journal editors with a demanding task. Not least is the much written about and utilised large language technology in the form of ChatGPT, and other similar technology advancements. ChatGPT, launched only in November 2022, and with its many relatives is challenging the way researchers, writers and publishers continue to work. With estimated users worldwide in the millions[61] this technology is here to stay and grow further as it is expanded to generative artificial intelligence (AI). These advances provide a historical leap for humans and the publication industry.

Much has been said about the positives and the perils of AI. The proliferation of writing about AI of itself makes addressing the topic difficult. Each new technology from clay tablets, the Gutenberg printing press, the typewriter, computers and now AI has raised fear and then excitement and adaptation as we adjust to the speed and content by which information and knowledge is communicated. Finding a balanced approach that accepts regulation to eliminate harm but also acknowledging the potential benefits is called for.[62]

What it will result in for dispute practitioners in the many different processes is a subject for many future articles. In this article the focus is on what it means for the researcher, writer and the journal. For editors and the journal, the concerns are to ensure that what is published is the genuine product of authentic research and practice. The tools and methods for ensuring this are growing alongside the use of AI. It means being vigilant and careful in the review process. This is required to ensure that new knowledge and practice experience can be relied on, and we do not devolve into an echo chamber of non-original regurgitated versions of existing printed words. For reviewers this will require a careful awareness of the things to look for when reviewing work.

---

[55] Singapore International Dispute Resolution Academy (SIDRA), *International Dispute Resolution Survey 2022* (2022) vi.

[56] SIDRA, n 55, 31.

[57] CEDAR, *The Tenth Mediation Audit. A Survey of Commercial Mediator Attitudes and Experience* in the United Kingdom (1 February 2023). Similar survey data is unavailable in Australia.

[58] CEDAR, n 57,17–18.

[59] CEDAR, n 57, 7.

[60] CEDAR, n 57, 10.

[61] *Exploding Topics* <https://explodingtopics.com/blog/chatgpt-users> at 17 July 2023 reported 1.6 billion website visits to ChatGPT in June 2023.

[62] See, eg, Michael Vincent, "Tech World Warns Risk of Extinction from AI Should Be a Global Priority like Pandemics and Nuclear War", *ABC*, 31 May 2023 <https://www.abc.net.au/news/2023-05-31/tech-world-warns-risk-of-extinction-from-ai-should-be-priority/102413250>.

On the other hand, for the researcher the use of AI is also presenting exciting possibilities. The use of AI to assist with large comprehensive data analysis can better inform decision-making that in turn can speed up creative innovation to human problems such as disputation.[63] For publishers and editors there is already a growing uptake in the use of such tools to address editing and formatting processes. The likelihood is an increase in the speed of publication outputs and therefore circulation of knowledge. Writers and researchers are ethically required to include information on how ChatGPT or other AI technologies were used in their work.

Conclusion

We trust our readers find this article provides a useful overview of the *Australasian Dispute Resolution Journal* from its pioneering start, through its 32-year life and into its future as it continues to serve its readers. The journal's quality, impact and subscriber base give it a unique position in the research and publication landscape. The journal has provided a significant contribution to the world of dispute resolution, and the editorial team are optimistic that notwithstanding the future challenges and changes to publishing we will continuing to support our researchers and writers by publishing their work.

[63] See, eg, Daswin De Silva and Mona El-Ayoubi "Three Ways to Leverage ChatGPT and Other Generative AI in Research", *Times Higher Education*, 20 June 2023 <https://www.timeshighereducation.com/campus/three-ways-leverage-chatgpt-and-other-generative-ai-research>.