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SECOND EDITION

DAVID SPENCER • SAMANTHA HARDY



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DISPUTE RESOLUTION IN AUSTRALIA: CASES, COMMENTARY AND MATERIALS

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SECOND EDITION

Published in Sydney by
Thomson Reuters (Professional) Australia Limited
ABN 64 058 914 668
100 Harris Street, Pyrmont, NSW

First edition 2005

Second edition 2009

National Library of Australia
Cataloguing-in-Publication entry
Dispute resolution in Australia: cases, commentary and
materials /
David Spencer, Samantha Hardy.
Edition: 2nd ed.
ISBN: 9780455226118 (pbk.)
Series: LBC casebooks.
Notes: Includes index.
Dispute resolution (Law)—Australia. Arbitration and
award—Australia. Mediation—Australia.
347.9409

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Product Developer: Sarah Hullah
Publisher: Robert Wilson
Printed by Ligare Pty Ltd, Riverwood, NSW



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I dedicate this book to Mary-Anne, Millicent and Prudence.

"Educate and inform the whole mass of people. Enable them to see that it is to their interest to preserve peace and order ... They are the only sure reliance for the preservation of our liberty."

(Thomas Jefferson in a letter to George Washington, 4 January 1786.)

David Spencer

I dedicate this book to Ange, who never lets me forget the really important things in life.

Samantha Hardy

PREFACE

The second edition of *Dispute Resolution in Australia: Cases, Commentary and Materials* reflects the changing climate of dispute resolution across the globe and in Australia. It also reflects a change in the authorship of the book with Associate Professor Tom Altobelli no longer being co-author, due largely to his elevation to the bench as a Federal Magistrate. Tom is a pioneer and doyen of dispute resolution in Australia and is sorely missed as co-author. Some of the material Tom first included in this book remains and in that respect this book will always have a little bit of him in it and is a worthy testament to his dedication and professionalism in the field of dispute resolution and the law. However, like dispute resolution itself, co-authorship of a book such as this is a dynamic activity and it is with great delight that Associate Professor Samantha Hardy joins Professor David Spencer as co-author. Samantha brings a wealth of experience and insight into the task of co-authorship and will hopefully not get picked off as co-author to serve on the bench ... at least not for a few years yet!

As always, the most difficult task in a book like this is not deciding what to include but what to leave out. Dispute resolution is basking in the glory of a more considered analysis and synthesis of its role in society and its impact on other disciplines such as counselling, psychology and the law. There is evidence of more empirically based research and writing emerging which will stand dispute resolution in good stead when it comes time for some of the scholarly debates that need to take place such as those on the issues of neutrality, ethics, accreditation and mandatory court orders for dispute resolution as well as the other burning issues of our time.

The second edition includes commentary and material on the vanishing trial phenomenon, the new national accreditation standards, recent family law developments and some new cases to emerge that assist in the development of the law of dispute resolution. Further, there are more hybrid forms of dispute resolution that have developed, such as collaborative law, and extracts that evidence the expanding body of knowledge, both empirical and doctrinal, making dispute resolution part of the landscape of how society operates at the community, commercial, political and legal levels. Finally, it includes an expanded chapter on ethics and a new chapter on the future of dispute resolution that documents the move from dispute resolution to more pro-active preventative approaches such as conflict coaching and advocacy.

David would like to thank Deidre Petrakis, and Sam would like to thank Alex Azarov and Claire Holland for their assistance in the research and preparation of the second edition of the book.

Naturally, two co-authors produce different styles of writing and at times that may be apparent. It was intentional to leave those stylistic differences in place for the sake of autonomy and to challenge readers to pick which author wrote which chapter. To the best of our knowledge the law is correct as of 1 March 2009.

PROFESSOR DAVID SPENCER
ASSOCIATE PROFESSOR SAMANTHA HARDY

Melbourne
March 2009

ACKNOWLEDGMENTS

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