EDITORIAL

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The importance of dealing with conflict through means other than litigation has become increasingly recognised both in Australia and internationally. This is reflected in the title of this edition, as the emergence and prevalence of non-litigious dispute resolution mechanisms makes the term '*alternative* dispute resolution' somewhat misleading. By focusing on the appropriateness of various dispute resolution methods, we hope this issue will provide a 'strategic architectural approach' in the landscape of a single, unified dispute resolution system.[1] Consequently, it is especially fitting that this *Forum* begins with Chief Justice Bathurst's article, which examines the ways in which the courts and alternative dispute resolution ('ADR') processes complement one another.

The impetus for this *Forum* came from not only our interest in this area of law but also recent, important legislative developments aimed at fostering early dispute resolution. In 2009, the *Access to Justice (Civil Litigation Reforms) Amendment Act 2009* (Cth) was passed by Parliament.[2] Then in 2011, the *Civil Dispute Resolution Act 2011* (Cth) – which has the object of ensuring that 'as far as possible, people take genuine steps to resolve disputes before certain civil proceedings are instituted'[3] – commenced. Tania Sourdin's article thus provides a timely consideration of the effectiveness and reasonableness of pre-litigation obligations, exploring whether these types of obligations enable justice system objectives to be met. Recognising that a cohesive dispute resolution system involves effective interaction between mediation and potential litigation, Alan Limbury draws the reader's attention to the current evidentiary 'black hole' in court-ordered mediation. Adding to this discussion, Melissa Hanks brings valuable international and comparative perspectives, reminding us that although such schemes compel parties to enter into the mediation process, they do not mandate an outcome. Consequently, she argues that the success of these reforms require a shift in domestic legal culture.

Recent reforms to the *International Arbitration Act 1974* (Cth) ('*IAA*') and state commercial arbitration acts demonstrate the push to increase the use of

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1 Tania Sourdin, *Alternative Dispute Resolution* (Lawbook, 4th ed, 2012) xi.

2 This was partly in response to National Alternative Dispute Resolution Advisory Council, *The Right to Resolve – Embracing ADR to Improve Access to Justice in the Federal Jurisdiction* (Commonwealth of Australia, 2009).

3 *Civil Dispute Resolution Act 2011* (Cth) s 3.

arbitration in Australia, for both domestic and international matters. Richard Garnett and Luke Nottage scrutinise potential obstacles arising from these reforms, in particular problems created by part II amendments to the *IAA*. By examining Australian case law and comparable developments in Asia-Pacific jurisdictions, the authors recommend a series of further reforms.

This edition also highlights growing controversies in the international investment arbitration space. Leon Trakman critiques the Australian Government's policy shift away from investor–state dispute procedures towards domestic courts, and warns this could jeopardise Australia's participation in multilateral investment treaties. Australia's proximity and dependence on the Asian region promulgates the need for an exploration of available dispute resolution mechanisms. The article by Micah Burch, Luke Nottage and Brett Williams insightfully focuses on the appropriateness of treaty-based dispute resolution systems in this context; in particular, the extent to which enhanced transparency may lead to settlements or more appropriate management of cross-border disputes across bilateral, regional, investment and double-tax treaties.

Through this collection of articles, we hope that this *Forum* will provide a conduit, not only to explore controversial issues relating to ADR mechanisms, but also a discussion of their appropriateness in resolving domestic and international disputes.

The dedication and enthusiasm of a large number of people have made this publication possible. We thank our colleagues on the Editorial Board for their time and effort in editing the issue, and particularly to the Executive Team for their wise counsel and commitment throughout the production process. We are sincerely grateful to Michael Legg for his aid in the initial planning of this edition; to Michael Handler and Lyria Bennett Moses, the *Journal*'s faculty advisors, and David Dixon, Dean of the UNSW Law Faculty, for their constant and much-appreciated support of the *Journal*. Most importantly, we would like to thank the anonymous referees (whom if it weren't for the nature of their role, we would thank personally), and the contributors to this *Forum*, who together form the intellectual lifeblood of this edition.