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CIVIL PROCEDURE

Alternative Dispute Resolution

Mediation

- Definition (CPA s25): a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute
- CPA s26: (1) the court may, by order, refer any proceedings before to mediation, (2) the mediation is to be undertaken by a mediator agreed to by the parties or appointed by the court
- Section 27: it is the duty of each party to participate in good faith

Arbitration

- Court-annexed arbitration was introduced into NSW on 1 July 1983 with the Arbitration (Civil Actions) Act 1983 (NSW). These provisions were moved to CPA.
- Civil Procedure Act 2005 (NSW)
 - o S37: The jurisdiction conferred on an arbitrator is part of the jurisdiction of the court
 - o S38: Court may order that proceedings before it be referred to an arbitrator
 - o S39: the arbitrator makes an award that records the determination and reasons in writing, and is signed.
 - o S42: a dissatisfied party in an arbitration can apply for rehearing in court by application of notice of motion

Principles of Case Management

Ashby v Commonwealth of Australia (abuse of process examples)

Proceedings that are unfairly burdensome, prejudicial or damaging, that are employed for an ulterior motive, or processes are employed in an improper way that would bring the administration of justice into disrepute among right thinking people

Civil Procedure Act 2005 (NSW)

Section 56: overriding purpose

- (1) The overriding purpose of this act and the rules of court are to give effect to the 'just, quick and cheap' resolution of the real issue in proceedings
- (2) The court must seek to give effect to the overriding purpose when it exercises its power
- (3) Parties to a civil proceeding is under a duty to assist the court and comply with directions
- (4) Persons who must not cause the parties to breach their duty:
 - a. Solicitors and barristers
 - b. Any person with a relevant interest in the proceedings
- (5) The court may take into account any failure to comply with respect 3) and 4) with discretion as to costs

Section 57: all cases must be managed by the court

- (1) Proceedings are to be managed having regard to the following objects
 - a. Just determination of proceedings
 - b. The efficient disposal of the business of the court
 - c. The efficient use of judicial and administrative resources
 - d. Timely disposal of proceedings at a cost affordable to parties

Section 58: dictates of justice

- (1)(a) in making any order

- (i) amendment of a document
- (ii) adjournment or stay in proceedings
- (iii) any other order procedural in nature ...

Must seek to act in the dictates of justice