

5.4 Summary

In the exercise of its discretion, a Court will take the following factors into account when evaluating whether a s110K order for compulsory mediation is appropriate:

- the circumstances at the time of the proceedings, rather than the circumstances at the time the contract was entered into;
- whether the issues between the parties have been identified;
- whether the interlocutory disputes have been largely resolved;
- the anticipated length of the trial, expenditure, and court costs;
- the stage to which the proceedings have progressed;

- whether mediation can offer resolution to matters that the court cannot provide relief for;
- the public benefit in compulsory mediation to the legal system and process; and
- whether mediation may offer the parties a more commercially attractive solution.

6 Conclusion

A key factor in the performance of any contract is the avoidance of disputes. An effective way to minimise disputes is to plan for them in advance by conducting a risk analysis of the particular project. Establishing clear responsibilities, liabilities, remedies and lines of communication is vital to

implement and maintain a healthy contractual framework.

Dispute resolution clauses must be clear enough to be carried out by the parties or enforced by one party if the other brings court proceedings without following the agreed procedures. Whilst a court has the ability to order mediation, it will exercise its discretion in the circumstances. A clear, workable contract is always the better option.

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Copyright Amendment (Parallel Importation) Bill 2002 (Cth)

Under the current Copyright Act 1968 (Cth) (**the Copyright Act**), it is an infringement of copyright to import non-infringing copies of software and, in limited circumstances, books for sale, hire, distribution, or trade exhibition without the permission of the copyright owner or an exclusive licensee.

In 1998, the Federal Government amended the Copyright Act to permit the parallel importation and sale of legitimate copies of sound recordings. In order to extend the application of a policy of limiting parallel importation restrictions, the Copyright Amendment (Parallel Importation) Bill 2002 (**the Bill**) was introduced to the House of Representatives on 13 March 2002.

The Bill proposes to amend the Copyright Act to enable the legal

parallel importation and subsequent commercial distribution of non-infringing computer software products (including interactive computer games but excluding "feature films"), books, periodical publications and sheet music. If the Bill is introduced in its current form, where a copyright owner brings an action for copyright infringement in relation to such works, there will be a presumption that the relevant work is a non-infringing copy in the country in which the work was made.

The objective of the Bill is to counteract the perceived market control which copyright owners exert over the distribution of imported copyright material. According to Senator Alston, the Minister for Communications, Information Technology and the Arts, the current

copyright law creates a lucrative distribution monopoly for foreign multinationals and prevents local retailers from sourcing cheaper copyrighted materials from overseas, even though individuals may make purchases directly over the internet. The Australian Competition and Consumer Commission has found that Australians pay significantly higher prices than international consumers for software and electronic books. For example, Australians have paid 27% more than US consumers for packaged business software, 33% more for personal computer games, and 23% more for electronic books.

The Bill has been deferred for consideration.

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