

President's message



For many years there has been debate in the Institute on how best to reflect the range of skills and expertise of members involved in the diverse number of dispute resolution processes. An obvious question was whether the name 'The Institute of Arbitrators Australia' reflected that diversity. There was also concern not to lose the emphasis on the usefulness of arbitration as a method of resolving matters in dispute in circumstances where agreement between the parties could not be reached. There was a desire to emphasise arbitration as the only alternative dispute resolution

process which could provide a final determination as would a judgment in litigation. There was also a desire to emphasise the flexibility of arbitration; the ability to adapt proceedings to the needs of the parties in all types of disputes in a manner which is generally not possible as part of the litigation process. This is, of course, on the basis that properly trained and experienced arbitrators offer a broad range of skills and procedures from dispute assessments at one end of the spectrum, adjudication by a tribunal with a high level of technical expertise with respect to matters in dispute towards the middle, and right across the spectrum to something in the nature of the litigation model. Advantages are available even in the type of arbitration that closely mirrors litigation, including confidentiality and expedited procedures adapted to particular needs, and with a tribunal of the parties' choice. The other principal areas of alternative dispute resolution currently offered by the Institute are expert appraisal, mediation and conciliation. Rules and procedures have been developed by the Institute and are offered for use by parties in these processes.

It is generally accepted now that in civil litigation, mediation should be pursued as an essential first step. This is not to say that mediation will necessarily achieve an agreed settlement but it may, and often does, assist the parties to appreciate other positions and ultimately settle the proceedings, or it may enable the issues to be narrowed so that the eventual trial is more focused, quicker and less expensive. The same applies with respect to arbitration proceedings. The experience in Victoria with court-referred mediation is that generally, a fairly high success rate has been achieved although there are some variations between courts and between types of matters mediated. Also, in Victoria the experience with the compulsory arbitration and conciliation system under the *Retail Tenancies Act* is that conciliation has been very successful and has achieved a settlement rate of between 70% and 75% in proceedings which are able to be convened very quickly and which last, on average, for about three hours. The cost-effectiveness of these processes is clear. Given the increased and successful use of mediation, it was

thought necessary that it should receive greater emphasis within the Institute. A person who wishes to become an accredited mediator with the Institute must undertake a recognised mediation course, successfully pass an examination on mediation ethics, be interviewed by a panel of experienced mediators and, if so recommended, be approved for listing by the National Council. The process is managed carefully and it does not follow that a person who has completed a mediation course will necessarily be accredited unless this process has been satisfied. The Institute must be confident of the person's knowledge, experience and performance as a mediator.

As a result of further assessment of the Institute's role, it became clear that there was strong support for a change in the name of the Institute to 'The Institute of Arbitrators & Mediators Australia'. This change was finally approved at an Extraordinary General Meeting of members of the Institute held on 1 December 1997.

The opportunity was also taken at that meeting to review the membership structure of the Institute. As a result, the Articles of Association were amended to include a new membership category called 'Member' to distinguish between members who are graded and accredited and those members who are not. Members who are not graded or accredited will continue to be called Associates. Other membership categories, such as Fellow, remain.

Another important change made was in the title of our Chief Administrative Officer. The new title is Chief Executive Officer, which more accurately reflects the present role of Leigh Cunningham in that position.

The establishment of the National Education Program is continuing and when you read this message arrangements will have been finalised to commence the national 'semester' based courses in all States in about the middle of 1998. Further details will be provided to Chapters in the meantime.



Dr Clyde Croft, President