



Editor's Commentary

Russell Thirgood, Editor

Welcome to this final issue of *The Arbitrator & Mediator* for 2004 – a year that has passed by at seemingly incredible speed!

Throughout the year a common theme has emerged. Most submissions to the journal have explored ways in which alternative dispute resolution (ADR) can be improved to ensure that those who use ADR services (and indeed the community at large) can have a product which is cost effective, quick, fair, reliable and user-friendly. It is within this context that the Institute held its 2004 conference, 'New Directions in ADR' – which I might add has produced a number of high quality papers, some of which we have been able to publish in the journal.

At times, it seems as though this quest to refine ADR to produce the 'perfect product' is as elusive as finding the Holy Grail. Like those who have sought to uncover the Grail, our search has taken us through various countries and cultures. In Craig Pudig's paper, 'Domestic Lessons from International Arbitration', we learn, in part, of the Asian influence in modern ADR. This influence has led many ADR practitioners to introduce a level of 'flexibility' into the process to ensure that disputes are settled and not adjudicated. Those of us who have spent time searching for the Grail in 'western' countries, and who are well-versed in the adversarial system, immediately see the pitfalls of breaching that sacred and revered concept of natural justice – something which, throughout the Ages, has been held up as if it contained all of the secrets of the Universe. At times, it seems as though ADR is at the epicentre of the clash of competing civilisations and philosophies. How then, against that backdrop, can we possibly find 'the solution' that we have all been looking for?!

But the search goes on and in this edition of the journal we start by receiving an update from the United Nation's Commission on International Trade Law (UNCITRAL), as it gets ready to celebrate the 20th anniversary of the adoption of the Model Law. Corrine Montineri and Franca Musolino analyse ways in which the Model Law can be strengthened with respect to interim measures of protection. Scott Ellis then explores ways in which arbitrators can deal with the curse of the self represented party – something that surely is an obstacle (or maybe a blessing in disguise) for finding the answers that we are looking for. While these two papers deal with discrete and specific issues, and it certainly is a truism that 'the devil is in the detail', the submissions from Craig Pudig and Robert Hunt (both papers that were originally presented at this year's national conference) go to the heart of the quest before us by examining what's wrong, what's right and what can be done about arbitration and ADR.

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Well, if all of that is not enough to ensure that your journey is very interesting, but perhaps rather confusing, finally some clarity. Enter Max Tonkin and Mal Ferrier. For Tonkin and the Department of Commerce, the Grail is staring us all in the face and has been for the last ten years – quite simply it is expert determination, of course! But, if we are to believe Ferrier, then all that is needed is an interpretive engineer to unlock the codes and riddles that are before us.

I hear the sighs from my Queensland colleagues in the far north of this great continent! During intensive training over the last year the Queensland chapter has discovered that, at least in respect of the construction industry which has been such a wonderfully fertile land, all will be revealed and the meaning of life itself discovered provided that claims are made pursuant to the *Building and Construction Industry Payment Act 2004* and the adjudication process is followed. To satisfy the Queenslanders (and I am a proud member of that Chapter) we have included a number of case notes from our southern colleagues who have known such truths for a number of years now.

I hope you enjoy this final edition of the journal for 2004 as I have. Many thanks are extended on behalf of the journal committee to all those who have contributed papers over the year and have made the journey so fascinating. As to whether or not there is a Holy Grail, I suspect that is a question that perhaps can never be answered. On a practical level, each case is different and the more journeys that each of us undertakes, and the more we learn from the experience of others, the more likely we are to at least survive to join the next quest. We may never find the Grail, but at least we can enjoy looking for it, share the stories along the way, point out to our colleagues some of the dry gullies and perhaps resolve a few skirmishes along the way. That, ultimately, is the aim of the Institute and this journal.

On behalf of the Journal Committee I wish you a happy and peaceful festive season.