



Editor's Commentary

Russell Thirgood, Editor

Greetings and welcome to the first edition of *The Arbitrator & Mediator* for 2005.

As I write this editorial just two days before my wedding, amidst the excitement and commotion of preparing for the big day, the appreciation of good interpersonal skills is heightened. In some ways, a wedding is a microcosm of life itself. Emotions of family members and friends are at a high point. Navigation through the tricky issues of a wedding is a difficult exercise. Who to invite? Where to sit them? Who not to invite? What should the composition of the bridal party be? Will all family members behave themselves for one night? Please God – give us the wisdom of Solomon!

In many ways, preparing for a monumental event such as the wedding ceremony and reception is not necessarily about making the right decisions. I'm sure my beautiful wife-to-be and I have made many mistakes – such as agreeing to allow our two dogs to attend the ceremony. But the real art is to enjoy the journey. In this regard, I'm particularly conscious that it's not the attainment of something but rather the journey, or the process, which is important. In many ways, a similar attitude needs to be taken towards resolving conflict.

As a lawyer, trained to see 'the issues' at an early stage, it is often quite easy to know what the 'outcome' of a dispute should be, in terms of legal merit, at a very early stage – often months or even years before the dispute is resolved. Getting to that point is another matter entirely. That is where the skill of crafting the right process for the right dispute is so important. In my experience, sophisticated members of the business community and society in general are gaining or already hold a real understanding of the value of alternative dispute resolution. It is common for clients to come to their lawyer with not only a briefing on the corporate objective and substantive issues in dispute, but also a strategy as to the process that ought to be followed in achieving a mutually acceptable outcome.

Many (if not most) problems do not have a 'legal solution'. Traditional adversarial processes simply do not have the capacity to (and, in any regard, ought not) deal with the multitude of 'people' or emotional issues that are inherent in every dispute. Accordingly, alternative dispute resolution practitioners, and particularly mediators who are well versed in administering and facilitating ADR processes, are very valuable in not only resolving the substantive issues in dispute, but also appropriately dealing with the 'human issues' which, if not addressed, can compromise the entire process.

It is in this light that I'm particularly pleased that readers of this edition of the journal will benefit from a number of articles and practice updates concerning mediation that have been written from differing perspectives. From the perspective of how ADR is taught to future practitioners, Kathy Douglas, lecturer at RMIT University, has written about 'Mediation as Part of Legal Education: the

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Need for Diverse Models.’ From a practical perspective of how to best prepare for mediation, Judge Eric Pratt QC and Robert Mills have put together an update on ‘Preparing for Mediation: Lawyer and Client’. And from the perspective of a practising mediator, Claudia Baldwin's paper tackles the issue of ‘How Can We Better Address Values and Interests that Underlie Conflict in a Dispute Resolution Process?’.

Along with the mediation articles mentioned above, this April edition of *The Arbitrator & Mediator* contains a range of articles, case notes and a book review dealing with a broad spectrum of topics such as the immunity of experts, electronic arbitral agreements, administrative arbitration, reviewing arbitral awards, the latest court authorities on adjudication and ICC arbitration. On behalf of the journal committee I wish to pass on a big ‘thank you’ to all of our contributors. I hope you enjoy reading this edition as much as I have. And fingers crossed, I won't be needing any dispute resolution services this Saturday!