



NEWSLETTER

Australian Dispute Resolution Association

April 2004

www.adra.net.au

Issue 2

EDITORIAL

Dear ADRA Members

Whoever said time flies wasn't kidding. If anyone unlocks the key to mediating it they will make a fortune.

In one sense that was the point stressed in our most recent seminar, reported in this newsletter. In response to a question about the lawyer's dilemma of reaching a quick settlement at the expense of additional fees, Tom Altobelli argued that a culture of quick settlements could be more cost-effective than a practice full of protracted matters. Another ADRA member puzzled over the mediator's dilemma of always feeling a pressure to reach settlement but internally querying its lasting value in some cases.

These exchanges sum up a central purpose of ADRA. To provide members with a forum for the free exchange of ideas, without a political or professional agenda dominating. While family lawyers are prominent in ADRA, members from counselling, mediating and welfare agencies, government bodies, private practitioners and teachers, all mix and share ideas to the benefit of all.

One of the primary objectives of the ADRA Board's monthly meetings is to ensure that members have thought-provoking seminars to look forward to. You'll see advance notices of our June and August seminars in the newsletter.

Another objective is to share as much information as we can on what is happening in ADR, and in this spirit the newsletter is produced. Our first issue was very warmly received. Keep us informed of events so we can inform members and others.

Have a restful Easter and many successful resolutions.

ADRA Newsletter Committee
Frank Astill, David West, Salli Browning

Though justice be thy plea, consider this,

That in the course of justice, none of us

Should see salvation: we do pray for mercy...

Portia to Shylock, The Merchant of Venice

ADRA SEMINAR. ADR AND THE LEGAL SYSTEM, DR TOM ALTOBELLI, 18 MARCH 2004

One of ADRA's most successful seminars had elements of history and forecast as Tom Altobelli reflected on a decade's involvement in ADR, spoke of his current research, and made predictions about the impact of the new Family Law Rules.

Tom wanted to discover whether a culture of ADR had permeated lawyers' thinking. He surveyed the 256 accredited family law specialists in NSW, asking them to identify matters that would benefit from ADR. He cautioned that there was a gap between the recognition of a benefit and the implementation of the means to achieve it. An example is the "we settle anyway" syndrome: the point being that the real benefit is in early rather than eventual settlement.

History suggested that changes in the administration of family law may be cyclical rather than developmental, but Tom sees the Family Law Rules 2004 as an agent of cultural change because they are so prescriptive. They aim to regulate settlement on principles of fairness and cost and set down procedures that must be followed.

Questions and comments from a highly involved audience of thirty people showed how relevant Tom's presentation was. A prominent practitioner made the point that a decade ago a couple who wanted a clean settlement could get it readily – now that there were so many steps to follow, it was significantly more expensive.

One of Tom's skills is to involve lawyers and non-lawyers in the same fundamental searches for the most appropriate solutions to eternal problems in family disputes.

Many agencies were represented at the seminar, and ADRA President Salli Browning echoed a common sentiment in thanking Tom by suggesting that he follow up with a workshop to tease out many of the issues he had raised.

ADRA EVENTS

24 June 2004. Conciliation in the Industrial Relations Context

Commissioner Janice McLeay, NSW Industrial Relations Commission

26 August 2004. Youth Justice Conferencing

Jenny Bergen, Department of Juvenile Justice

Both seminars will commence with refreshments at 5.30, at the Law Society, 170 Phillip Street, Sydney. For further information, please contact ADRA on 02 9231 5822



THE CHARTERED INSTITUTE OF ARBITRATORS

The Australian Commercial Disputes Centre (ACDC) has assumed responsibility for the administrative functions of the Australian branch of the Chartered Institute of Arbitrators, with ACDC's CEO Bernhard Ripperger taking on the role of Executive Officer for the Institute.

The Chartered Institute of Arbitrators was founded in England in 1915, incorporated in 1924 and granted a Royal Charter in 1979. The Australian branch was formed in 1995. The Institute aims to 'promote and facilitate the determination of disputes by arbitration' and has almost 10,000 members located in 84 branches. Its multi-disciplinary membership includes practitioners in law, construction, architecture, shipping, finance, insurance, commodities, agriculture, accountancy and medicine.

The Institute's Australian branch provides the following services:

- Education and training programs for potential and practising arbitrators
- Maintenance of a panel of arbitrators
- Appointment and nomination service of suitably qualified persons to act as arbitrators
- Nomination service of expert witnesses
- Nomination of adjudicators and mediators
- Setting up and administration of small claims arbitration schemes.

More information is available on the Institute's website www.arbitrators.org.au

DISPUTE RESOLUTION AT LA TROBE

In 2004, La Trobe Law is offering postgraduate programs in Conflict Resolution and Mediation at both its Melbourne City and Bundoora campuses. Programs are vocationally relevant to professionals from backgrounds such as business, education, industry, law, government, health and aged care, human resource management – in fact any occupation that involves conflict as part of human interaction.

The programs combine practice, theory and research in the management of conflict in a variety of settings. As well, they provide an opportunity to develop specialist knowledge and skills. Graduates will be able to identify and analyse potential conflict situations and become skilled in processes with which to handle a range of disputes (both personal and professional).

The intensive workshop-based subjects will be available throughout the year at La Trobe's City campus, located at 215 Franklin Street, Melbourne.

Subjects include: Family Law for Mediators; Mediation; Negotiation; Dispute Resolution; Victim Offender Dispute Resolution; Environmental Dispute Resolution; Advanced Communication Skills; Business Dispute Resolution; Intercultural Aspects of Dispute Resolution; Advanced Family Mediation

The La Trobe website, [www/latrobe.edu.au/law](http://www.latrobe.edu.au/law), has information on timetables, presenters, course outlines, entrance requirements, supervised student placements etc. La Trobe Law's phone number is 03 9479 2284.

BOND UNIVERSITY DISPUTE RESOLUTION CENTRE

The Centre plans to offer its Basic Mediation Course at the Gold Coast in June and December 2004 and in Melbourne in October, and the Advanced Mediation Course at Noosa in early August. Further information and the opportunity to subscribe to the free Bond Dispute Resolution Newsletter can be found on the website: www.bond.edu.au/law/centres

By way of example, Volume 16 of the *Bond University Dispute Resolution News* <http://www.bond.edu.au/law/centres/drc/newsletter.htm> contains these articles:

(1) 'Liability of Mediators for Pressure Drafting and Advice: *Tapoohi V Lewenberg*' by J H Wade

This article analyses the first case in Australia where legal action has been brought successfully against a mediator for alleged negligence.

(2) 'Collaborative Lawyering' – Some Preliminary Thoughts for Australia by J H Wade

This article describes the core element of the collaborative lawyering movement and sets out the advantages and disadvantages of this new 'wave' in the context of Australian culture.

Bond's 2004 postgraduate courses include electives in Chinese negotiation, dispute systems design, mediation, theories and principles of dispute resolution.

A BOOK ABOUT REDUNDANCY & HOW TO COPE WITH IT

A member of ADRA, David West has recently written a book about redundancy.

David works as a psychologist and the book arises from his work with people who have been made redundant. The book lists some of the consequences of redundancy, and then gives practical help. This ranges from advice on getting a new job to how to negotiate a better settlement.

Writing about the book in *The Financial Review* Catherine Fox quotes West: "I wrote the book because I couldn't find anything out there to help people. I wanted information on the emotional aspects and there was nothing. And work is emotional for people. It's central to them. One third of us even find our partners at work".

From an alternative dispute resolution practitioners point of view, the book emphasises that everything is negotiable. There are lots of opportunities for practitioners to help clients negotiate a better redundancy outcome.

But Why Me? by David West, Choice Books 2003. \$20. Available through Choice or at bookshops.

UNITINGCARE UNIFAM MEDIATION PROGRAMS

UnitingCare Unifam will be offering the Framework for Mediation and the Certificate IV in Community Mediation programs starting in May and again in October in 2004. The Framework for Mediation will provide a concise introduction to PDR. The Certificate IV in Community Mediation builds on this introduction whilst exploring a range of subjects including Ethics, Professional Development, and Introduction to Family Law Mediation, Child Inclusive Practice, Domestic Violence, and Specialist Communication Skills. It is a practical course, which features a skills development subject and a placement at UnitingCare Unifam co-mediating with experienced Family and Child Mediators who undertake mediation for property and parenting arrangements post-separation.

The programmes are delivered in Parramatta/Sydney. For further information contact the training department on 02 9633 4555 or check the website: www.unifamcounselling.org

NEW ACDC COURSES 2003-2004

The Australian Commercial Disputes Centre (ACDC) have just released the dates of their forthcoming courses to June 2004. Full details can be found on the website www.acdcld.com.au For further information about ACDC courses call 02 9267 1000 or e-mail info@acdcld.com.au

ADR IN LAW STUDENT COMPETITIONS

Before the ADR/mediation movement took hold, law student competitions were dominated by moots where a point of law was argued before a judge. Now, with a greater focus on the client as central to lawyering, the skills of negotiation, interviewing, and assembling materials for arbitration hearings are forming the basis of the newer wave of competitions over the last decade. The Australian Client Interviewing and Negotiation Competitions for law students were held at the University of Newcastle from 19-21 February 2004. Both competitions emphasise communication skills, the generation of options, finding non-litigious solutions, and future relationships.

Bond University's Sam Holloway and Gavin Davis were judged the best interviewing team, while Sydney University's Law Extension Committee team of Patricia Vagg and Peter Starkey won the Negotiation Competition. Patricia and Peter, studying for the Legal Practitioners Admission Board's Diploma in Law, will represent Australia at the International Negotiation Competitions in Paris in July, while Sam and Gavin are Glasgow-bound for the International Client Counseling Competition in late March. Other Australian teams will converge on Vienna in April. The Vis International Commercial Arbitration Moot is probably the world's most ambitious law student competition, with over 120 teams taking part. The pervasiveness of an adr culture is evident in the growth of these competitions.