

Editor's Message

The content of the Chapter newsletter depends on the material available for publication. All members' contributions are welcome. Case notes, particularly of unreported or unavailable judgments are invited. Book reviews, articles of general interest and notification of activities likely to interest members will also be welcome. It is your Chapter newsletter for you to use to communicate with your fellow members. Send copy to the Editor at: robertknott@smartchat.net.au

Sub Committee Chairman's Reports

The Mediation Practice Discussion Group Convenor Breda Annesley Reports

As part of its "professional business development program", the **Mediation Practice Discussion Group** ("MPDG") decided to take a proactive approach to the topical discussion on "Mediator Accreditation".

This month, the MPDG finalized its' review of the current IAMA Mediator Accreditation Policy. The meetings were well attended, and the various contributions from members provided for good discussion, and at times lively debate! Many thanks to Todd Trevaks and Penny Webster for chairing and facilitating the meetings.

The proposed changes submitted to the Chapter Executive are;

1. Broadening of the policy objectives.
2. Retain single level accreditation.
3. Policy to contain more detailed description of required competencies.

4. Reasons to be given to applicant if unsuccessful.
5. Unsuccessful applicant can re-apply after 6 months.
6. Fees to be clearly published.
7. Introduce IAMA complaints system.

We look forward to receiving a response from the Victorian Chapter Committee.

There will be a report in the next newsletter on the Skills Development Session on the topic "Active listening and Reframing".

All members (not just mediators!) are invited to attend these meetings, and to contribute ideas for topics of discussion.

We hope to see you at the next MPDG meeting. If you have any queries, please contact Breda Annesley on 9600 4921 or by email at breda@solutionist.com.au.

The Adjudicators' Group activity report

convenor Lawrence Reddaway

**Security of Payment and other
matters - Adjudication in 10 Days –
the NSW Experience**

On Wednesday 10th November 2004 Tim Sullivan IAMA National President addressed a group of IAMA Vic Chapter members with some thoughts on his adjudication experiences.

He commented on the significant differences between the Victorian and NSW Acts such as the outcome of the provisions of the NSW Act providing an excellent discovery system for subsequent proceedings or settlement; and the Vic Act's requirement to pay or

Sub Committee Chairman's Reports continued

commence proceedings; together with the Vic Act being based on the NSW Act.

He further commented on the QLD Act being based on the NSW Act but also containing provisions for training and accreditation of adjudicators, and management of adjudications by a Registrar. The training syllabus contains 16 subjects and in the 3-hour examination candidates must gain a pass in all 16. In addition there are three assignments, which must also gain a pass mark. The examination system is anonymous with numbered papers and each failed paper being reviewed by a second examiner and if again failed finally reviewed by the Registrar.

In the NSW experience to date, there have been 61 appealed adjudications on which a court has handed down a judgment out of a total of approx 1200 adjudications

In respect of costs; whilst the Act indicated that parties share on a 50/50 basis many adjudicators use their discretion to award cost. Payment is required in 5 days and judge Mc Dougall in the NSW court of Appeal has ruled that an adjudicator's decision is not reviewable. Ref: Contract Plumbing V.NSW Minister of Commerce

The future role of superintendents, as agents of the principal in contract administration, is becoming doubtful after a ruling in *Burden V. Davenport* In respect of considerations of a superintendent's decision evidenced by certification; such certification was found to be not binding and therefore open to review by an adjudicator. A certificate for payment is not a payment schedule.

A payment schedule must clearly identify all reasons for disputing the claim and must clearly relate to items contained in the claim. Additional reasons cannot be considered after issue of a payment schedule.

Tim commented that at the recent IAMA Conference discussions revealed that in some states adjudication has led to an increase in arbitrations, particularly where principals try to recover money paid as an outcome of adjudication.

Referring back to a comparison between States Tim referred to the WA Act as having a radically different approach

such as introducing implied terms of contract regarding payment processes and procedures for interest on overdue payments, where the contract is silent on such matters.

The WA Act also provides for respondents to submit a second payment schedule and for payment due on an adjudication determination to be enforced by a Registrar's Certification, which can be presented to a court for stamping as a judgment of the court.

In answer to questions Tim indicated that:

A conditional acceptance by an adjudicator is not possible under any of the Acts. Negotiations regarding possible extensions of time or security for costs have to be after the acceptance. Mostly there is no extension of time.

Reasons may be requested at any time even if, at the commencement, they were stated not to be required. It is therefore wise to produce reasons in case they are requested at the last minute.

In dealing with the material submitted it is best to start with the payment schedule which limits the matters at issue. Then move to the Claim for details of the issues raised. Deal with the items in sequence as they arise in the payment schedule rather than selecting items for some reason or other. Following the sequence usually reveals a pattern of recurring issues.

With a very few notable exceptions, a view will be counterproductive. Adjudicators must rely on the evidence presented in support of the payment schedule rather than on their own expertise. An adjudicator is not an expert referee!

Tim Sullivan, President, IAMA
tim.sullivan@contraxgroup.com

International Commercial Arbitration - An Australian Perspective

At a meeting Jointly sponsored by CIArb Australian Branch, IAMA Victorian Chapter and the Victorian Bar Council on Monday 9th November 2004 in the Neil McPhee Room Owen Dixon

Chambers; **Associate Professor of Law at the University of Melbourne Richard Garnett & Dr Gavan Griffith QC**, addressed a very attentive group including members of IAMA Victorian Chapter.

After the meeting those who were able to stay enjoyed further discussion over drinks in the Essoign Club.

Professor Garnett presented the first paper: **“International Arbitration: The Australian Legal Regime”**

He examined the legislative framework in Australia with respect to International Arbitration and commented that in Australia International Arbitration is currently regulated by two legal regimes: The Commonwealth *International Arbitration Act 1974* (IAA) and the Uniform State Legislation (in Victoria the *Commercial Arbitration Act 1984*) (CAA)

He described the relationship of the IAA to the 1958 New York Convention (NYC) on the recognition and enforcement of Arbitration Awards, which is attached to Schedule 1 and Sections 7 & 8 of the IAA and commented that the Convention now has 133 state parties and has effectively become a global law.

The aim of Section 7 of the IAA being to reinforce the arbitral process by limiting the scope of parties to escape their contractual obligations to arbitrate, and together with Section 8 to ensure that a foreign award is enforceable in Australia if it was made in a NYC Country or any other country, if the party seeking enforcement is incorporated or has its principal place of business in a NYC country.

He went on to describe the effect of the amendment in 1989 incorporating the UNCITRAL Model Law on Commercial Arbitration in section 16 and Schedule 2 of IAA. This now has acceptance in 30 countries including four states of USA and, whilst the UK has not adopted it, the English *Arbitration Act 1996* shows strong signs of its influence.

The scope and application of the Model Law in Australia is described in detail as defined in Article 1 para. 3.

This is a broad definition, which enables an otherwise domestic arbitration agreement to be converted to an international one by merely selecting a foreign place of arbitration, or by making a declaration that the subject matter of

the arbitration relates to more than one country.

In practice, although there are few arbitration agreements with a foreign element which will not fall within the terms of the Model Law, it is important to note that where an arbitration agreement does not satisfy the requirements of Article 1 the provisions of the CCA will govern that arbitration. This in itself may have serious consequences for the parties due to the provisions of CAA for greater judicial intervention in the arbitral process.

Under the provisions of Section 21 of the IAA the parties may agree to exclude the provisions of the Model Law by deciding that “any dispute that has arisen between them is to be settled otherwise than in accordance with the Model Law”. This was originally included to provide flexibility to parties but in practice has had unexpected consequences in that by exclusion of the Model Law proceedings have been deemed to come under the provisions of local procedural law. (In Australia the CAA) Singapore has dealt with this by amendment of its Act.

Under the provisions of section s 23 to 27 of the IAA the parties may agree to include provisions such as court enforcement of tribunal ordered interim measures, power of the tribunal to consolidate proceedings and the power to award costs and interest, again to provide flexibility.

To complete the picture reference was made to the International Convention on the Settlement of Investment Disputes (ICSID) which concluded in 1965 and now has 130 state parties. This was enacted in Schedule 3 of the IAA and has the force of law by the provisions of section 32 of the IAA. There have been few ICSID arbitrations since its inception. In Australia the mechanism for enforcing an ICSID award is that provided by section 33 of the CAA.

Professor Richard Garnett.
r.garnett@unimelb.edu.au

Members wishing to have a copy of the paper as presented should contact Professor Garnett.

Sub Committee Activity Reports continued

Dr Gavan Griffith who presented the second paper “**UNCITRAL MODEL LAW OF INTERNATIONAL COMMERCIAL ARBITRATION -COMING OF AGE**” was an Australian representative member of the UNCITRAL Working Group sessions, leading to the adoption of the UNCITRAL Model Law of International Commercial Arbitration at the Commission's 1985 working session in Vienna, that produced the text which was settled by the Commission of UNCITRAL, and sanctioned by the United Nations General Assembly in the same year.

His paper provides a personal perspective on developments from the 1958 New York Convention to the 1989 UNCITRAL Model law of International Commercial Arbitration up to its adoption

at the present time by 130 or so contracting states to the New York Convention including its incorporation by enacting the entire UNCITRAL Model Law as a Schedule to the Commonwealth Act, with a few minimal provisions intended to support the law's operation in Australia.

Dr Griffith advised that IAMA National had commissioned his paper for publication in their National newsletter, to which you are referred for the full text.

Gavan Griffith QC Griffithqc@aol.com

NB Those needing more information may wish to refer to details of some useful websites on page 8.

Defence Lunch

Lawrence Reddaway Reports

A family and a business in total crisis: How could IAMA respond to an appeal for help? Send a mediator or an arbitrator? a man or a woman? At lunch at the Officers' Mess at Victoria Barracks on 11 October, Jon Kenfield took an eclectic group of 23 IAMA members through a scenario that challenged us to question our prejudices and appreciate how some problem situations are beyond a simplistic 'mediator or arbitrator' solution.

We soon realised that sometimes there

might be a benefit from a 'dispute resolver consultant' being engaged in the first instance. This was, as usual, a thoroughly enjoyable and truly thought-provoking, development in the DD @ D tradition of Discussing Disputes @ Defence. Thanks to IAMA member Robert Turner, and to the Barracks, for allowing us to meet in a fine surroundings. Let's hope that next year's DD @ D is at least as good as 2004!

Lawrence Reddaway
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Security of Payment legislation and adjudication

Judgment of
His Honour
Judge Frank
Shelton

**A County Court
Judgment on an
Adjudication matter**

Considering, amongst other things, the definition of a progress payment

Together with His Honour's subsequent order to the parties follows on the next 3-1/2 pages

THE CONCRETE PANEL CO PTY LTD V ADVANCED STORAGE SYSTEMS (VIC) PTY LTD

JUDGE: HIS HONOUR JUDGE SHELTON
DATE OF HEARING: 23 February 2004
DATE OF JUDGMENT: 30 March 2004

REASONS FOR JUDGMENT

Catchwords: Summary Judgment Application –
Building and Construction Industry Security of Payment Act 2002, s.16

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Plaintiff	Mr J A Twigg	Giannakopoulos
For the Defendant	Mr D G Henshall	Aughtersons

HIS HONOUR:

This is an application for summary judgment pursuant to Order 22. The application is based upon S.16 of the *Building and Construction Industry Security of Payment Act 2002* (“the Act”). There is similar legislation in force in New South Wales, the *Building and Construction Industry Security of Payment Act 1999*.

In *Leighton Contractors Pty Ltd v Campbelltown Catholic Club Limited* [2003] NSW SC 1103, Einstein J, at paragraph 69, referred to “the series of cases spawned by this legislation”. By contrast, I am told that this is the first occasion upon which the Act has come under judicial consideration in Victoria.

The purpose of the Act, which came into operation on 31 January 2003, (S.2(2)) is stated as follows in S.1 :

“The main purpose of this Act is to provide for entitlements to progress payments of persons who carry out construction work or who supply related goods and services under construction contracts.”

The Act further provides in S.3 :

“Object of Act

(1) The object of this Act is to ensure that any person who carries out construction work or who supplies related goods and services under a construction contract is entitled to receive, and is able to recover, specified progress payments in relation to the carrying out of that work and the supplying of those goods and services.

(2) The means by which this Act ensures that a person is entitled to receive a progress payment is by granting a statutory entitlement to that payment in circumstances where the relevant construction contract fails to do so.

(3) The means by which this Act ensures that a person is able to recover a progress payment is by establishing a procedure that involves--

(a) the making of a payment claim by the person claiming payment; and (b) the provision of a payment schedule by the person by whom the payment is payable; and

(b) the provision of a payment schedule by the person by whom the payment is payable; and

(c) the referral of any disputed claim to an adjudicator for determination; and the payment of the amount of the progress payment determined by the adjudicator or the setting aside of money as security for payment of the progress payment; and

(d) the recovery of the progress payment in the event of a failure to pay.

(4) It is intended —

(a) that this Act does not limit any other entitlement that a person may have under a construction contract, or any other remedy that a person may have for recovering that other entitlement; and

(b) in particular —

(i) that the payment of money as security does not prejudice any claim, counter-claim or defence that may be raised in proceedings (including arbitration proceedings or other dispute resolution proceedings) concerning the work or the supply of goods and services to which the payment claim relates; and

(ii) that the payment of the amount of the progress payment determined

(ii) by the adjudicator is allowed for in any proceedings (including arbitration proceedings or other dispute resolution proceedings) brought under the construction contract concerning the work or the supply of goods and services to which the payment claim relates.”

(5) The approach to be taken to a summary judgment application is stated by the High Court in *Fancourt v Mercantile Credits Ltd* (1983) 154 CLR 87 at 89 as follows:

“The power to order summary or final judgment is one that should be exercised with great care. It should never be exercised unless it is clear that there is no real question to be tried.”

(6) In my view, in this proceeding there are questions to be tried which make it appropriate that the defendant should have leave to defend.

(7) By standard SC6 Sub-Contract Agreement dated 11 June 2003, (“SC6”) the plaintiff agreed to carry out in situ concrete works for the defendant builder at Mornington. In SC6 the plaintiff is named as “Concrete Panel Company Pty Ltd” and the defendant as “Advanced Storage Systems Pty Ltd”. No issue was raised as to the slightly incorrect description of the parties in SC6. Surprisingly, affidavit material initially filed on behalf of the plaintiff alleged contractual arrangements between the parties based rather upon an exchange of letters and a telephone call and makes no reference to SC6. However, the plaintiff took no issue that SC6, which incorporated some of the correspondence between the parties in it, governed the contractual relationship between the parties.

(8) The plaintiff’s claim is for the sum of \$115,765.46, and is contained in an invoice dated 30 September 2003 (“the second invoice”). The second invoice sets out the original contract amount and then refers to variations, incomplete works, GST and amounts paid, leaving a balance outstanding of \$115,765.46. The claim is stated to be made under the *Act* as required by s.14 (3)(c). A party served with a claim under the *Act* can dispute the claim by providing “a payment schedule” (s.15). No such payment schedule was provided by the defendant within the time limited by S.14(4)(b). Section 15(4) provides, in effect, that in the absence of such a payment schedule the progress payment claimed is payable on the date due for payment under SC6. Section 16(2)(a) then provides that a party such as the claimant “may recover the unpaid portion of the claimed amount from the respondent, as a debt due to the claim of, any competent jurisdiction”.

(9) The second invoice causes me concern.

(10) It would appear to be a final claim rather than a progress claim. Although dated 30 September 2003, Michael Sydney Shone, a director of the plaintiff, deposes in his affidavit sworn 6 February 2004 that in fact it was not forwarded to the defendant until on or about 14 October 2003.

It is very significant, in my view, that, on 14 October 2003, the defendant sent the plaintiff a letter which stated:

“We wish to confirm that there are no resources on site today to carry out your subcontract works”.

Further to our letter dated 13 October 2003, the remaining concrete works i.e. 2 nos building slabs for Buildings “G” and “H”, all driveways slabs and curbs will be deleted from your subcontract in accordance with Clause 8 of the subcontract conditions. In addition, all defect rectifications works carried out by us on your behalf will be back charged to you.”

(11) Clause 8 of SC6 is entitled “Defaults by Sub-Contractor”. The works stated in the letter of 14 October 2003, to be deleted are the works referred to in the second invoice as “incomplete works”. The second invoice appears to be a claim for a final payment, which envisages that no further works will be carried out under the subcontract, rather than a claim for a progress payment. Paul Damiani, construction manager of the plaintiff, in an affidavit sworn 23 February 2004, appears to admit as much. The second invoice is to be contrasted with an invoice also dated 30 September 2003 (“the first invoice”) which the plaintiff sent to the defendant and which Jeremy Lai, general manager of the defendant, in an affidavit sworn 19 February 2004, referred to as a progress payment claim “made” on or about 30 September 2004. The first invoice, which is stated to be “Claim #C4” is for the sum of \$32,627.43, is based upon a percentage of works completed and allows for a retention sum. In his affidavit of 23 February 2004, Damiani refers to the first invoice as the fourth progress claim under the contract and refers to the second invoice for \$115,765.46 as a “progress claim under the *Act*”. (I do not pause to consider whether the plaintiff was entitled to forward to the defendant two payment claims, each dated 30 September 2003).

(12) There is a real issue as to whether the *Act* applies to a final claim such as the second invoice would appear to be. Sections 1 and 3 quoted above refer to progress payments, as do other provisions of the *Act*, which suggest that the *Act* is concerned with progress rather than final claims and payments. The definition section of the *Act*, s.4, is of little assistance in that it defines “progress payment” as meaning “a payment to which a person is entitled under s.9”. Part 2 of the *Act* is entitled “Rights to Progress Payments” and Part 3 is entitled “Procedure for Recovering Progress Payments”.

(13) In *Jemzone v Trytan* (2002) NSWSC 395, Austin J, at paragraph 37, stated:

“The definition of ‘progress payment’ is unhelpful, because s.8 confers an entitlement to payment only for a ‘progress payment’, without further defining or explaining those words. In my opinion the words ‘progress payment’ when used in s.8 and other parts of the *Act* should therefore be given the meaning that they have under the construction contract”

If the *Act* was intended to apply in the case of the final payment on practical completion, it would have been a simple matter for the drafter of the statement of the object of the *Act* in s 3(1) to refer to the entitlement to receive all payments due under the construction contract, rather than only ‘specified progress payments’.”

(14) I note that in her second reading speech on the Bill to introduce the *Act*, the Minister states that the Bill is modelled on the New South Wales *Building and Construction Industry Security of Payment Act 1999* (Hansard, 23 April 2002, T1049). This gives added weight to the comments of Austin J., so far as the *Act* is concerned.

(15) Jeremy Lai deposes that the defendant has a set-off to the plaintiff's claim and a counterclaim based upon delays in performing the works and defects in the works carried out. The plaintiff disputes the defendant's contentions. It may well be appropriate for the defendant to have the right to raise these issues at the end of the contract in an endeavour to defeat a claim for payment by the plaintiff.

(16) There is a further issue. In *Jemzone*, Austin J. stated, at paragraph 43 :

(17) "S.13(2)(a) requires the payment claim to identify the construction work to which the progress payment relates. In my opinion, this requires the claimant to identify the particular work that is the subject of the progress payment, rather than simply to identify in general terms the work that is the subject of the construction contract as a whole At no stage is there any statement purporting to identify the work carried out since the making of the last payment claim." S.14(3)(a) of the *Act* is in similar terms to S.13(2)(a) of the New South Wales *Act*. The second invoice clearly does not comply with the requirements stated by Austin J.

(18) There are real questions to be tried here.

The defendant is given leave to defend. I will make appropriate directions for the further conduct of this matter.

Further directions were made as follows: ORDER OF HIS HONOUR JUDGE SHELTON

DATED THE 30TH DAY OF MARCH 2004

UPON HEARING

Mr J. Twigg for the Plaintiff and Mr D. Henshall for the Defendant

I DO ORDER AS FOLLOWS

1. Dismiss the Plaintiffs Application made pursuant to Order 22.
2. The Defendant is granted leave to defend.
3. That the Plaintiff be granted leave to file and serve an Amended Statement of Claim on or before 21 April, 2004.
4. That the Defendant file and serve its Amended Defence and Counterclaim on or before 21 May 2004.
5. That the Plaintiff file and serve any Reply and Defence to Counterclaim on or before 14 June 2004.
6. That the parties on or before 30 June 2004 each swear file and serve an affidavit of documents. Such affidavit is to specify all documents in the party's possession or power, as well as to further specify all documents on which it seeks to rely at trial and documents, which may be injurious to its case or to any other party's case.
7. That the proceedings be referred to a Mediator to be appointed by agreement between the parties, failing such agreement to a Mediator appointed by the Court. 8. That such mediation be held on or before 30 July, 2004.
9. That the Mediator must, before proceeding, inform all parties of the amount of the fees to be charged in respect of the Mediation. Such fees, as agreed, shall be paid equally by the parties and the Mediator may decline to proceed until the whole of the fees are paid.
10. Subject to the terms of this Order the solicitors for the Plaintiff shall take all necessary steps to ensure that the mediation commences on the date and time appointed and deliver a copy of all pleadings to the Mediator.
11. Subject to the terms of this Order, the solicitors for the Defendant shall take all necessary steps to ensure that the mediation commences on the date specified.
12. Those persons who have the ultimate responsibility and authority for deciding whether to settle the dispute and the terms of any settlement and the lawyers who have the ultimate responsibility to advise the parties in relation to the dispute and its settlement must attend the mediation.
13. That in the event that the proceeding settles at or after mediation the Plaintiff shall have the obligation of notifying the court of the settlement prior to the trial date.
14. That subject to the direction of the Trial Judge in the event that the mediation fails to settle the dispute the costs of the Mediation shall be costs in the cause.
15. That the Mediator within 7 days from the date of mediation complete the "Notice of Mediation Result" and file it with the Court.
16. That all parties to these proceedings serve on all other parties all expert reports as to damages and liability upon which the parties intend to rely together with all supporting documentation 14 days prior to the mediation.
17. That there be a final service by all parties to this proceeding of expert reports as to damages and liability upon which the parties intend to rely together with all supporting documentation on or before 21 October, 2004 and that no report not so served by that date shall be led in evidence or relied upon in cross examination or in any other way at trial by any party except by leave of a judge or by consent of the parties.

18. That the proceeding shall be fixed for trial on 4 November, 2004 as a cause (estimate 8 days).
19. That the Plaintiff shall pay a Trial Fee of \$433.00 on or before 27 April, 2004.
20. That in the event that the Trial Fee be not paid by the date fixed by this Order, then subject to any Order to the contrary by the Judge in Charge of the Building Cases Division, the Trial date fixed by this Order is vacated.
21. That each party shall serve a Court Book on or before 1 November 2004 and file the Book on the day of the Trial. Such court books shall contain the documents specified in Rule 34A.31(a), (b) and (c); Rule 34A.32(a), (b) and (c) as well as copies of each document the parties intend to tender in evidence pursuant to Rules 34A.31 (d) and 34A.32(c).
22. That there be liberty to apply to the Judge in Charge of the Building Cases Division.
23. That the costs of the Summary Judgment Application be costs in the cause.
24. That the Plaintiff to pay the Defendant' s costs of, and occasioned by, amending its Defence pursuant to this Order.

His Honour Judge Shelton

Some useful websites

ICCA -The International Council for Commercial Arbitration: <http://www.arbitration-icca.org/>

The Permanent Court of Arbitration website also dedicates a page to the limited subject of ICCA' s publications at: <http://www.pca-cpa.org/icca.htm>

The 1985 UNCITRAL Model Law on International Commercial Arbitration

<http://www.uncitral.org/english/texts/arbconc/ml-arb.htm>

LCIA – The London Court of International Arbitration.

The 1998 LCIA Arbitration Rules:

<http://www.lcia-arbitration.com/town/square/xvc24/rulecost/arbitration.htm>

The 1998 LCIA Mediation Rules:

<http://www.lcia-arbitration.com/town/square/xvc24/rulecost/mediation.htm>

IFCAI -The International Federation of Commercial Arbitration Institutions

On the site of the American Arbitration Association:

<http://www.adr.org/rules/international/0005aa.ht>

ICSID -The International Centre for Settlement of Investment Disputes

General: <http://www.worldbank.org/icsid/>

Basic Documents: <http://www.worldbank.org/icsid/basicdoc/basicdoc.htm>

Additional Facility: <http://www.worldbank.org/icsid/facility/facility.htm>

General bibliography: <http://www.worldbank.org/icsid/pubs/bibliogr/main.htm>

Bibliography on bilateral investment treaties: <http://www.worldbank.org/icsid/pubs/treatbibl/main.htm>

ICSID Arbitration and Conciliation Rules and related Rules:

<http://www.worldbank.org/icsid/basicdoc/basicdoc.htm>

For further ADR websites see:

http://www.arbitration-icca.org/directory_of_arbitration-website.htm

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PROFESSIONAL DEVELOPMENT PROGRAMME 2004

- Cost per standard “non dinner” Forum remains at \$38.50 for Members and \$45.00 for non-Members

NOTE 1: For Tasmanian function details contact Craig Doherty on (03) 6220 6220.

NOTE 2: Melbourne venues are advised on event flyers; check enrolment forms circulated by email approximately two to three weeks in advance or contact the Chapter office.

NOTE 3: The programme may vary as a result of unforeseen circumstances
- check emails regularly for updates.

All notices are circulated by email; **please notify us of your email address.**

If you prefer to receive notices by mail? Please advise Chapter staff.

T: (03) 9602 1711 F: (03) 9607 6969 Email: vic.chapter@iama.org.au

IAMA Victorian Chapter, GPO Box 4134, Melbourne Vic. 3001

DATE	EVENT & TOPIC HRS	CP D	
NOVEMBER			
Mon 8 - 5-30	International Commercial Arbitration – An Australian Perspective Associate Professor Richard Garnett & Dr Gavan Griffith	1.5	2
Wed 10 – 5- 30,	Adjudication in 10 Days – the NSW Experience Tim Sullivan, President, IAMA 1.5	2	
Mon 15- 5.30	Chapter Committee meeting		1
Tue 16 – 5 - 30	Expert Determination – Process, Procedures & Opportunities Jon Kenfield LLB CA FIAMA (Grade 1 Arbitrator and Mediator) Expert Determination as a real alternative to arbitration for commercial disputes - putting the experts back into the picture!	1.5	2
Wed 17 – 9.00 to 5.00	Advanced Negotiation Skills Jon Kenfield LLB CA FIAMA (Grade 1 Arbitrator and Mediator) Concepts, tools and techniques for use in complex negotiations, facilitations & mediations. Cost: \$450.00 + GST. (Includes 100+ page manual and negotiation preparation templates on CD).	7	8
Wed 24 - 5.30	Active Listening & Reframing Breda Annesley & Cheryl Thomas Essential micro-skills training for mediation practitioners. La Trobe City Campus - 215 Franklin Street (Rm 229) (Opposite Queen St roundabout)	1.5	2

Thur 25 12.30 - 2.00	Arbitration Case Study – “Fireside Chat” with Dr Clyde Croft SC Implications of Age Old Builders’ Case	1.5	2
DECEMBER			
Wed 1 -12.30	Mediation Styles & Formats - Fireside Chat A lively discussion of different mediation theories and styles in practice: What works best? Why? When? Where?	1.5	2
Sat 4 – 9.00 to 5.00	Mock Arbitration Facilitated, commentated and acted out by experienced arbitrators and struggling thespians. Demonstration of arbitration process, including: preliminary conference, taking evidence, directions, decision-making and award formulation. Cost: \$450.00 +GST includes course notes.	8	8
Mon 6 - 5.30	Chapter Committee meeting		1
Tue 7 - 5.30	Tasmania TBA		
Wed 8	Dinner for Members and partners – Victoria Barracks Professor Di Bretheron, the director of the International Conflict Resolution Centre at the University of Melbourne.		2
Wed 15 – 5.30	View from a “victim of arbitration” Unmet expectations of a recent “victim” of arbitration, including analysis of appeals to the Supreme Court. Robust, gloves off discussion. Attendees will be sworn to confidentiality.		