

## VICTORIAN CHAPTER NEWSLETTER

April 2007

### Message from the Chair



There always seems to be a lot happening within IAMA, and here are a few notes about some of the activities since our last newsletter.

#### National Arbitration Day

Melbourne was honoured to be the venue for IAMA national Arbitration Day last December.

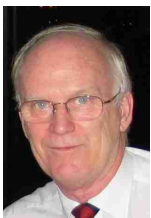
The assembled experts discussed various models for how IAMA could introduce a form of time-limited arbitration.

The aim, of course, is to reach a consensus on what is the best form for this 'new product' in order that IAMA could promote it to fill the perceived market need.

I understand that the debate on the day has been followed by further interchange of drafts, with everyone working towards a common goal.

From my personal perspective, it is vital for this work to come to fruition, and for the marketing of it to start, as soon as possible.

### Message from the IAMA CEO



#### Chief Executive's Report

While January and February are traditionally quieter months for IAMA Chapters, March sees the start of the sessions of our National Training Course. Three States, NSW, Queensland and Victoria conducted the Practitioner's Certificate in Mediation courses during the month. You may have seen our National advertising for the 10 sessions of the course being delivered around Australia in 2007. These appeared in the Financial Review and The Weekend Australian, and selected professional publications in February. While the reasons for applicants applying for this training are many and varied, it is interesting that in Victoria where currently there is more interest in Mediation than other States (the August course is filling rapidly), a large number of the students indicate that word of mouth from previous trainees is the greatest influence.

This emphasises the importance of the Chapter membership in nurturing new members who, having taken advantage of the joint training/membership deal we offer with these courses, become members for 12

#### Mentoring

One issue that comes up regularly is the desire of many members to have the opportunity to benefit from mentoring from more experienced practitioners of their particular craft – whether it be arbitration, mediation or adjudication.

IAMA can, typically, never do enough in this area. If I receive sufficient response I plan to strengthen the processes by, whenever I nominate a person for a role, I will positively encourage him or her to offer to act as a mentor.

So, I encourage any member who would like to sit in as an observer of proceedings to register your interest with Tony McNally, at the IAMA office.

Lawrence Reddaway

[reddaway@bigpond.net.au](mailto:reddaway@bigpond.net.au)

months and we need to concentrate on extending their IAMA involvement well beyond that.

The Queensland Chapter also conducted its second round of Adjudicator training in late February. 21 members, who missed the initial training at the introduction of Queensland Security of Payments legislation in 2005, attended this session. Adjudication activity in Queensland has had a slower than expected take up, but is now building although not to the degree seen in NSW. NSW Department of Commerce reports indicate that 509 applications were received in the period January-June 2006, the latest period released.

Victoria has also experienced changes to the Security of Payments adjudication processes as the legislative amendments passed in 2006, came into force on 30 March 2007.

As previously reported, these changes are wide-scale and place greater responsibility on the Authorised Nominating Authorities (ANA) to administer the processes.

To ensure that IAMA adjudicators are equipped to meet these changes, all Victorian adjudicators have been required to attend training to retain their accreditation. The Institute itself was subject to a rigorous application for ANA authorisation process, and the Building Commission advice that IAMA was approved was received only 2 days before the existing authorisation expired.

Early registrations for ***New Horizons in ADR***, the 2007 IAMA Annual Conference, to be held at the Stamford Grand Hotel in Glenelg, SA, 1-3 June 2007, are now being received. The speaker program will be released shortly, and will have the three streams for Arbitration, Mediation and Adjudication as introduced at Palm Cove 2006. We are also fortunate that to complement the expected range of excellent Australian speakers, International visitors from China, Malaysia and Nigeria are also speaking. Registration details are on the IAMA website [www.iama.org.au](http://www.iama.org.au).

The Institute is involved as a foundation member of an initiative of the Singapore Institute of Arbitrators (SIA), of a grouping of Regional Arbitral Institutes. This group is to be established at a Conference in Singapore on 12 and 13 July. Arbitral Institutes differ from the other Regional ADR organisations and Arbitration Centres, in that they are membership, standard and rule setting, and training bodies. Six bodies from Asia Pacific will be represented at this inaugural meeting.

A little sooner than this but in the same region, The Malaysian Institute of Arbitrators is conducting its Regional Arbitration Conference ***Towards an Effective Arbitration Culture – Regional Initiatives and Development***, in Kuala Lumpur on 22-23 June 2007. IAMA is a supporting organisation for this event and members will receive discounted registration. Also to be held in conjunction on the 24 June will be the 11<sup>th</sup> Symposium of the Australasian Forum for International Arbitration (AFIA).

The Federal Attorney-General's Department has advised that a series of seminars are being conducted around Australia for Family Law dispute resolution practitioners. These will advise on the about the new practitioner registration processes required for involvement in the new ADR approaches that are now integrated into Family Law. Details of can be found at [www.ag.gov.au/fdrproviders](http://www.ag.gov.au/fdrproviders).

The Attorney-General's Department through the Australia-China Legal Professional Development Program has sponsored 10 Chinese Lawyers to visit and work in Australia during 2007. This Program is designed to help China develop its

burgeoning legal profession, by providing placements where Australia has established expertise. It is a result of arrangements negotiated during the Attorney-General's July 2006 Law Mission to China.

Past National President Ian Nosworthy represented IAMA on that mission, and now sits on a China advisory group to the AG, formed following the mission. The visiting group as part of their initial introduction process were in Melbourne in the week prior to Easter. Accompanied by Ms Sandra Purser, from the AG's International Legal Services Section, they visited IAMA for discussions with National Councillor Andrew Kincaid, Honorary Fellow His Honour Judge Frank Shelton, Peter Wood of Minter Ellison, and myself. Part of the group is staying in Australia on a longer-term program of attachments to legal firms in Melbourne and Sydney. The two in Melbourne are at Minter's and Allens Arthur Robinson, and have been invited to attend our CPD events during their stay.

An issue, which emerged at the training of the Victorian Adjudicators in late 2006, is the subject of practitioner fees and the lodgement of security deposits. Even for the short duration matters members can find themselves in awkward positions on payment matters. The Institute Trust account was established to smooth some of these wrinkles and is a highly efficient way of managing the financial aspects of matters. The Victorian course members at their follow-up session with Instructor Tim Sullivan on 26 March 2007 requested a future CPD event to explain the workings and processes of the Trust account. This followed Tim outlining the advantages of the Trust account to members and also the reassurance it gives to parties that deposits are not being held in personal accounts. There is considerable information on the Trust account and its operation on our website.

Speaking of the Trust account, I need to report that Jessica Tippet, our Trust account administration Officer for the past two years, has left the IAMA, and her role has been taken by Emma Jane. We have also farewelled IAMA Queensland Chapter Administrator Jennifer Winzar after three years service. Sarah Montgomery has taken her place.

We are sorry to see both of these ladies leaving us, as both have been significant in their achievements. Jennifer as well as her CA activities, helped steer Queensland through the introduction of adjudication in 2005, and last year the Annual Conference at Palm Cove. Jessica has completely revamped the Trust Account, and assisted

us with the Victorian Chapter administration, as members who have worked with her are no doubt well aware. Emma and Sarah come to us with excellent

credentials and we are very pleased to welcome them to the Institute staff.

Gordon Tippet

[ceo@iama.org.au](mailto:ceo@iama.org.au)

## Member's profile: - Victorian Chapter committee member



David Thyer

After working for three major construction companies in Victoria over a period of 20 years David joined Thyer & Associates - Construction Contract Consultants in 1991 and was appointed a director in 1995.

His extensive construction industry experience embraces the fields of contract administration, claims preparation and analysis, report writing, arbitration and litigation support, adjudication support, alternative dispute resolution and contract documentation and he has been engaged as a consultant for principals, contractors and subcontractors on a variety of major building, construction and infrastructure projects such as Citylink, Melbourne Casino, Federation Square and Southern Cross Station.

When he completed the Professional Certificate in Arbitration course at the University of Adelaide in 2001 he was awarded the prize for achieving the highest mark (90%) in the national course that year.

Since 2002 he has practised as an arbitrator and expert determiner in building and construction disputes, and has published a number of awards and determinations. He is currently an IAMA Grade 2 Arbitrator, Accredited Mediator and Accredited Adjudicator.

His dispute resolution experience embraces disputes between principals, contractors, subcontractors and consultants on commercial, industrial and domestic projects

involving amounts in dispute up to \$6M on a wide variety of issues such as contract interpretation, incomplete works, variation claims, extension of time claims, delay cost claims, prolongation claims, liquidated damages, defects, rectification costs, contractual default, back charges, quality of work and damages claims.

Since the introduction of the *Building and Construction Industry Security of Payment Act* in Victoria in January 2003, David has been appointed to a number of Approved Nominating Authorities Adjudicator Panels and has conducted a number of adjudications.

Having served on the Victorian Chapter Committee of IAMA since 2001 and both the Arbitration and Security of Payment Subcommittees, David is currently IAMA's representative member on the Approved Nominating Authority Consultative Committee and is the Approved Nominating Authority Consultative Committee's representative member on the Security of Payment Industry Reference Group both of which are chaired by the Building Commission.

David is married, he and his wife Karen have a son aged 13 and a daughter aged 11. His main outside interest is spending time with his family, he is also a keen golfer, plays veterans cricket and has recently taken on a new challenge coaching his son's basketball team. [thyerassociates@bigpond.com](mailto:thyerassociates@bigpond.com)

## Personal notes

### Welcome to the following new members:

Frank Armer  
Jenny Branton  
Tim Connard  
Graeme Eddiehausen  
Jodie Fox  
Louis Iaquinto  
Leanne Lawrence  
Anna Lee Cribb  
Hugh McArdle  
Karen Moore  
Leonie O'Neill  
Stephen Pledge  
Julie Trompf

### Congratulations on Accreditation as a Mediator

Peter Condliffe  
Tim Connard  
Bruce Nadenbousch

### Congratulations on Grading 2 as an Arbitrator

George Deutsch

### Congratulations on Grading 3 as an Arbitrator:

Peter Condliffe

Simon De Garis     Richard Lightfoot  
Hugh McArdle     Victor Perton

## Obituaries

It is with sadness that I report the passing of:

IAMA Fellow Jim Elliott-Smith, former Victorian Chapter Chairman, who died as a result of cancer on Sunday 25<sup>th</sup> February 2007

And

New IAMA member Kevin Fitzpatrick, who was the Chief Executive Officer of C.bus property, which is the Property Investment arm of the Construction Industry Superannuation Fund. Sadly Kevin, aged 58, died suddenly on Monday 5<sup>th</sup> March 2007.

## Report of Summary Judgment Application

*Building and Construction Industry Security of Payment Act 2002 – S.14 & 15*

The following is an extract from the report of the judgment of His Honour Judge Shelton in the Adjudication appeal matter of Charisiou, Christos Building Group Pty Ltd v Geoproc Pty Ltd dated 11<sup>th</sup> December 2006.

At section 16:

'I have previously concluded that there was no obligation upon a party to show compliance with the provisions of a contract for making progress claims prior to making a payment claim pursuant to the Act. I have set out my reasons for so concluding in *Blueview Constructions Pty Ltd (Trading as WRS Constructions) v Vain Lodge Holdings Pty Ltd* (15 November 2005) and *Age Old Builders Pty Ltd v Arvanitis* (23 June 2006), and adopt my reasoning there set out. In *Age Old Builders*, I also referred to the cases of *Nepean Engineering Pty Ltd v Total Process Services Pty Ltd* (in liquidation) [2005] NSWCA 409 and *Brookhollow Pty Ltd v R & R Consultants P/L* [2006] NSWSC 1. These two cases state that a summary judgment application may not be resisted on the basis that there has not been compliance with s.14 of the Act. Any objection to such non-compliance must be made in a payment schedule'

## Editor's message



I have reprinted the above extract because it emphasises an important aspect of the practical application of the Security of payment legislation. Any member wishing to have a complete copy of the Reasons for the Judgment, published by the Department of Justice can obtain one by contacting me by email as noted below.

I invite all members, particularly those new members who are listed above, to consider contributing to the Chapter newsletter.

From a personal development point of view writing an article for the newsletter is an excellent opportunity for both new and established members to gain valuable PD

points at the same time as taking the opportunity to become more widely known within the Chapter and, because newsletters are on the IAMA website, to those in other Chapters.

Articles of particular value are those commenting on a PD event, which inform those members with a particular interest in the subject but who were unable to participate, in addition to providing valuable feedback to the Vic Chapter committee regarding a participant's response to the presentation and comments on its content.

**The Institute of Arbitrators and Mediators Australia, Victorian Chapter, Suite 5, 1/190 Queen Street Melbourne**

Postal Address: GPO Box 4134 Melbourne 3001. Phone: 9602 1711 Fax: 9607 6969 Website: [www.iama.org.au](http://www.iama.org.au)

Chairman: Lawrence Reddaway

Chapter Administration

Newsletter Editor: Robert Knott

Email: [reddaway@bigpond.net.au](mailto:reddaway@bigpond.net.au)

Email: [vic.chapter@iama.org.au](mailto:vic.chapter@iama.org.au)

Email: [robertknott@smartchat.net.au](mailto:robertknott@smartchat.net.au)

*Disclaimer: the Institute does not necessarily endorse Views expressed by contributors to this newsletter. The Institute, the editor, or the printers accept no responsibility for the accuracy of information contained within the newsletter.*