

Official newsletter of the  
Institute of Arbitrators and  
Mediators, Australia, W.A.  
Chapter

Volume 13 No.3  
August 2002

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# The View

Postal address: IAMA, PO Box 518 COMO WA 6952

Thanking the 2002 Corporate Sponsors:

**JACKSON MCDONALD BARRISTERS AND SOLICITORS**

**ESSENTIAL DIARY DATES**

General Meeting: 5.15pm **Wednesday 21<sup>st</sup> August**

Professional Development: 5.15pm **Wednesday 18<sup>th</sup> September**

@ Master Builders Association 35-37 Havelock Street, West Perth

Breakfast Meeting: 7.30am **Tuesday 24<sup>th</sup> September**

@Tawarri Reception Centre, The Esplanade, Dalkeith

## The Editor's View

Barry Tonkin, the volunteer Editor of The View, will include your contribution to The View and he continues to seek your input.

A copy of this edition of The View is available in electronic 'pdf' format to be down-loaded or read on the IAMA National website. If you are not on the Web The View can be e-mailed to you if you let Sue Doherty know your E-mail address.

### POINT OF INTEREST

Perth was founded on the 12 August 1892, ("On the birthday of King George IV")

**The Mayor, and the Town Clerk, were Justices of the Peace & 11 of the 24 Councillors were also JP's**

This information can be found on a plaque at the Town Hall under the clock in Barrack Street, Perth.

Barry Tonkin JP.

## Inside this Issue

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# CHAIRMAN'S MESSAGE

## MEDIATION

### Course

Such was the success of the National Mediation course held in Perth last month that another will be conducted in November this year.

Despite that promotion for it has barely begun (at the time of going to press) half of the available positions are already taken with the wait list for the previous course and the recent applicants.

### Nominations

For those members interested in the practice of mediation, you may be interested to know that last month I nominated two members for mediation. As it happens, both of them have some interesting aspects that they wish to present back to members at a CPD session.

Bruce Phillips is programming it in.

## ROOMS

I am interested in the W.A. Chapter having its own premises. Many members are aware of that. I know that there are all sorts of considerations that impact on a decision whether or not to take rooms. I am considering the financial viability and impact of that idea with our Chapter committee.

A key source of revenue for such a proposal being viable is the hire of rooms for hearings, conferences and other meetings. Can all graded and accredited members to whom I have circulated a questionnaire put my curiosity to rest, one way or another? I am seeking to develop a feel for the Chapter interest. If there is enough support, it will be put back to the committee for further consideration.

If any other member is associated with a group who might consider using rooms for general meetings, call me or Sue Doherty and one of us will forward a copy of the questionnaire.

## PETER CONDLIFF IN PERTH

I had the opportunity of spending some quality time with Peter whilst he was in Perth for the Mediation course.

Take confidence from the fact that he had little to say about the present state of the W.A. Chapter other than as far as he was concerned he "*had no problems to discuss*". I had the distinct impression that Queensland and Western Australia share a reputation for drive, enthusiasm and results along every aspect of management, including the financial and budgetary controls.

I thank other members who took the time and effort to show Peter a few of the sites, err, sights, of Perth while he was here.

## REGIONAL INITIATIVES

### Busselton

Clive Raymond and I did our '*road show*' at the Busselton Courthouse on 22 June, with the result that the W.A. Chapter now has a branch in the South west. Phil Dyer is its secretary/coordinator. Phil Dyer is a builder and graded member with considerable experience in many facets, including IAMA matters. Phil lives in Margaret River and currently has a building business along with other commercial interests. Many members will have seen him at our various training programs over the years.

### Broome

I am pleased to announce that Sarah Moyston has offered to take over the secretariat for Broome. Sarah has lived in Broome for some time, studying for a Bachelor of Arts (majoring in Counselling and Applied Psychology) at Notre Dame University. She has a useful interest in the Department of Justice (victim offenders) especially in regards to Mediation.

**Both Phil's and Sarah's contact numbers appear with the other committee members' details at the end of this newsletter. If any member has related interests in those regions, feel free to call them.**

## AWARD WRITING WORKSHOP

Laurie James and I conducted the Award Writing Workshop on the weekend of 20 July. The healthy mix of senior lawyer members, practicing arbitrators and graduated students as participants worked very well. The case of 'the Missing Periwinkle' proved successful once again.

It is interesting how, with the same set of facts, so much discussion (did I say controversy?) can arise. Thanks Laurie for your help.



## CPD

National Office released the outcome of the returns for members CPD attendance. I am pleased to announce that effectively all of the W.A. graded/accredited members have submitted their returns – not like other chapters who appear to be tardy in this area. *Well done W.A. for the above.*

Thanks to Ken Brine who retired from active (arbitration) service and donated his collection of reference material to the Chapter Library. Although we already had some of his books it is useful for the collection to have extras. Ken also donated a portable tape recorder, complete with carry case and (now) blank tapes. It is available for members to borrow. In spite of having taken down his shingle, Ken's ongoing interest in the Chapter has not gone unnoticed. Note Rosalyn Edley has offered to undertake the task of cataloguing the library.

I suggest any members who attended the Award Writing Workshop - or practicing arbitrators in the building industry - read the article "The Power of the Arbitrator to Award Costs" p61 of the Arbitrator and Mediator December 2001. It is interesting, and I suggest sobering, to say the least.

**Phil Faigen**, Chapter Chairman

*PD sessions of The Institute of Arbitrators & Mediators Australia (WA Chapter) are held on the 4th floor at the Master Builders Association, 35/37 Havelock Street, West Perth. The next one is on Wednesday 18 September 2002 at 5.15 pm.*

## From the Administrator

Looking back over the last 7 months it has been a time full of activity. In particular the presentation of the National Mediation & Conciliation course which was both a success and a window of opportunity to market the Institute of Arbitrators & Mediators as the bench-mark organisation in ADR to professionals in Western Australia. Congratulations to the course presenters/trainers Peter Condliffe (CEO – National Office) and WA Chapter member Su Lloyd, also thanks to the WA Chapter members who undertook coaching roles with the participants on the 4th day of the course. Last but by no means least to all those who attended the training and were successful in achieving The Practitioner's Certificate in Mediation & Conciliation – well done!

The Annual General Meeting held in June was attended by 30 members and certificates were presented to new members, accredited mediator and those who completed the Advanced Course in Arbitration last year were acknowledged. Socialising at the conclusion of meetings is an important part of networking and is one of the opportunities that membership of the WA Chapter of IAMA offers to all.

## Membership

*Chapter membership stands at 150.  
Welcome to our new members:*

<i>David Aitken</i>	<i>Lawyer</i>
<i>Geoff Barker</i>	<i>Architect/Planner</i>
<i>Christopher Fitzhardinge</i>	<i>Engineer</i>
<i>Ian Hammond</i>	<i>Medical Practitioner</i>
<i>Kevan McGill</i>	<i>Electrical Engineer</i>
<i>Mark Nevill</i>	<i>Geologist</i>
<i>Marilyn Hopkins</i>	<i>Lawyer</i>
<i>Christopher Jefferies</i>	<i>Human Resources</i>
<i>Robert Gehringer</i>	<i>Industrial Relations</i>
<i>Colin Kaeser</i>	<i>Lawyer</i>

*Timothy Moore*      *Civil/Structural Engr.*  
*Karen Powell*      *Industrial Relations*  
*Brian Middleton*    *Accountant*  
*Sally Jetson*        *Social Work*

**Retired member:**

*Fred McCardell*

Congratulations to Greg Steinepreis for his re-grading as a Grade 1 Arbitrator.

**Nominations**

The Chapter has received eight requests for nominations of either arbitrators/mediators this year. There no longer seems to be a demand in respect to requests for panels and/or listings. Members of the public are increasingly accessing the IAMA web-site to locate arbitrators/mediators. With these details available in a public domain I find I am referring the majority of requests to the web-site after discussing the advantages of the WA Chapter making an independent nomination.

**Sue Doherty**

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Never doubt that a small group of thoughtful committed citizens can change the world. Indeed, it's the only thing that ever has -- Margaret Mead

**Unclassified. Exam---  
very clever**

For anyone who ever thought about cheating in an exam.....

At Sydney University, there were four students taking Organic Chemistry. They did so well on all the mid-terms and labs, etc., that each had an "A" so far for the semester.

These four friends were so confident with the finals approaching that the weekend before, they decided to go down to Canberra and party with some friends there. They had a great time. However, after all the hard partying, they slept all day Sunday and didn't make it back to Sydney until early Monday morning - the morning of their final exam!

Rather than taking the final then, they decided to find their professor AFTER the exam and explain to him why they missed it. They explained that they had

gone to Canberra to do some research in the ANU archives for the weekend with the plan to come back in time to study, but, unfortunately, they had a flat tyre on the way back, and that they couldn't get help for a long time. As a result, they only just arrived now!

The professor thought it over and then agreed they could make up their final exam the following day. The guys were elated and

relieved. They studied hard that night - all night - and went

in the next day at the time the professor had told them. He placed them in separate rooms and handed each of them a test booklet, which was out of 100 points) and told them to begin.

The first problem was worth five points. It was something simple about free radical

formation. "Cool," they all thought in their separate rooms,

"this is going to be easy." Each finished the problem and then turned the page.

Question 2 (for 95 points): Which tyre?

**PRACTICE NOTE  
3C- Letter to Editor.**

The opening of this practice note quotes the words of the Honorable Justice Michael Kirby as follows:

'Mediation and arbitration are not just court proceedings conducted in a different place. They require distinct skills, novel approaches, different techniques and a new psychology.'

Unhappily, this 40 page practice note contradicts Justice Kirby's recommendations. There follow page after page of highly detailed, legalistic procedures for a Preliminary Conference'.

The original Practice Note 3 was written by John Morrissey, a long-standing member of the Federal Council of what was then the Institute of Arbitrators,

Australia, of which I was also a member for eight years.

It was he who introduced the idea that persons should not accept nomination as arbitrators until they had gone through the complicated procedure outlined in the note.

To begin with, a 'nominee arbitrator' has no authority to call such a meeting, as I remember telling John Morrissey at the time. Section 14 of the Uniform Commercial Arbitration Acts gives the arbitrator the authority to conduct proceedings 'as he thinks fit', but this applies to no-one else.

The procedures recommended by Morrissey and since then gradually elaborated until this latest edition of Practice Note 3C are in many respects back to front. The procedures recommended by the Chartered Institute of Arbitrators (UK), the mother of all such institutes, have served us well since the inception of that institute many years ago, but they have no such recommendation.

The initial move for a person nominated or requested to become an arbitrator is to ensure that he can accept the appointment. First of all he should get the exact names of the parties, a copy of the notice of dispute, the particular clause of their contract or other arbitration agreement, an outline of the dispute, an approximate value of the claims, and any other items which might affect his capacity to arbitrate. He should also inform the parties of his intended fees and charges. He should then be in a position to accept the nomination and to enter the reference.

The arbitrator then, and only then, has the authority to call a preliminary meeting. (By the way, a conference or meeting is 'called', not 'appointed'. Also, the term 'conference' is a pompous expression for what should be a meeting of no more than about six people.)

The agenda for a preliminary meeting in a straightforward reference would cover matters such as the following:

- decisions on Sections 20, 22 and 40 of the Commercial Arbitration Act;
- the- security for costs;
- the timetable for statements of claim and defence,
- and any other procedural items.

There is another disturbing possibility which could result from an abortive ' preliminary conference' . Take the following scenario under Practice Note 3C:

There arises a dispute between two large mining companies in the north-west. A contract clause refers such disputes to arbitration. The 'nominee arbitrator' calls a 'preliminary conference'. Two directors of each company make a special trip to Perth, and with their Perth-based lawyers, attend the ' preliminary conference'. After going through the clauses of Practice Note 3C, the 'nominee arbitrator' decides that he has not quite the expertise to conduct the reference. The parties then return and the whole process is repeated with another nominee. The parties lodge claims against the nominee for their wasted travel, accommodation and legal costs, amounting to thousands of dollars. The ' nominee arbitrator' has no defence against a negligence claim because he had no authority under the Commercial Arbitration Act to call the meeting and so cannot invoke Section 51, which indemnifies a real arbitrator against claims of negligence.

**Signed: Fred McCardell LFIAMA**

## The Mediation and Conciliation Course – A Student's Observations

I enrolled in the recent IAMA course on Mediation and Conciliation without much knowledge of the five days that lay ahead – in retrospect not a bad start for a would-be mediator, being ready for anything.

The course has all the signs of careful planning and preparation. The instructors, Peter Condliffe and Su Lloyd, were well prepared and were excellent in their delivery. Their

differences of background and manner provided good contrast and moments of humour. The venue and support services were excellent.

The group of students could not have been better. The variety of professional backgrounds, ages, genders (two!) and personalities provided the fuel for lively interaction. And it did get lively, even competitive. Boredom did not get a look-in.

From the start we did simulated mediation exercises, with other students role-playing the parties. Bit by bit we learned the basics of the process and how to enter role - play. On the fourth day the video cameras came in, and we were able to review our efforts that night. There were reports of groaning during private replay. I can attest to that. Other IAMA members lent their assistance in reviewing students' progress. On the fifth day, each of us did a two hour mediation, in camera, with (by this time) competent role-players. This was used as a basis of course assessment. Pressure-cooker learning!

I particularly recall three moments:

- After an exercise in listening skills our youngest class member observed “ I am a good listener – up until the time I get the glimpse of a solution, after which I focus on the solution and stop listening”. Many nods of recognition.
- At the end of the third day, I despondently wrote in my journal (a learning tool I found effective) “if I get through this successfully it will be a triumph of training over conditioning!”
- At the very end, having done a gruelling mediation, a fellow student – a tough minded, pragmatic, contract and facts-oriented professional - told me that he had started off the course without much belief in the power of role-play, but when he got to an end of his final mediation, he felt emotionally moved.
- My experience exactly. We agreed that the mediation process as taught

is well designed and has considerable potential for dispute resolution.

Then we went to the pub. That was good too.

Peter Byrne

## Rooms

Rooms that may be suitable for conducting Arbitration and or Mediation are often in short supply. Following from requests for information from members, the following rooms have been identified and are available by arrangement, starting at \$35 per half day and going up to \$160 per full day, depending on the location and size. Many include tea and coffee within the realm of their service and some may provide hire of equipment or other services.

Master Builders Assoc	9322 5133
Institution of Engineers	9321 3340
Institute of Architects	9321 7114
APESMA	9321 8187
Curtin Business School- 78 Murray St	9226 3237

If members are aware of other rooms that may be suitable please e-mail [rmachell@southwest.com.au](mailto:rmachell@southwest.com.au) and the list can be updated in The View, from time to time

## Breakfast Meeting on 23rd July 2002

The photo below is of the early risers who completing breakfast at the riverside setting of Tawarri reception centre. Photographer, Phil Faigen, snapped those whom attended while taking part in an exercise during the presentation. The speaker, Ms Vikki Stone of Centre Care spoke on “Ethical Dilemmas for mediation”.



# The more you put in The more you get out.

## WHY we need CPD -

1. Participation by Members in a range of high quality professional development activities, with credit given for the level of participation in these activities.
2. Achieving and maintaining high standards of professional competence and ethical behaviour.
3. Demonstrating to Courts and the community that the Institute is committed to the accountability of its members, in requiring them to undertake Continuing Professional Development activities which keep their expertise current and which are of benefit both to the members and the community at large.
4. To promote public perception of the Institute and its members as proponents of high standards of professional excellence in the resolution of disputes.

## Eligible Activities: Ratings

- 1 **Institute Masterclasses/Workshops** - 2 hours per contact hour
- 2 **Other Institute training activities** - conferences, seminars - 1 hour per contact hour
- 3 **Training activities conducted by other professional bodies approved by the Institute** - as determined by the Education Committee (including rating), up to a limit of 8 hours per annum
- 4 Approved undergraduate course - 1 hour per contact hour up to a limit of 5 hours per annum
- 5 Approved postgraduate courses 1 hour per contact hour up to a limit of 8 hours per annum
- 6 Lecturing or Tutoring in an approved tertiary course- 3 hours per contact hour up to a limit of 8 hours per annum
- 7 Published Papers and Articles, or Presentation of Original Material – rated by Education Committee.
- 8 Professional Practice (including writing awards and pupil training) as an arbitrator, mediator or other ADR practice - 1 hour per hour actually spent - up to a limit of 8 hours per annum.
- 9 Approved Pupillage - 1 hour per hour actually spent - up to a limit of 8 hours per annum.

- 10 Member of Council/Committee/Chapter - 1 hour per hour actually spent - up to a limit of 8 hours per annum
- 11 Other Activities - as approved by the Education Committee.
- 12 Members living more than 200 km from Chapter Headquarters must obtain 15 attendance points and the remaining 10 in each year can be from reading, study or other approved activities to be detailed.

## Compliance

- Required from graded arbitrators and accredited mediators
- Submit to N.O. on or before 31st March every year for the preceding calendar year
- Submit with application (regrading, accreditation, transfer) for the 12 months immediately preceding the application
- Audits requiring verification will be conducted by the Professional Affairs Committee each year on a range of record sheets
- Failure to submit a CPD Record Sheet or to complete CPD requirements - the member shall be asked to show cause why she/he should not be removed or regraded.

All members require 75 points over 3 years.

Target 25 points each year

Members applying for grading must have 25 points in the preceding 12 months.

### *For details*

Contact - Alan Swann.

Tel. 9257 2032 Fax. 9293 3936

e-mail – swann107@ozemail.com.au

### **Possible Points for 2002 – CPD**

General meetings	5
CPD sessions	5
Breakfasts Seminars	5
Arbitration Workshop	10
Award Writing Workshop	12
Expert Determination Workshop	12
Symposium	8
National Mediation Course	30

### **So attend all the meetings**

**plus a course  
plus other CPD activities,  
plus seminars, etc.**

**and you have the required points.**

## MEMBERSHIP UPDATE INFORMATION

If you have changed your place of employment, contact details for work or home – address, phone or FAX number and/or e-mail address please advise the Chapter Administrator on 9368 4755 or e-mail: [suedoherty@bigpond.com](mailto:suedoherty@bigpond.com)

### Working parties for WA Chapter Activities 2002

#### COURSES

##### *Industrial Arbitration*

Clive Raymond, Ian Johnstone

##### *Arbitration Workshops & Expert Determination*

Alan Swann, Phil Faigen

##### *Masters Course*

Laurie James

#### MEETINGS

##### *Professional Development, Speakers/ questions for General Meetings*

Bruce Phillips

##### *Breakfasts*

Barry Tonkin

***THE EXECUTIVE COMMITTEE can be contacted for any matter relating to the Institute.***

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THE  
INSTITUTE of  
ARBITRATORS & MEDIATORS  
——  
AUSTRALIA  
W.A. CHAPTER

***NOTICE OF GENERAL MEETING***

Notice is given that a General Meeting of The Institute of Arbitrators & Mediators Australia (WA Chapter) will be held on the 4<sup>th</sup> floor at the Master Builders Association, 35/37 Havelock Street, West Perth, on **WEDNESDAY 21 AUGUST 2002 AT 5.15 PM**

**AGENDA**

1. Welcome visitors & guests
2. Apologies
3. Minutes
4. Matters Arising
5. National Council
6. Chairman's report
7. Education & Promotion Committee
8. Working Party reports
  - 8.1 WADRA
  - 8.2 University Arbitration Course
  - 8.3 National Mediation Course
  - 8.4 Current Training Programs
9. General Business

Formal business will be followed by a discussion led by Ian Steele on the topic:

*“Rules Vs Guidelines for Alternative Dispute Resolution processes (Arbitration, Mediation and Expert Determinations)”*

Sue Doherty  
Chapter Administrator  
29 July 2002