

The official Newsletter of the W.A. CHAPTER

THE
INSTITUTE of
ARBITRATORS & MEDIATORS
— (A) —
AUSTRALIA

the View

VOL: 14 No. 1 February 2004

Gratitude is extended to our Newsletter Sponsor:
JACKSON MCDONALD SOLICITORS

NEXT MEETINGS ARE:

- **General on 18 February 2004 at 5:15 at MBA**
- **Breakfast 24 February 2004**
- **C.P.D.: 17 March 2004 at 5:15**

See the program for 2004 in this issue.

EDITORIAL

Members seeking feed back about the happenings behind the scenes will be interested to know of the recent teleconference of the Membership and Profile Committee (headed by Tim Sullivan).

Some of the aspects discussed to which all members are invited to comment include:

1. **The web site** – is it dull, cluttered and unclear so that it needs an upgrade? Nonetheless it is useful if each chapter's newsletter is attached and is easily accessed.
2. **Members details** are often not current, so members are requested to keep their details updated – please return your information sheets to the administrator who can now make the changes.
3. There is discussion regarding a new **membership categories** of "Affiliate" (being lower than Associate) (similar to a corporate membership but applicable to individual members)
4. The apparent **discontent** of some members who have not received nominations for arbitrations or media completed the respective course/s
5. **Transparency** of the nomination process
6. **Regional branches** may best be allowed to develop their own impetus rather than before commencing o the need and fill it!" It was mooted that the Executive might need to have their next meeting in Margare that is?

The teleconference needed with Tim Sullivan suggesting there was no secret men's business here that's why A present. (oh sorry Tim, was I not supposed to mention that?)

Anything to add or comment on these topics folks?

Ed.

In this issue:

- **Editorial**
- **Chairman's Message**
- **Comment from CEO**
- **Reports of recent events**
- **Administrator's Report**
- **Letters to the Editor**
- **Contact numbers**
- **Breakfast Meeting flyer**

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*Comments expressed in this newsletter are those of the author of the particular piece and do not necessarily reflect that of the IAMA unless so indicated.*

Letters to the Editor can be sent to:

**The Administrator is**  
Sue Doherty  
Ph. 9368 4755  
Fax 9368 4744  
[suedoherty@bigpond.com](mailto:suedoherty@bigpond.com)

## Chairman's Message

The year has kicked off with a frenetic level of activity for Committee members engaged in co-ordinating and presenting the various activities programmed for 2004.

The Rail Access Regime Workshop was held on 2 February 2004 when had the benefit of hearing from Eastern State Regulators who have been directly involved in Rail Access arbitration. It was an interesting session.

The traditional introductory session to Arbitration and Mediation that was to have been held on 10 February 2004 was amended to include a very general coverage of the proposed Construction Industry Payments Bill. Unfortunately it had to be cancelled.

The most recent intelligence is that we are now up to the eighth draft of the Bill, although the last two are said to be minor procedural corrections and updates. The sixth draft was circulated to members of the Taskforce which prepared the original drafting instructions, but was not put out to public comment. It is not possible to get a copy of that draft apparently due to protocol surrounding Cabinet approvals. The Bill awaits Cabinet approval.

On top of all this we have the University General Course kicking off on 2 March 2003 and the National Mediation & Conciliation Course starting on 4 March 2004.

In the past we have often seemed to get off to a slow start at the beginning of the year and have then gathered momentum as the year progresses. This year it appears to be flat out from the start which perhaps reflect the health of the Chapter. Of course all of this is only possible because of the effort that is put in by the members of our various committees. We can never have enough assistance and anyone who has an interest in helping in a particular area would be most welcome. Please contact me or any members of the Committee known to you if you are able to help. I know that the Mediation Sub-Committee recently canvassed recent graduates of the Mediation Course and a number of people have expressed a willingness to help which is very much appreciated.

The Education and Promotions Sub-Committee met on 22 January 2004 to review our programme for 2004 and to ensure that we were on track with our planning - which proved to be the case. There are a number of openings left in the calendar for mediation related activities. The Mediation Business Plan should be approved at the next Committee Meeting on 18 February 2004 and that is when the real interest of our members will be put to the test because it is always easier to plan than to do.

While the initial Mediation Taskforce and then the Mediation Sub-Committee has seen through the development of the Business Plan it has suffered some casualties on the way with both the inaugural Chair, Su Lloyd and the next Chair Barry Mendelawitz having to relinquish the post due to the pressure of other responsibilities. We will be looking for someone with drive and enthusiasm to pick up the baton and keep this initiative moving.

In relation to Arbitration and Adjudication it is likely that there should be a significant increase in work for our members. There are already some matters in the pipeline which will lead to arbitrators being nominated. Given the amount of information which is now available on IAMA's website one would have expected that there would be a fall off in the number of nominations we make. Last year we actually exceeded the number of nominations made in each of the previous three (3) years. The introduction of Adjudication under the Construction Industry Payments Bill may affect the number of matters that go to arbitration but that should be more than made up by the likely number of adjudications. Certainly that seems to have been the experience in those states already subject to similar legislation.

All in all it looks to be an interesting year which lies ahead.

***Clive Raymond Chapter Chairman***

## from the Administrator's Desk

Welcome to 2004!

A quick catch-up on what has been happening over and since the (quiet!) Christmas holiday period.

### ***Welcome to our new members:***

|                      |                         |
|----------------------|-------------------------|
| <i>Alan Dickson</i>  | <i>Engineer</i>         |
| <i>Ray Dohmen</i>    | <i>Builder</i>          |
| <i>Maurice Ford</i>  | <i>Architect</i>        |
| <i>Albert Moore</i>  | <i>Engineer</i>         |
| <i>Cal Pruiti</i>    | <i>Lawyer</i>           |
| <i>Robert Viol</i>   | <i>Judge</i>            |
| <i>Dafna Lambert</i> | <i>Family therapist</i> |

### **Grading & Accreditation Interviews in 2004**

The Chapter plan to organize for all grading and accreditation interviews to take place on a set day some 2-3 weeks prior to National Council Meetings. The current method of responding to assessment requests has been on an ad hoc basis, whereas the plan is to interview all those members who have sent their applications to the Chapter before the nominated date (for the April National Council Meeting the cut off date will be Tuesday 15<sup>th</sup> March). Interviews will be organized shortly after the cut off date.

Members who have undertaken Mediation training with either the LEADR or IAMA courses, and are interested in becoming accredited contact me for an application form and I will organize a Tax Invoice to cover the assessment fee.- \$110.00 (incl. GST).

### **The Practitioner's Certificate in Mediation & Conciliation**

Places are still available and the cost of the course has been reduced to \$1,740 for members and \$1,950.00 for non-members.

***ANOTHER REMINDER – IF YOU CHANGE YOUR CONTACT DETAILS PLEASE LET ME KNOW ASAP.***

***Regards Sue***

## Pupillage

*Based upon my current records the following people are seeking arbitration pupillage.*

|                       |                        |
|-----------------------|------------------------|
| <i>Tony Cameron</i>   | <i>Alan Dickson</i>    |
| <i>Patricia Smith</i> | <i>Scott Ellis</i>     |
| <i>Glynn Logue</i>    | <i>Stephan Fiedler</i> |
| <i>Steve Lieblich</i> | <i>Fulvio Prainito</i> |
| <i>Cal Pruiti</i>     |                        |

*If you are not on this list but are looking for arbitration pupillage opportunities please contact me on 9324 3211 or by email [jknuckey@capitalhouse.com.au](mailto:jknuckey@capitalhouse.com.au)*

John Knuckey Arbitration Pupillage Coordinator

## and from N.O.

From: "Gianna Totaro" <national@iama.org.au>

Dear National Councillors, National Council committees, Chapter Chairs and Chapter Administrators

As of March 2004, The National Newsletter will carry an ISSN (International Standard Serial Number) 'identifier' and will be issued to that repository of all things 'in the national interest' ... the National Library.

In keeping with the national focus, much of the NN will be tweaked to publicise Institute services and activities across the country; informing, engaging and profiling its members, in addition to publishing articles of interest from national and international contributors. [Further information will be sent under separate e-mail cover] . 1975 - 2005

"Setting National priorities"

This is a conference of ideas: it is by way of a think tank, a discussion among a very wide range of Australians about where our opportunities lie, what our ambitions should be, and what are the best ways to realise them. In other words, it is a means of creating some national strategic ferment.

If we create enough of it, new policies will follow in due course. ...

- The Hon Paul J Keating

National Strategies Conference

Sydney, 24 November 1994

Gianna Totaro

Executive Assistant, National Office

The Institute of Arbitrators & Mediators Australia

Tel: 61 + 3 + 9607 6908 Fax: 61 + 3 + 9602 2833 E-mail:national@iama.org.au

## Construction Contracts Bill

From: "Graham Anstee-Brook" <graham.anstee-brook@minterellison.com>

To: <faigen@allpointsbuilding.com.au>

Subject: Construction Contract Bill Date: Monday, February 16, 2004

I spoke to Peter Gow on 12 February 2004.

He indicated that Cabinet had given the eighth draft of the Construction Contract Bill approval on 9 February 2004 and it was now going to be printed in that form.

He indicated that it is unlikely that the bill will be put to Parliament until the second half of the year however funds were now available to commence preparation of the regulations and training programs put in place.

He has employed someone to undertake this task and Peter undertook to arrange for that person to telephone me at the end of the month.

I offered my assistance in regard to training and the regulations which was warmly received.

I am not sure that there is much point in meeting until such time as I have received the course outline from Tim Sullivan.

Graham Anstee-Brook

Partner Minter Ellison

Tel: (08) 9429 7612 Fax:(08) 9429 7666 Email: [graham.anstee-brook@minterellison.com](mailto:graham.anstee-brook@minterellison.com)

## And via N.O.

From: "Philippa Morrissey" <philippa.morrissey@minterellison.com>  
To: <faigen@allpointsbuilding.com.au>  
Subject: Article for The View  
Date: Thursday, February 05, 2004 2:54 PM

Dear Phil

Below is the text of a suggested article for The View:

'The National Adjudication Committee of IAMA met by teleconference on 2 February 2004. Topics which may interest readers were:

- Nomination fees

In NSW IAMA are charging the following nomination fees:

- less than \$10,000 - \$220

- \$10,000 - \$200,000 - \$444

- \$200,000 - \$500,000 - \$660

- more than \$500,000 - \$880

- Alternative fees as opposed to charging a nomination fee

An alternative is for adjudicators to return to IAMA 5% of the value of the dispute to a maximum of 2 hours of the adjudicator's time.

- Training programs

Each Chapter has been requested to provide the National office with its course outline in regard to adjudication courses.

Your Chapter Committee is in the process of preparing a draft course outline with the assistance of our colleagues in NSW.

- Rules of Natural Justice

Draft 5 of the Construction Contracts Bill 2003 contained provisions that the adjudicator was not bound by the rules of natural justice. I understand that this provision is to be removed.

In NSW the Courts have found that although nothing is said in their Act an adjudicator is bound by the rules of natural justice.

Regards Graham

## Membership Drives

*First issue is what type of members do we want to attract?* A common that a shot gun approach is adopted and any member with an interest in the association is sought. Do we want to be more targeted in particular types of members for example several characteristics could be considered with varying approaches to each?

### MEMBER TYPES:

|               |                                                                    |
|---------------|--------------------------------------------------------------------|
| Field:        | Arbitrators, Mediators, Adjudicators, General                      |
| Practising    | Full time, part time, or not                                       |
| Party:        | Party, Representatives [legal or other] Advisors, Expert witnesses |
| Organisation: | Government, Private, Court or regulatory body, Education           |

### CAMPAIGN METHODS:

**Training Discounts** - discount on the course cost when joining IAMA at the same time

**Word of Mouth** - personal recommendation by members or others

**Exposure to a process** - disputes, mediation, adjudication, arbitration, litigation.

**Advertising General** - Press, Radio, TV, Spam, letterbox drop

**Advertising Specific** - flyers, brochures, pamphlets, posters, billboards

**Media Publicity** -- Press, Radio, TV, Web Site, other

**Education** - reference to IAMA in courses, seminars,

**Legislation** - reference to processes in legislation or court rules.

**THE INSTITUTE *of* ARBITRATORS & MEDIATORS AUSTRALIA**

**W.A. CHAPTER**

**BREAKFAST MEETING**

**TUESDAY 24<sup>th</sup> February 2004**

**VENUE:** TAWARRI RECEPTION CENTRE, The Esplanade, Dalkeith

**START TIME:** 7.00 for 7.30am **CONCLUDES BY:** 8:30am

**COST:** \$25.00 pp - by cash or *cash* cheque (non-members and guests welcome)

**SPEAKER:** Mr Warren Kerr – Chair State Steering Committee for the Year of the Built Environment 2004; W.A. President & National President-Elect Royal Australian Institute of Architects

**TOPIC:** “The Year of the Built Environment 2004  
How can it Assist Dispute Resolution ?”

Warren Kerr, is the W.A. President of the Royal Australian Institute of Architects and the W.A. representative on the National Executive of the RAIA. Elected as the National President-Elect of the RAIA in 2003, he will take over the role of National President of the RAIA in May 2004. Invited by the State Government last year to chair the State Steering Committee for YBE2004 which currently is actively planning events and activities to take place during 2004. Warren initiated this idea and will represent the RAIA on the National Steering Committee for YBE2004.

A registered architect with over 25 years of experience in the design and construction of major hospital projects, Warren holds a Masters Degree from the University of NSW in this field. Currently he heads the Hames Sharley Health Group with specific responsibilities for health projects undertaken by the company throughout Australia and New Zealand.

**Set plate breakfast menu incorporates:**

*Fresh orange juice or Coffee on arrival*

*Fresh fruit*

*Danish pastries and croissants*

*Complete hot breakfast*

*Coffee and tea*

**CPD POINTS: 1**

**WE LOOK FORWARD TO YOUR ATTENDANCE!**

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PHONE OR FAX YOUR CONFIRMATION TO Sue Doherty by Friday 20th February 2004

Telephone: (08) 9368 4755

FAX: (08) 9368 4744

Note: The seating is limited to 42 people. I will be attending the breakfast. Please reserve ____ place(s) at Tawarri Reception Centre for Tuesday 24th February at 7.00 for 7.30am.

Name(s):

Contact Phone:**Fax:**

Bring a **cash** cheque or cash for \$25 p.p. Please do not make cheques out to IAMA

(Last minute cancellations MUST be phoned through by midday, Monday 23rd February in order to revise the booking – we are charged according to the number booked).

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AUSTRALIA
WA Chapter

CPD & Education Programme – 2004

Date.	Event & Topic.	Contact Hrs.	CPD Pts.
February.			
Wed. 18 th	Chapter Committee & General Meeting	1.00	1
Tues. 24 th	Breakfast Seminar.	1.00	1
March			
Tues. 2 nd	<i>University General Course in Arbitration commences (13 weeks)</i>		
4 th , 5 th , 6 th 12 th & 13 th	The Practitioner's Certificate in Mediation & Conciliation		
Wed. 17 th	Chapter Committee Meeting	1.00	1
Wed. 17 th	Professional Development session	1.00	1
Sat. 27 th	Arbitration Workshop - Evidence	8.00	12
April.			
Wed. 21 st	Chapter Committee & General Meeting	1.00	1
Tues. 27 th	Breakfast Seminar	1.00	1
May.			
Sat. 8 th	Mediation Course – TBC	8.00	12
Sat. 15 th	<i>University General Course in Arbitration - Workshop</i>		
Wed. 19 th	Chapter Committee Meeting	1.00	1
Wed. 19 th	Professional Development session	1.00	1
June.			
Tues 8 th	<i>University General Course in Arbitration - Exam</i>		
Sat 12 th	Adjudication Course* <i>note:</i> * <i>subject passing of legislation etc</i>	8.00	12
Wed. 16 th	Chapter Committee Meeting	1.00	1
Wed. 16 th	Annual General and General Meeting	1.00	1
Sat. 19 th	Arbitration Workshop – Pleadings	8.00	12
Tues. 22 nd	Breakfast Seminar	1.00	1
July.			
Sat. 3 rd	Mock Arbitration	8.00	12
Tues. 20 th	<i>University Advanced Course in Arbitration commences (12 weeks)</i>		
Wed. 21 st	Chapter Committee Meeting	1.00	1
Wed. 21 st	Professional Development session	1.00	1
August.			
Sat. 7 th	Mediation Course TBC	8.00	12
Sat. 14 th & Sun. 15 th	Regional Event TBC		
Wed. 18 th	Chapter Committee & General Meeting	1.00	1
Tues. 24 th	Breakfast Seminar	1.00	1
Sat. 11 th	Arbitration Workshop – Advanced	8.00	12
Wed. 15 th	Chapter Committee Meeting	1.00	1
Wed. 15 th	Professional Development Session.	1.00	1
Sat. 18 th	<i>University Advanced Course in Arbitration - Workshop</i>		
October			
Wed. 20 th	Chapter Committee & General Meeting.	1.00	1
Tues. 26 th	Breakfast Seminar	1.00	1
November.			
Sat. 6 th	Taxing of Costs/Awards Workshop	1.00	1
Wed. 17 th .	Chapter Committee Meeting	1.00	1
Wed. 17 th .	Professional Development Session	1.00	1
Tues. 23 rd	<i>University Advanced Course in Arbitration - Exam</i>		
Wed. 24 th	Introductory session – Processes of Arbitration & Mediation	3.00	2
December.			
Wed. 15 th	Chapter Committee & General Meeting and Sundowner	1.00	1

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Minutes of the General Meeting of the WA Chapter held at the Master Builder's Association, 4th floor,

35/37 Havelock Street, West Perth on **Wednesday 10 December 2003**

PRESENT: *Chairman - C Raymond, P Faigen, A Swann, T Brand, I Johnstone, J Morhall, J Foster, R Davis, L Ranford, G Logue, F Feher, J Knuckey, P Smith, B Wales, B Tonkin, F Feher, K Sasche, M Muir, B Lambert, J Stevenson, B Carman, J Jordan, T Ednie-Brown, J Luxford, S Ellis, P Panek, J Pidgeon, T Cameron, K McGill, K Doherty, B Wyatt, A Dickson, G Morrow, K De Courtenay, J Foster (35members)*

In attendance: Guests:- S Fiedler, G Baldock

Visitor: - L Tilly

Chapter Administrator - S Doherty

The Chairman opened the meeting at 5.27pm and welcome visitors and guests.

1. APOLOGIES were received from S Lloyd, S Lieblich, F McCardell, D Standen, G Anstee-Brook, B Phillips, R Langrish, H Esbenschade, C McIvor, B Mendelawitz, J Duncan.

2. MINUTES of the General Meeting held on Wednesday 15th October 2003 were received as a correct record.
Unanimously accepted

3. BUSINESS ARISING

There was no business arising from the minutes.

4. NATIONAL COUNCIL

- The Chairman referred members to The View and National Newsletter regarding the resignation of the CEO. National Executive along with reviewing applicants for the CEO's position, which will be on a 12-month contract, is addressing essential matters of Council.
- The Chapter's Mediation Report was tabled at the last National Council Meeting and will be circulated to all Chapters and Committees.
- Financially the Institute is operating at a modest profit.

5. CHAIRMAN'S REPORT

- As per "The View."
- Rail Access Workshop – responses have been received by members to attend final briefing in February 2004. Under the Rail Access Code, IAMA has to provide a panel for Access Disputes. The Rail Regulator has made a number of costings under the National Competition Principles and disputes will involve quite large sums of money.
- Pupillage – in response to the issue raised at last meeting the current system for pupillage has been reviewed. The Chairman has written to all graded Arbitrators advising of the need to offer pupillage. J Knuckey spoke to his recent article in The View, and the need for those on the Pupillage list to provide updated e-mail address information.
- Honour Roll – article in The View explaining that nominations are restricted to retired members. Request that members provide the name of anyone they consider worthy of this nomination. Currently 2 retired members are listed on the Honour Roll.

6. EDUCATION & PROMOTIONS SUB-COMMITTEE

R Machell reported the Business Plan for 2004 is in its final draft. The 2004 CPD programme has been finalized and circulated in The View.

7. WORKING PARTY REPORTS

7.1 WADRA

No report. P Faigen focussed on the rewards of involvement in the SCRAM programme. The View provides details on how members can become involved in the programme.

7.2 Arbitration Course

L Tilly reported there had been quite a few enquiries about the 2004 course and is optimistic that the numbers will enable a face-to-face course to be conducted in Perth next year.

7.3 National Mediation Course

The Chairman reported S Lloyd and B Mendelawitz had indicated to the Chapter Committee all planning is in hand for the course. S Lloyd and A Zariski to present the course in 2004.

7.4 Current Training Programmes

Next courses will take place in February – Introductory session on the Commercial Processes of Arbitration & Mediation. The Adjudication course planned for February will be rescheduled until later in 2004.

8. GENERAL BUSINESS

8.1 Chapter Library

G Morrow spoke to an article he wrote for The View, and encouraged members to utilize the resources available at the library.

8.2 The View

J Luxford complimented the current editor of The View on the professional presentation of the newsletter.

Presentation of Certificates

Certificates were presented to members and guests for new membership, Mediation Accreditation, Grading and successful completion of the Advanced Arbitration course.:

The Chapter Chairman extended Christmas greetings to all present and invited everyone to partake in Christmas drinks.

The meeting closed at 5.50pm.

NEXT GENERAL MEETING will be held on **Wednesday 18th February 2004** at 5.15pm at the Master Builders Association, 35-37 Havelock Street, West Perth.