

The official newsletter of the  
WA Chapter of  
the Institute of Arbitrators and  
Mediators Australia

Vol: 14 No. 3  
June 2004



Thanking the 2004 Corporate Sponsors:

**JACKSON MCDONALD**

**BARRISTERS AND SOLICITORS PH 9426 6611**

**(Guest) Editor's View**

**In this issue:**

**Where are we going?**

When you look at the attendances at General Meetings, CPD sessions and Breakfasts one wonders where are the other 125 members of the Chapter? The Editor's comments in the April Issue further queries breakfasts and pose 2 questions.

1. *Should we stay with the general focus being on our practices, or look to a wider range of speakers, or*
2. *Do we cease them altogether?*

**Why our programme includes breakfasts -**

The breakfast initiative commenced in 1998 and generally we have included more dispute resolution matters in our speaker's topics and about 1 speaker each year on a general topic. I believe the organisers Ivan Saracik followed by Barry Tonkin have provided an excellent series of speakers.

Certainly, numbers have been erratic around the low to upper 20's except on odd occasions, and I suggest that more members be encouraged to attend and to bring along a guest, potential member or just interested, so that we can increase to the low to upper 30's at least.

I believe the relaxed atmosphere is excellent for social interaction as well as the CPD, and it would be a great loss to our Chapter and activities to cease.

We seem to suffer at General Meetings and CPD sessions in a similar manner with attendances generally in that same bracket of low to upper 20's.

It has been suggested that in addition to the calendar and advices in the View that meetings etc., need to be notified separately to members to ensure that members are aware and informed, and this may be helpful and has been instigated by the committee.

May I suggest that ALL members should enter ALL the dates in their diary?

Meetings are the third Wednesday in each month except for January (no meetings) and December (earlier in the month). Breakfasts are generally on the third Tuesday each second month from February on, but these do move occasionally to suit the speaker.

**ACT NOW** and pledge your support.

WA members are fortunate as we get our meetings generally included in our membership but the other States all charge significantly for ALL CPD sessions, and they still get good attendances.

Perhaps we should do the same?????

**Who said "No Way!" - ....and I agree..... THE BLACK DUCK!**

- **Editorial**
- **Chairman's Message**
- **Comment from CEO**
- **Reports of recent events**
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*Comments expressed in this newsletter are those of the author of the particular pieces and do not necessarily reflect that of the IAMA unless so indicated.*

**Send letters to the Editor**  
to:  
**Phil Faigen**  
to  
**faigen@allpointsbuilding.com.au**

**DEADLINE FOR  
NEXT ISSUE:  
24<sup>th</sup> July 2004:**

*It is desirable for all material to be published in "the View" to be forwarded by e-mail in **WORD** format, with minimal formatting,*

**The Administrator is**

**Sue Doherty**  
**Ph. 9368 4755**  
**Fax 9368 4744**  
**suedoherty@bigpond.com**

## *Chairman's Message*

### **STOP PRESS !!!!!!!!!!!!!**

Printing deadlines mean limited time for me to give a short note following my return from IAMA's 2004 National Conference held in Sydney over the weekend of 22 and 23 May 2004.

It was awe-inspiring! There were 197 persons attending which was an all time record and testimony to the hard work put in by the New South Wales organising committee.

I wish that a greater number of WA members were able to attend these annual conferences because they really demonstrate what a dynamic and strong organisation IAMA is and all of that flows from the quality and diversity of our members. Unfortunately the tyranny of distance and the associated costs also makes it impossible for WA to compete as a venue for such events. About two (2) years ago we offered to host the next conference but after detailed investigation had to back off because of the risk that the anticipated sponsorship and attendance level left us dangerously exposed. This is such a pity because hosting a conference would really lift our profile and show the market our strength.

It would take a lengthy article to give an adequate summary of all of the sessions. Suffice to say that there was an Arbitration stream and Mediation stream for each session with some plenary sessions. All of the arbitration sessions which I attended demonstrated that arbitrators are increasingly using innovative ideas to provide a superior dispute resolution service. The quality of papers was excellent and I will be reviewing whether we can adapt some of them for own CPD program.

One of the mediation sessions, which I attended involved the use of facilitation methods either independently with or as part of a mediation type process, which was an interesting concept. The method used was similar in many respects to that which was used by the professional facilitator we engaged to assist with the mediation planning day last year. Laurie James facilitated the session on the topic "Preparing Your Client for Mediation" at which Robert Angyal presented a paper. I heard some very positive feedback about that session. A plenary session was held towards the end of the first day in which the Chapter Chairs reported on the activities in the Chapters. The reports were kept fairly short because the real interest lay in the suggestions which came from the floor and there were many. Most noteworthy of which, supported by a number of members, was that we must move towards a total conflict management service where our members' skills are exploited in advising parties. The idea is to ensure that we can provide a one-stop shop for any stage of conflict or dispute.

The Annual General Meeting went off without any controversy except that Ian Nosworthy, who remained in the Chair forgot to announce the names of the incoming office bearers for the next year and had to remedy the situation by making the announcement at the Conference dinner. Tim Sullivan (NSW) was elected President, Laurie James (WA), Senior Vice President, Ian Bailey (NSW), Vice President and Ken Stout (VIC), Treasurer. Laurie deserves double congratulations for this honour and also for topping the voting in the national election with 200 votes. I was in joint second place with 197 votes. Thank you to all WA members for their support.

I am sure Laurie will also make a very worthwhile contribution to the National Executive this year. For my part with all that has been going on with the closing down of KPMG Legal and the many issues which came before the Executive, I made my intention clear that I would not want to nominate for the Executive / Vice President again if other suitable candidates were willing to take on the role. I am sure that Ian Bailey, will bring a lot of enthusiasm and energy to the position and I wish him all the best.

The Dinner on the Saturday Night was a great success. Justice Terry Sheahan AO was the after Dinner Speaker. His Honour is the President of the Workers Compensation Court in New South Wales and came across as a very down to earth, committed social reformer, who has not only been prepared to entertain radical alternative dispute resolution methods but has implemented them in his Court. Apart from that he was also very amusing.

On the Sunday morning I facilitated a panel discussion on the Construction Industry Payment Legislation governing adjudication. This without doubt was the flavour of the month topic. It was extremely interesting to hear about the practical and legal difficulties facing adjudicators and it underlined the need for us to provide the very best possible training when the WA Legislation comes into force which will probably be in September this year.

Adjudication has become so popular in New South Wales that on one day the Chapter handled 15 nominations. During a Planning Day which was held prior to the conference figures were quoted showing that IAMA members earned approximately \$800,000.00 in fees as adjudicators last year and we were assured that those figures were not up to date and that the correct figure was closer to \$1,000,000.00.

The Conference concluded with a fine parting lunch and we then all headed in our different directions somewhat exhausted but all very impressed with a superbly organised conference.

Clive Raymond Chapter Chairman

## **STATISTICS.**

Due to workloads of members creating the delay, the forms for completion by Graded Arbitrators and, for the first time, for Accredited Mediators will be distributed shortly.

After analysis the detailed information will be included in the View and will be utilised by the Committee for our planning for courses, CPD and for furthering information to the public, and in particular to those areas of industry where we will “spread the good word”.

We acknowledge that the completion of these forms will impose upon you but – PLEASE fill in the details, even if it is a nil return, for the greater the spread of information is all for the benefit of YOU, the members. This initiative commenced 4 years ago is only carried out in WA, and also helps to keep us in front.

Mediators are being asked to complete forms for the first time, and we particularly request your help to assist the Institute in our initiative to gain this information to assist the Mediation subcommittee with their planning.

**It does take time but please help us - to help you.**

**From - THE BLACK DUCK!**

**Dateline: 31/5/04**

Phil,

..... In respect to the National ballot 45 WA members voted – current WA membership is 163, with additional 9 new members admitted at the meeting in Sydney on 21/5/04.

Regards,  
Gordon.....

**Gordon Tippett**

**Chief Executive Officer**

The Institute of Arbitrators and Mediators  
Australia

Ph: 03 9607 6908; Website  
[www.iama.org.au](http://www.iama.org.au)

## From the Administrator's Desk

June is here and with it the mild Western Australian wintry weather, however as I see it activities in the Chapter have certainly not slowed down.

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

*Mark Sheehan*

*Solicitor*

*Christopher Holmes*

*Contract/Risk Manager*

### **Congratulations to:**

Accredited as Mediators

*Roy Langrish & Jaap Poll*

Graded as an Arbitrator

*Jaap Poll*

### **Arbitration Modules**

The 1<sup>st</sup> of the 3 Arbitration Modules took place with 11 participants continuing their professional development under the tuition of Laurie James and Clive Raymond. The 2<sup>nd</sup> Arbitration Module is planned for Saturday 19<sup>th</sup> June, and 11 members have registered to attend. Places are still available for the 2<sup>nd</sup> and 3<sup>rd</sup> Modules. Presenters for the 2<sup>nd</sup> Module will be Laurie James and Justice Christopher Carr.

### **Mediation Workshops**

The long awaited Mediation Professional Development has arrived! 3 Sessions are planned over 3 consecutive Thursday nights in June, commencing on Thursday 3<sup>rd</sup> June. Archie Zariski will facilitate these sessions and members can choose to attend all 3 or whatever suits.

### **Training Venue**

The venue for the current Professional Development training in Arbitration and Mediation is the Mt Lawley Professional Centre, 99 Central Avenue in Mt Lawley. These rooms are available for hire. Contact Chapter member Sally Jetson on either 9371 8977 or 9370 4014.

### **CPD Hours**

*How well do you comply with CPD requirements?*

*Who is required to meet CPD obligations?*

The IAMA website has all the details about the CPD obligations of Graded Arbitrators and Accredited Mediators. The scheme is administered as a self-monitoring program, but each year the Professional Affairs Committee (which administers the program nationally) will audit a proportion of returns submitted. The following extracts might be a useful prompt to check your own progress:

#### **The purpose of CPD**

- ❖ To achieve and maintain high standards of professional competence and ethical behaviour.
- ❖ To demonstrate to Courts and the community that the Institute is committed to the accountability of its members.
- ❖ To promote public perception of the Institute and its members as proponents of high standards of professional excellence in the resolution of disputes.

#### **Mandatory CPD**

- ❖ Graded Arbitrators and Accredited Mediators to complete 75 hours of eligible activities per triennium, with a target of 25 hours per annum.
- ❖ Applicants for re-grading as an Arbitrator or for transfer to Member or Fellow must complete 25 hours of eligible activities in the year preceding the application.
- ❖ Fellows, Members and Associates who are not Graded Arbitrators and Accredited Mediators generally should be encouraged to undertake CPD, however there is no mandatory requirement for these persons.

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

The next round of applications for assessments will need to be at the Chapter Office by Tuesday 8<sup>th</sup> June so they can be listed for the next National Council Meeting on 1<sup>st</sup> July.

***Professional Development Session 19<sup>th</sup> May 2004***

Cameron Maclean from Phillips Fox has made available his paper "Expert Witnesses & Evidence." If you would like a copy contact the Administrator.

***REMEMBER TO EXERCISE YOUR RIGHT TO VOTE IN THE CHAPTER  
COMMITTEE ELECTIONS 2004 – 2006***

***RETURN YOUR COMPLETED BALLOT PAPER TO THE CHAPTER OFFICE BY  
4.00PM, 9<sup>th</sup> JUNE 2004***

*Members who change e-mail addresses, phone numbers or mailing addresses PLEASE  
ADVISE THE CHAPTER ADMINISTRATOR*

Regards **Sue**

***NATIONAL VOTING RESULTS***

The following is a summary of the voting results for the information of Council members and unsuccessful candidates. The Poll will be officially declared at the Annual General Meeting in Sydney on 22 May 2004, and this information should be treated as confidential until that time.

1. The total number of ballot papers counted was 277.
2. Informal or ineligible ballots received was 23. 20 ballot papers were received after the poll closure at 4.00 pm EST on Friday 14 May 2004, of these 17 were postmarked 13 May or later.
3. Sandy Policansky has been elected automatically as the only nomination from a large chapter (Article 10 (b) (x) ), and her results have been removed from the table.
4. The results in ascending vote order are shown in the following table:-

| <b>Candidate</b> | <b>State</b> | <b>Total Votes</b> | <b>Membership Category</b> |
|------------------|--------------|--------------------|----------------------------|
| POLICANSKY       | SA           | 10 (b) (x)         | Member                     |
| <b>JAMES</b>     | <b>WA</b>    | <b>200</b>         | <b>Fellow</b>              |
| FISCHER          | QLD          | 197                | Member                     |
| <b>RAYMOND</b>   | <b>WA</b>    | <b>197</b>         | <b>Member</b>              |
| BAILEY           | NSW          | 187                | Fellow                     |
| AHERN            | ACT          | 181                | Member                     |
| REARDON          | QLD          | 179                | Member                     |
| HUNT             | NSW          | 176                | Fellow                     |
| HIBBERT          | NSW          | 173                | Member                     |
| O'BRIEN          | VIC          | 167                | Member                     |
| SULLIVAN         | NSW          | 166                | Member                     |
| STOUT            | VIC          | 157                | Member                     |
|                  |              |                    |                            |
| BOYLE            | ACT          |                    |                            |
| WILSON           | NSW          |                    |                            |
| MEGENS           | VIC          |                    |                            |
| BEDROSSIAN       | NSW          |                    |                            |

**GORDON TIPPETT**, Chief Executive Officer.

***CONGRATULATIONS TO Laurie and Clive on their outstanding successes.***

THE  
INSTITUTE of  
ARBITRATORS & MEDIATORS  
—  —  
AUSTRALIA

Level 1, 190 Queen Street, Melbourne, Victoria 3000  
PO Box 13064 Law Courts, Victoria 8010  
Telephone 03 9607 6908 Facsimile 03 9602 2833  
e-mail national@iama.org.au

**NATIONAL COUNCIL  
2004 - 2006 COMMITTEE**

**Tim Sullivan (President)**

Contract Administration Group Pty Ltd  
PO Box 80  
OAKDALE NSW 2570  
Telephone (02) 4659 6200  
Mobile: 0411 554 435  
Facsimile: (02) 4659 6355  
Email: timsullivan@contraxgroup.com

**Laurie James (Senior Vice President)**

Kott Gunning  
11<sup>th</sup> Floor, 15 William Street  
PERTH WA 6000  
Telephone: (08) 9321 3755  
Mobile:  
Facsimile: (08) 9321 3465  
Email: chamilton@kottgunn.com.au

**Ian Bailey (Vice President)**

Ground Floor, Wentworth Chambers  
180 Phillip Street  
SYDNEY NSW 2000  
Telephone: (02) 9233 3011  
Facsimile: (02) 9232 8435  
Email:  
bailey@wentworthchambers.co  
m.au

**Ian Nosworthy (Immediate Past President)**

Roper Street Chambers  
21 Roper Street  
ADELAIDE SA 5000  
Telephone: (08) 8227 1900 (w)  
Mobile: 0421 095 000  
Facsimile: (08) 8227 1911  
Email: iannos@nospart.com.au

**Ken Stout**

Boutique Corporative Advisory  
Level 2/111 Collins Street  
MELBOURNE VIC 3000  
Telephone: (03) 9687 6570  
Mobile: 0419 340 491  
Facsimile: (03) 9687 6370  
Email: kken2252@bigpond.net.au

**Bryan Ahern**

PO Box 236 (During the week)  
GREEN ACRE NSW 2190  
Telephone: (02) 9707 3122  
Mobile: 0418 204 016  
Facsimile: (02) 9707 4952  
Email: ahern@netspeed.com.au

**Warren Fischer**

Unit 30, 69 Leichardt Street  
SPRING HILL QLD 4000  
Telephone (07) 3832 1701  
Mobile: 0400 005 192  
Facsimile: (07) 3832 1471  
Email: adrs@tpg.com.au

**Stephen Hibbert**

Partner  
Corrs Chambers Westgarth  
Governor Phillip Tower  
1 Farrer Place  
SYDNEY NSW 2000  
Telephone: (02) 9210 6357  
Facsimile: (02) 9210 6611  
Email: stephen\_hibbert@corrs.com.au

**Robert Hunt**

104 Kurraba Road  
SYDNEY NSW 2000  
Telephone (02) 9904 3666  
Mobile: 0409 076 045  
Facsimile: (02) 9904 3677  
Email: robhunt@bigpond.net.au

**Angela O'Brien (Chair)**

School of Creative Arts  
University of Melbourne  
Art Centre Building  
PARKVILLE VIC 3010  
Telephone: (03) 8344 8362  
Mobile: 0409 385 746  
Facsimile: (03) 8344 8462  
Email: aob@unimelb.edu.au

**Sandy Policansky**

CRS Australia  
Level 1, 165 Grenfell Street  
ADELAIDE SA 5000  
Telephone: (08) 8402 4251  
Facsimile: (08) 8402 4242  
Email: Sandy.Policansky@crsrehab.gov.au

**Clive Raymond**

KPMG Legal  
Level 31 Central Park  
152 – 158 St George's Terrace  
PERTH WA 6000  
Telephone: (08) 9263 7132  
Mobile: 0414 602 782  
Facsimile: (08) 9263 7177  
Email: craymond@kpmg.com.au

**Karyn Reardon**

Clayton Utz  
GPO Box 55  
BRISBANE QLD 4001  
Telephone: (07) 3292 7207  
Mobile: 0412 086 704  
Facsimile: (07) 3292 7950  
Email: kreardon@claytonutz.com

## REMINDER ANNUAL GENERAL MEETING

**Members & guests are cordially invited to remain after the AGM & General Meeting on Wednesday 16<sup>th</sup> June 2004 for light refreshments**

To assist with catering, please return this form **by Friday 11<sup>th</sup> June** to:

Chapter Administrator      PO Box 518, COMO WA 6952  
Phone: 9368 4755 or FAX: 9368 4744  
E-mail: [suedoherty@bigpond.com](mailto:suedoherty@bigpond.com)

!      I will be attending the AGM & General Meeting on Wednesday 16<sup>th</sup> June 2004

! Please tender my apologies for the AGM & General Meeting

## Mediation News

The mediation group continues to meet informally each month. We expect that we will soon need to reconsider and formalise the meeting place and time. This will allow us to take advantage of the many offers that we have received from experienced practitioners to meet with the group and discuss their experiences in mediation and conciliation. We have received two generous offers of premises for future meetings.

The recently advertised series of three mediation workshops in June is attracting a good level of attention. These workshops have been devised to satisfy learning needs that have been raised by recently qualified mediators and some with considerable practice experience. The workshops are intended for both experienced and new mediators as well as arbitrators who extend to mediation and conciliation outside the formal arbitration process. We are indebted to Archie Zariski for taking on the facilitation of this project.

Another initiative still in development is that of informal skills development groups. Those who may be interested in these could make themselves known to Dennis Barton ([barton@actuary.com.au](mailto:barton@actuary.com.au)).

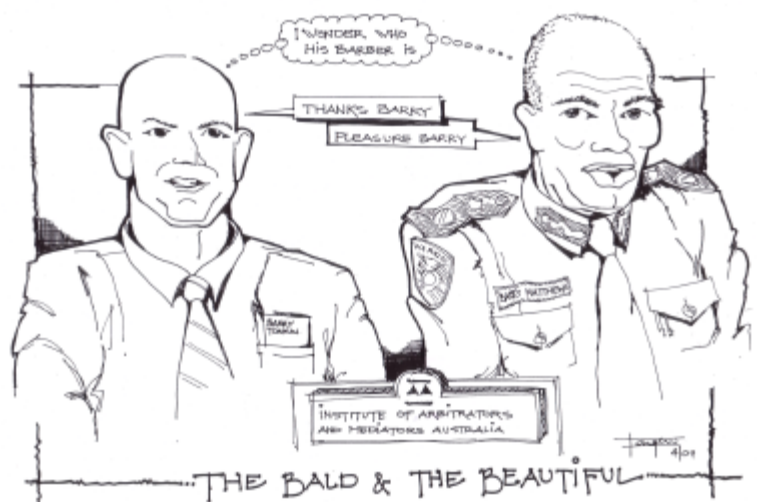
The first goal of the mediation group is to develop the sense of a community of mediators within IAMA. Those interested in being 'on the list' are encouraged to contact me.

Peter Byrne  
[P.Byrne@aamhatch.com.au](mailto:P.Byrne@aamhatch.com.au)

## BREAKFAST MEETING

Police Commissioner Barry Matthews  
being thanked by Master of Ceremonies  
Barry Tonkin at the  
Institute of Arbitrators and Mediators  
Australia breakfast, Perth W.A. on  
27 April 2004.

(drawing by, and presented with personal gratitude to  
B.M.of P.D.F.)



## Thinking of seeking Grading, Regrading or Accreditation?

**Read this in conjunction with other information I the administrator's report in this issue.**

The acceptance to grading, accreditation or regrading is not an automatic right of passage. Members who of the view that having completed the exams and attended a couple of P.D. sessions will entitle them to a 'free passage' might like to reconsider in the light of the following.

It is recommended that, firstly, visit the IAMA website and look for the particulars required, and then think about the sorts of information that the grading interview panel will seek from you, such as:

- Your professional standing and how your professional role interacts with dispute resolution
  - Experience as an arbitrator/mediator,
- and if none
- Your pupillage.

Be prepared to respond to "situational questions" at the interview, for e.g.

Q: How would you respond to such-n-such situation?

Q: What alternatives are there if.....?

Q: What are consequences of.....?

The panel (of 3) will wish to look beyond the information in the papers you supply.

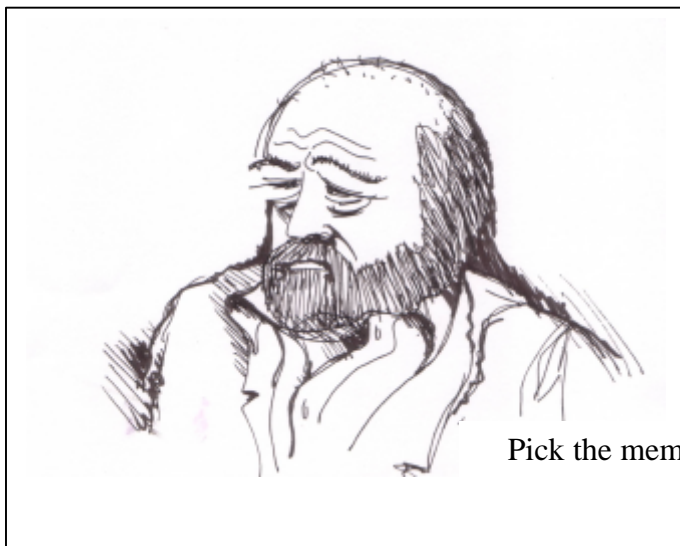
Why? Simply because it is not desirable to give an applicant their "your wings" if the interview panel is not comfortable with your ability to handle awkward circumstances.

**Premature grading/accreditation is of no benefit to you or IAMA.**

The interview panel will make recommendations to council which in turn may, or may not, adopt the recommendations.

Remember, the interview panel cannot recommend "subject to" or conditional approval. Its either yay or nay!

*For further information contact Ina Johnstone or any committee member.*



Pick the member.....

**I hope that there will be more letters to the Editor on the issue expressed in the guest editorial to support the continuation of the breakfast meetings and to encourage the organisers and the speakers.**

**Indeed, any letters to the editor are welcomed (if you want to be heard that is)  
... ED.**

## POST MORTEM GERALDTON

### SEMINAR: "MINIMISING THE FINANCIAL AND EMOTIONAL COST OF COMMERCIAL DISPUTES"

This two hour seminar was held in Geraldton on Wednesday 24<sup>th</sup> March between 5.00pm and 8.00pm. Two papers were presented:

1. Alternative Dispute Resolution Processes - An Overview: John Knuckey
2. An Introduction to the Construction Contracts Act: Graham Anstee-Brook

#### **Registration and Attendance:**

There were 34 paying registrations plus three complimentary registrations. Two of these were for City of Geraldton in return for free hire of the room and equipment (would have cost \$350) and one for Dianne Gilliland from MBA as reward for promotion of the event to MBA members.

Registration was a little slow at first, which meant that we were delayed in making the final commitment to hold the event. This adversely affected the cost because we were unable to purchase airfares sufficiently in advance to get the 14 day advance purchase fares.

As would be expected the majority of the audience were from engineering and building construction organisations however others were also represented.

Personally I was a little disappointed at the final attendance result. There was both radio and local news paper coverage of the event during the month prior however, based upon a show of hands at the seminar, most people found out through either the MBA or Engineers Australia.

#### **Response:**

There was a very good response from the audience on the night with a lot of interest shown in the Construction Contracts Bill as might be expected. Obviously, it provided a valuable insight into what can be expected in the future; unfortunately a lot of people that will be affected were not captured by our marketing campaign.

#### **Follow -up with the Audience:**

I think we made an impact with the audience however there was no indication that it would result in additional members for IAMA at this stage despite the offer of discounted subscriptions for applications received before 31<sup>st</sup> March. However, we should remain in contact with the audience over the coming months using the following means:

- A number expressed an interest in receiving a copy of the presenters' notes. Graham and I will arrange this using Sue's email list.
- I think they should all be sent the next three issues of "The View".
- Perhaps a follow-up at appropriate intervals to report progress of the Construction Contracts Act.

#### **Media Coverage**

We used the "voluntary" services of Kerry Faulkner, a free lance media liaison journalist in Geraldton. She is a friend of Phil Faigen's and offered to help us out with the promotion at no charge. She did a great job getting articles into the local news using local identities etc and arranging for radio interviews with Clive and Bob Stawarz (Engineers Australia Geraldton). I don't think we would normally be able to afford that sort of assistance. Notwithstanding what I thought was excellent coverage, it did not seem to translate into big numbers of registrations as most registrations resulted from professional organisations contacting their members.

Whilst Kerry offered to provide the service for free as a favour to Phil I think some reward is appropriate.

#### **In Conclusion**

The event was quite successful, ran at a profit, was good PR for IAMA and should translate into future business for IAMA in dispute resolution and possibly training courses although I am not sure how this can be measured.

*John Knuckey* Friday, March 26, 2004

## Hearsay

Author: Chris Merritt with Marcus Priest and Katherine Towers

Date: 28/05/2004

Source: AFRBreaking

Publication: **Financial Review**

Section: Legal Affairs

Page: 61

Sydney silk Stuart Littlemore has finally joined the exalted ranks of those lawyers who have made a personal impact on the law.

Thanks to Littlemore, the world now knows that barristers and judges who deal with each other professionally are most unwise to call themselves mates.

Towards the end of March Littlemore was waiting for proceedings to begin before **David Plaister**, who was acting as a referee in a building dispute in Sydney.

Littlemore was appearing for the plaintiffs and had the following conversation with barrister Simon Kerr, who was appearing for the other side:

Littlemore: I don't think that anything will be happening with the matter today.

Kerr: Why not?

Littlemore: The referee's father has just died.

Kerr: How sad. I'll go outside and say something to him. He's a mate of mine.

That conversation gave rise to proceedings in which Littlemore's clients sought to have Plaister disqualified for apprehended bias.

Late last month, in a decision known as Michael David v Vamiso Pty Ltd, judge Paddy Bergin in the NSW Supreme Court rejected that application and had some harsh words for both sides.

After hearing evidence about the limited links between **Plaister** and Kerr, Bergin said the term "mate" was an inappropriate way of describing their relationship. It played a major part "in setting the hare running".

She said moderately informed bystanders would know that professionals, when dealing with referees and judges, do so professionally.

"In this case, the use of the word 'mate' ... was one that was latched on to and, in my view, latched on to quite inappropriately," Bergin said.

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Even the best of conferences sometimes take their toll on participants. And Saturday's proceedings at the conference of the **Institute of Arbitrators and Mediators** was no different.

So Melbourne silk **Neil Brown** got to his feet and grabbed everyone's attention with this question:

"Mr Chairman, aren't there a lot of opportunities we are overlooking in the field of international commercial arbitration that we could move into?"

"I was thinking about this last week when I was in Beijing at the annual conference of the International Council on Commercial Arbitration.

"They were all there: Poms, Chinese, Japanese, Koreans, Singaporeans, Swedes and everyone else. Even Bulgaria was there and they had actually set up a stand in the foyer where they were pushing this exciting book called *107 Years of Commercial Arbitration at the Bulgarian Chamber of Commerce and Industry*, which of course I read over lunchtime.

"It was so fascinating and absorbing that I couldn't put it down.

"It was almost as gripping as that great work by Miles Lewis, the professor of architecture at Melbourne University, called *Two Hundred Years of Concrete in Australia*.

"As you know, you just can't drag architects and engineers away from reading it.

"So, Mr Chairman, have you got our international relations under control and is there some way we can elbow our way in and get some international arbitration work that Bulgaria and others have got their feet on?"

Brown, who was a minister in Malcolm Fraser's government, had to make do with this reply: "What can I say after that. We are doing our best."