



THE
INSTITUTE OF
ARBITRATORS
& MEDIATORS
AUSTRALIA

the View

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

Thanking our 2005 Corporate Sponsor



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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.*

IN THIS ISSUE:

- Chairman's Message
- Administrator's Report
- Adjudication checklists
- Reports of recent events
- Contact numbers and more ...

NEXT MEETINGS:

- General Meetings:
 - 5.15pm, 13 April 2005; and
 - 5.15pm, 15 June 2005
- at MBA Building, West Perth

E d i t o r i a l

This is the first edition of *The View* I have edited. From the outset I'd like to extend a very large thank you to Phil Faigen for the energy and effort he has provided in editing this newsletter for a number of years. Having completed the editing process for this edition, I can say that my thanks to Phil are truly sincere and richly deserved. I shall endeavour to carry on Phil's hard work to achieve a quality product.

Echoing Phil's comments in the last edition, one of the main functions of this newsletter is to provide two-way communications for WA Chapter members. The first communication is a contribution, and on that note I also thank those who contributed material for this edition. The second communication is to respond to what you read in these pages. I would gratefully receive (preferably in Microsoft Word format) any comments, letters, suggestion or thoughts that are evoked by this edition. The deadline for submissions for the next edition is the end of May 2005.

Finally, in moving on from the post as editor Phil has provided me with a caricature of a book (right), which looks remarkably like me. It is clear the man is one bottomless pit of multi-disciplinary talent. Oh, what big shoes you have!

Cal Pruiti
Editor



Chairman's Message for the April View

We are now well into the year and, after a hectic start seem to be settling down to a normal pace.

Our Administrator Wendy Brown will be enjoying a bit of a breather after a bit of a baptism by fire. It is planned that Wendy will attend the National Conference when all Administrators and most of National Office staff will have the opportunity to meet face to face and address matters of administrative significance.

The financial return, from the recently completed Adjudication Course and the National Mediation Course completed over the last week-end has helped to put the Chapter on a sound base for the rest of the year.

When we first offered the National mediation course in Perth the Chapter was very concerned that the market was not sufficient to support the course and that we would probably not be able to run it more frequently than once a year at best. We thought that probably we should stage it at about 18 month intervals. The quality of the course has been such that demand continues to grow. Last year was the first year in which we ran 2 courses within the same calendar year. The current course is being run within 5 months of the last and was fully subscribed until a few days before its commencement with one withdrawal occurring.

In the long term the greatest benefit that comes out of the success of these courses is that they act as a steady recruitment source for new members who add more energy and enthusiasm to our Chapter. To a large extent it is the graduates of the Mediation course who have provided the nucleus of an active group of mediation members who breathe a new life into this area of the Chapter's activities.

Our breakfast meetings continue to provide a good vehicle for networking and are often well supported by guests. Experience has shown that the success of these events is dependant on having the right guest speaker and topic. We had a record number attend our most recent breakfast this month to hear the Deputy President of the State Administrative Tribunal speak on the very wide jurisdiction which that body exercises in W A. Judge Chaney succeeded admirably in simplifying what has been described as WA's lengthiest piece of legislation and reducing it to an understandable form. Jurisdiction is conferred by some 137 enabling Acts and consists of original jurisdiction, particularly in areas previously covered by the former Commercial Tribunal, and a review jurisdiction covering virtually any administrative decision within the State. SAT now hears appeals from decisions of the Building Disputes Tribunal and against decisions of Adjudicators declining to exercise jurisdiction.

Another recent highlight was the very interesting presentation by Scott Ellis exposing the extent to which Arbitrators are bound by the rules of evidence even when they think they are not!!

Until next time.

Clive Raymond
Chapter Chairman

F r o m t h e (n e w) A d m i n i s t r a t o r ' s D e s k

Thank you to the Committee and all the members I have come into contact with in my short time in the position - you have made me feel very welcome.

Practitioner's Certificate in Mediation and Conciliation

This course had 20 paying participants with the 21st place being taken by 5 different qualified mediators who stepped in and assumed role-playing duties. Thank you to them for volunteering their time at such short notice.

Breakfast Meetings

The breakfast meeting on 22 February was very successful with 44 people attending to hear Judge John Chaney speak on the role of the SAT.

As our aim is to get in excess of 30 people to every breakfast meeting, we want to put together a list of really top-notch interesting speakers on all sorts of topics. So, if you know someone, or have a few ideas, please email me or pick up the phone and tell me in person. My contact details are wa.chapter@iama.org.au or phone 9201 0564.

In the meantime, the breakfast meeting for 26th April has been cancelled.

National Conference

Our National conference is being held in ACT from 27-29 May and this year, all Chapter Administrators are invited. The invitation is not without strings, however, as we will be expected to work to help out during the 3 days. I am, however, looking forward to attending as it will be an excellent opportunity for me to "fast track" my learning about the organisation.

Membership

We have a database of members' details from which you obtain your list of members. Please check your details and if they are incorrect (ie address, contact details etc) contact me and I will make the appropriate changes. Also, if you haven't paid your 2005 fees yet, this is a gentle reminder to please do so.

Kind regards to all.

Wendy Brown

A d j u d i c a t i o n

Adjudication Application Checklists

Adjudication is a new dispute resolution procedure governed by the *Construction Contracts Act 2004* (WA). Many WA Chapter IAMA members have invested in undertaking the adjudication training course offered by the Chapter. The Chapter is a “prescribed appointer” under the Act. As such, one of its roles is to appoint an adjudicator once it receives an application for adjudication. Members may be interested to know the policy and procedure of the WA Chapter when appointing/nominating an adjudicator. The following tables, kindly prepared by Kim Doherty, set out an action list addressing the WA Chapter’s actions upon receipt of an adjudication application.

Receiver of Application – Corporate Edge

Item	Checklist	Action	Notes
1.	Application received at Corporate Edge	1. Record date & time of receipt of documents. 2. Receipts the application fees. 3. Receipts acceptance of ad Date recorded.	
2.	Corporate Edge advises Administrator by Fax and forwards the application with fees to the Administrator by Courier	Record time and date of forwarding.	

Prescribed Appointer (WA Chapter Administrator)

Item	Checklist	Action	Notes
1.	Prepare data base of Accredited Adjudicators	Initial preparation and update as required	
2.	Prepare data base for Adjudication Applications	File for each Adjudication with checklist to monitor progress.	
3.	Receive application from serviced office	1. Record time of receipt and log in data base and prepare Matters folder. 2. Check the Application is in the correct format and contains the required information under the Act & Regulations. 3. Contact Duty Adjudicator and advise the nature of the Application so duty Adjudicator can nominate appropriate Adjudicator. (See action list for Duty Adjudicator) 4. Obtain Matter Number from National Office. 5. Receive advice from Duty Adjudicator as to the Nominee Adjudicator.	1. If application format is incorrect or info is missing return same to the Applicant. 2. Section 28: Adjudicator must be appointed within 5 days of Application Receipt.
4.	Issue standard letter of appointment to Adjudicator.	1. Sets out the requirements under the Act. 2. States that 5% of fees are payable to IAMA. 3. Sets out the parties to the Adjudication. 4. Forward original Claim Documents (and any response) to the Nominee Adjudicator.	
5.	Issue letters to the applicant and the	Standard letter identifying Nominee Adjudicator.	

Item	Checklist	Action	Notes
	respondent.		
6.	Advise the Registrar at DHW of the Appointment	Notification by e-mail to registar@dhw.wa.gov.au	

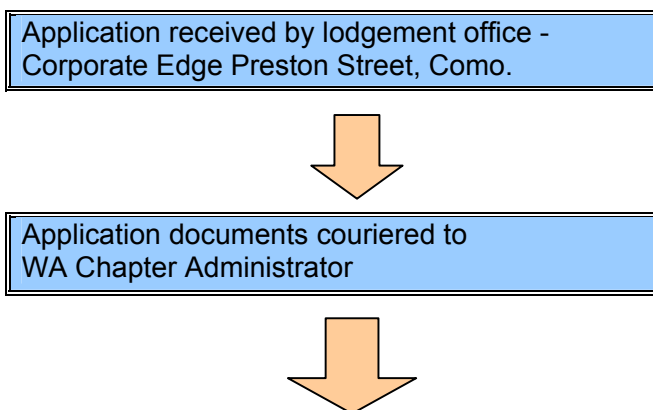
Duty Adjudicator

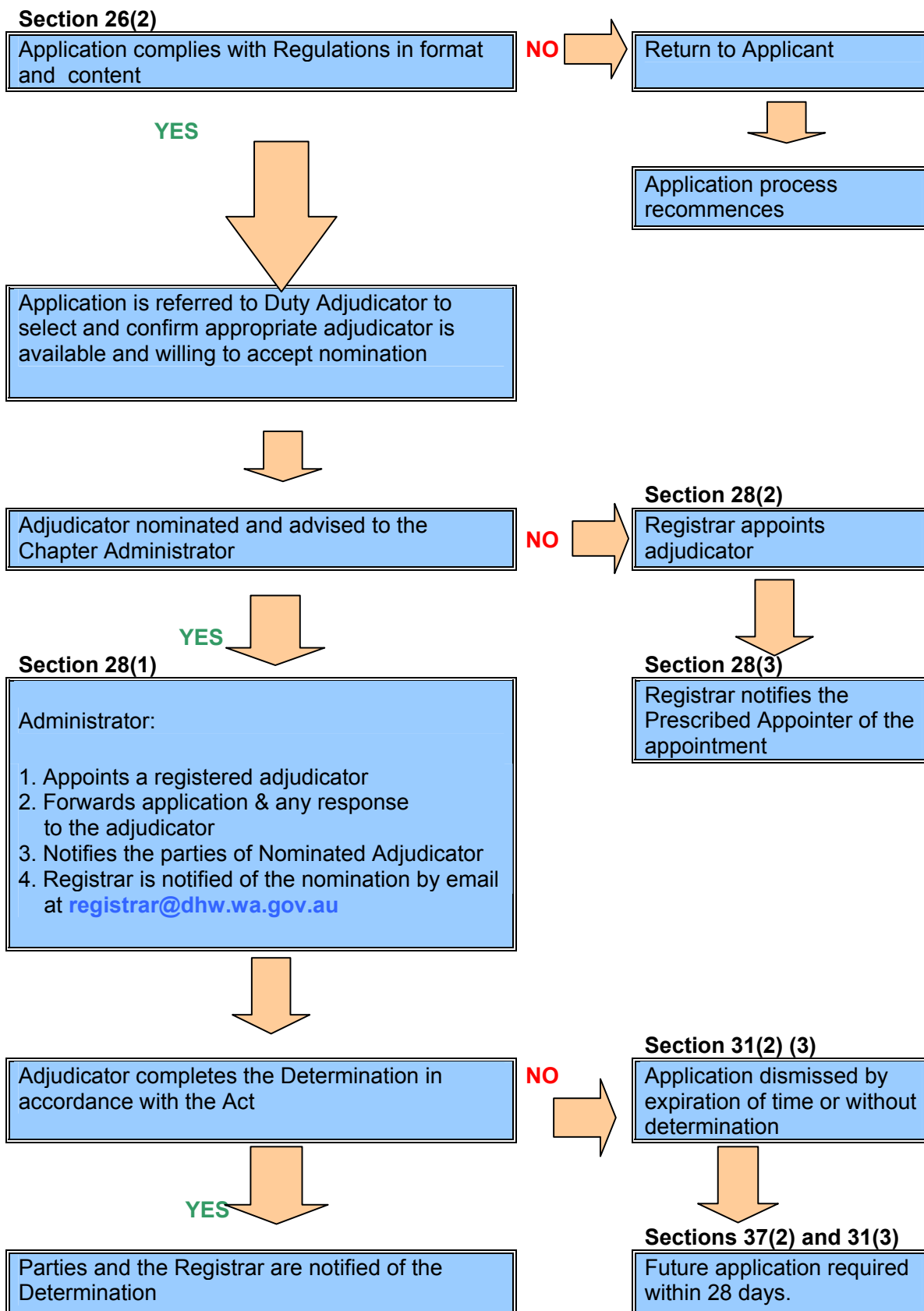
Item	Checklist	Action	Notes
1.	Receive brief details of Application from Administrator	<ol style="list-style-type: none"> Contact appropriate adjudicator and check that they are available and do not have a conflict of interest. Repeat the process until adjudicator is available and accepts. Advise the Administrator of the Nominee Adjudicator. 	Appointment must be completed quickly due to time restraints on appointment under the Act.

Adjudicator

Item	Checklist	Action	Notes
1.	Initial contact will be from Duty Adjudicator.		Confirmation of availability.
2.	Receives claim and letter of appointment as Adjudicator from the Chapter Administrator.	Commences and completes the adjudication as per Act.	Note time limit periods to be complied with under Act.
3.	Sends copy of Determination to Registrar.		Adjudication Identification number to be advised in DHW format.
4.	Advise Administrator adjudication completed.		
5.	Sends 5% of fee to National Office.		

IAMA PROCEDURE UNDER THE CONSTRUCTION CONTRACTS ACT 2004 (WA)





M e d i a t i o n

The first Mediation Colloquium was held recently. Peter Byrne was in attendance and has kindly provided the following report.

Mediation Colloquium #1: Pressure Learning In the Fishbowl

The first mediation development session for 2005 was held on 15 February 2005 in the Central Avenue, Mount Lawley facility, which is becoming the favoured venue for these events. The number of participants was limited to twenty. Exactly that number attended.

This was a mediation play in which the roles of the parties and the mediators were inter-changed from time to time while all others looked in. Mediation role-play is an effective skills-learning process.

The issue chosen as the subject matter appeared simple – a dispute over the distribution of profits in a family company. It contained all the elements of a dispute that is not what it at first appears to be.

A co-mediation model was adopted. This was a new experience for many of the participants.

The mediation got under way under the direction of Archie Zariski. It ran into trouble when the agenda was not soundly established. Archie did not intervene, but rather allowed the process to continue on its troubled path. One could almost hear him saying “these things happen, manipulative parties can distract the mediator, mediators make mistakes, mediators need to live with these possibilities and learn to deal with them.” Indeed, the lapse in not synthesising the agenda made the play real and illustrated the difficulties facing mediators.

Nevertheless, in future a model in which the parties do not inter-change roles may have to be considered to avoid the difficulties that arise when different players adopt differing interpretations of key terms the subject of the mediation (in this case ‘dividend’ and ‘profit’). This diminished some of the sense of reality of the play and became a distraction to the mediators. Alternatively, we need to find a scenario in which the terms are without any ambiguity of meaning, if that is possible.

I am pleased to say that many participants reported the exercise as valuable and worthy of regular repetition. Another will be run later in the year.

B r e a k f a s t M e e t i n g

Judge Chaney was the speaker at the last Breakfast Meeting held on 22 February 2005. The topic was “The State Administrative Tribunal Begins – New approaches to Sorting-Out Problems”. The following notes are courtesy of Lionel Cranenburgh, who was in attendance.

Jurisdiction

- About 130 Western Australian Acts of Parliament are under the State Administrative Tribunal’s (SAT’s) jurisdiction.
- The jurisdiction of SAT has two main directions:
 1. Review jurisdiction - i.e. to review some other jurisdiction such as Town Planning decisions;

- 2. Jurisdiction that does not involve a review.
- SAT's vision is to adopt best practice that is innovative. It has been modelled on the Victorian model, which is more limited in scope.

Legislative Objectives

- Resolution of questions and complaints according to best practice.
- Acting speedily with as little cost to the participants.
- Use the skills, knowledge and appropriate experience of members of SAT.
- The whole process is designed to be more informal than traditional legal processes.

Core Values

These include:

- Respect for law and persons appearing
- Fairness
- Independence from the Department of Justice
- Diligence
- Efficiency
- Accountability
- Transparency
- Proportionality (SAT does not want to get bogged down in legal procedures)
- Apply principles of natural justice

Structure

- SAT has four streams, each administered by an appointed person, as follows:
 1. Development and Resources (administers 35 Acts, including town planning, valuations, compensation, fisheries appeals and water licensing)
 2. Human Rights (administers 5 Acts, including equal opportunity and mental health)
 3. Civil and Commercial (administers Strata Title Act, Retail Shops Act and Credit Act)
 4. Commercial Regulations Act (administers 38 Acts, including licensing decisions, security, medical practices and disciplinary functions).

Website

- The SAT website (www.sat.justice.wa.gov.au) is a useful tool for further research into SAT.
- The website provides practical assistance for those seeking to bring an application to SAT. A tailor-made application form can even be downloaded from the site.

Mediation

- Section 54 of the *State Administrative Tribunal Act 2004 (WA)* provides that SAT can compel people to mediate. Any mediation must be approved by the President of SAT (currently Supreme Court Justice Michael Barker QC).
- Mediation is likely to play a large part in the activities of SAT, but it is expected that mediators will come from within SAT who will be both sessional and full-time members. External mediators will be approached when required.

C o n t i n u i n g P r o f e s s i o n a l D e v e l o p m e n t

The following is courtesy of Alan Swann.

What is and why do we need Continuing Professional Development (CPD)?

This is a question often raised by Members. My answer to this question is as follows:

1. To demonstrate that Members are achieving and maintaining high standards of professional and ethical behaviour.
2. To demonstrate participation by Members in a range of high quality professional development activities, with credit given for the level of participation.
3. To promote public perception of the Institute and our Members as proponents of high standards of professional excellence in the resolution of disputes.
4. To demonstrate to the community and the judiciary that the Institute is committed to the accountability of its Members, by requiring them to undertake CPD activities to ensure their expertise is current and beneficial both to Members and the community at large.

Where is the availability of CPD?

If you are NOT graded or accredited, attendance is essential to maintain, and increase, your level of knowledge and assists in your interview when applying for grading or accreditation.

Possible CPD points available for April to June 2005 on current program:

Activity	Number of CPD Points
General Meetings with CPD.	3
CPD sessions	5 to 8 depending on program and duration of presentation
Breakfast Meetings	1
National Conference	15
2 Arbitration Workshops	12 to 15 each
6 Mediation sessions	4 or 6 each
National Mediation Course	30
Reading professional Journals	1 point for each 3 hours spent - limit of 4 points per year

Points are also awarded for pupillage, committees, paper preparation and presentation, professional practice and for country members' additional time for reading of professional journals etc. on ADR.

You may also be entitled to CPD points for attendance at workshops, seminars etc. with other organisations.

To maintain graded or accredited membership a member shall acquire 75 CPD points over 3 years with the ideal target of at least 25 in any one-year. Currently members applying for grading must have acquired 25 points in the preceding 12 months. Country members are expected to achieve 15 points in each year with the balance from professional reading. Each year with subscription renewal

members have to state the CPD points earned in that year. National Council arranges for a number of audits each year. Many members achieve 50 to 60 points each year.

More information or enquiries to:

Alan Swann

Tel/Fax: 9293 3936

Email: aswa9827@bigpond.net.au

S u r v e y

The following is courtesy of Alan Swann, who welcomes enquiries (see previous paragraph for contact details).

Arbitration Statistics

Forms were sent to all graded arbitrators for the Calendar Year 2004 and we request these be completed and returned not later than 8 April 2005.

Remember a nil return is just as important to the statistical results and these need only be a short e-mail or fax.

Including my own, I already have six completed forms and to help me in the collation of the stats, the earlier they are in the quicker I can get the results published. So act now please.

Mediation Statistics

A new improved form has been drafted and is with four members for appraisal. We hope to distribute the form in the first week of April 2005.

Graduate Certificate in Construction and Building Law

Continuing the further education theme, the following information is courtesy of Phil Evans.

Introduction

The College of Law at the University of Notre Dame Australia is exciting and unique. Established in 1997 under the leadership of an eminent constitutional lawyer and backed by leading members of the Western Australian legal profession and judiciary, it offers a practical and ethical legal education of exceptional quality.

Why Study at Notre Dame?

Headed by Professor Gabriël A. Moens, the Graduate School of Law commenced operations in February 2004. This new school was created within the College of Law in order to extend the College's provision of postgraduate and professional law programs.

The academic staff involved in the teaching of the Graduate Certificate in Building and Construction Law have extensive experience in the teaching and practice of construction law, holding both professional and legal qualifications. Their comprehensive background provides students with a broad base of knowledge from which they will gain a solid and practical understanding of contemporary construction law issues.

Course Rationale and Overview

The construction industry in Australia employs around 7% of the national workforce and accounts for approximately 6% of the gross domestic product. The Graduate Certificate in Building and Construction Law has been developed to equip members of the legal profession and construction industry with the knowledge and skills to circumvent and resolve the frequent disputes that arise within this dynamic and complex industry.

The course has been designed to enable students to develop a focused and clear understanding of the relevant legal issues and practical approaches relevant to legal practice in the area of building and construction. The certificate course will equip students with an understanding of the law related to construction project formation and administration, issues of liability and dispute resolution.

Admission Requirements

- Applicants for the Graduate Certificate in Building and Construction Law must hold a Bachelor of Laws or Juris Doctor degree.
- Applications will also be considered from candidates with degrees in disciplines other than law supplemented by at least five years of relevant industry experience in construction and building, or related disciplines such as architecture or engineering.
- Legal practitioners may enrol in any of the four courses in the Certificate program for audit (ie not assessed) and have these credited as Continuing Legal Education units.

Course Structure

The course is comprised of the following four units:

- LW533 Construction and Building Contract Law (*3 points*)
- LW530 Construction Claims (*4 points*)
- LW531 Dispute Resolution in the Construction Industry (*4 points*)
- LW532 Professional Liability in the Construction Industry (*4 points*)

Duration, Teaching Mode and Assessment

All courses in the program will be delivered in intensive mode in order to better suit the commitments of working professionals. The first course is scheduled to commence during Winter Term of 2005, and the final course is scheduled for January 2006. The course will be assessed by way of a substantial research paper for each unit of the course.

Course Fees

The Graduate Certificate in Building and Construction Law is offered on a tuition fee paying basis. Students may be eligible for assistance through the Commonwealth Government's FEE-HELP scheme.

Postgraduate band Law unit fees apply for this program. Please visit the University's web page (www.nd.edu.au) or telephone the Fees Office for the current cost per credit point.

For further information on fee payment or the FEE-HELP scheme, please contact the Fees Office at Notre Dame on 9433 0536.

Further Information

The information contained in this publication is intended as an overview. If you would like further information regarding the course, please contact the Graduate School of Law on (08) 9433 0600.

We welcome visitors to the University at any time. If you would like to view the University facilities please contact the Prospective Students and Admissions Centre on (08) 9433 0533 or at future@nd.edu.au.

MEETING: TOPIC - Is there a need for an association or institute of building consultants?

**An open invitation to any person with an interest in
the building and construction industry in Western Australia**

This will be of interest to:

<p>builders architects quantity surveyors consumers</p>	<p>sub-contractors dispute resolvers building surveyors engineers</p>	<p>legal practitioners real estate agents project managers government agencies with interests in the building industry</p>
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Preamble:

There are long-standing concerns expressed in various circles as to the proficiency and expertise of “**building consultants**” as it relates to the standards of reporting of workmanship, the level of standard of “pre-purchase” reports and the competency of expert evidence.

*These concerns give rise to an apparent need for proper training of **building consultants** and perhaps the registration of such persons.*

... a need for ... the
registration of such

An association of **building consultants** might have as its memorandum and articles provisions to:

- train **building consultants** in various aspects ADR, expert reporting and evidence,
- involvement in government initiatives in respect to reviews of the building industry
- educating the public in various aspects of the building industry
- assisting builders and owners in matters such as building contracts, technical difficulties, defects, dispute resolution, codes and standards.

Meeting Details

An initial meeting has been arranged as follows:

4:00pm Thursday 14 April 2005 at RAAF ASSOCIATION

BULL CREEK DRIVE, BULL CREEK

(1st main driveway from Leach Highway)

Drive in past the Spitfire, enter the white building on the right off the parking area - via the arbour

Agenda

- 4:00pm Greeting and general overview by chairman elect P. Faigen
Open discussion as to
- whether there is need for an association
 - the articles that might be incorporated
 - foundation membership
- Election of nominee committee members
Next meeting
- 6:00pm Close

For more information or RSVP contact P. Faigen : Ph. 9316 3025, 0413 757 885, e-mail faigen@allpointsbuilding.com.au

Contact Details

The Committee can be contacted for any matter relating to the Institute.

<p>Chairman - Clive Raymond Phone: (08) 9486 5501 FAX: (08) 9485 0898 Mobile: 0414 602 782 E-mail: cliveraymond@iinet.net.au</p> <p>Vice-Chairman - Laurie James Phone: (08) 9321 3755 FAX: (08) 9321 3465 E-mail: chamilton@kottgunn.com.au</p> <p>Immediate Past Chairman – Phil Faigen Phone: (08) 9316 3025 FAX: (08) 9316 3023 Mobile: 0413 757 885 E-mail: faigen@allpointsbuilding.com.au</p> <p>Hon. Treasurer – Barry Tonkin Phone: (08) 9222 4769 FAX: (08) 9222 8130 Mobile: 0419 910 851 E-mail: Barry.Tonkin@dhw.wa.gov.au</p> <p>Kim Doherty Committee Member Phone: (08) 9430 3322 FAX: (08) 9430 3403 Mobile: 0419 812 242 E-mail: kdoherly@fremantleports.com.au</p>	<p>Graham Anstee-Brook Committee Member Phone: (08) 9429 7444 FAX: (08) 9429 7666 E-mail: graham.anstee-brook@minterellison.com</p> <p>Ian Johnstone Committee Member Mobile: 0413 746 405 E-mail: ijoh4119@bigpond.net.au</p> <p>Barbara Kwiecien Committee Member Phone: (08) 9364 4086 FAX: (08) 9316 8389 Mobile: 0412 380 866 E-mail: trillium@iinet.net.au</p> <p>Glynn Logue Committee Member Phone: (08) 9323 4245 FAX (08) 9221 7851 E-mail: glynn.logue@mainroads.wa.gov.au</p> <p>Peter Byrne (co-opted Mediation representative) Phone: (08) 9271 4560 E-mail: byrne.peter@optusnet.com.au</p> <p>Scott Ellis (co-opted WADRA representative) Phone: (08) 9211 7832 E-mail: scott.ellis@freehills.com</p>
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