

Conflict and dispute management – the new science?

Editor's commentary

In an acknowledgement of the negative impacts that conflict and disputes have on commercial agreements, the parties to long term commercial contracts are increasingly considering their approach to contracting in order to:

- manage conflict before it gives rise to dispute; and
- ensure that any disputes are resolved in as timely and cost-effective manner as possible.

The Institute's members have traditionally been involved in the latter issue of managing dispute resolution.

It is also important for members to be aware of the different types of procedure being used to manage conflict and avoid disputes arising. A general awareness of the broader conflict management environment will provide us with a greater capacity to assist parties in the selection and implementation of suitable procedures. New approaches to contracting may include an agreement to form a committee consisting of members of both contracting parties to oversee the implementation of the project, a form of 'partnering'. Another new approach is alliance contracting. This is considered in some detail in JK Bremen's article entitled 'Alliance contracting — why choose alliancing?' on p 13.

To carry on the theme of large infrastructure projects and the role of alternative dispute resolution, we have published an article by Norman Reich entitled 'Current and future trends for dispute resolution on significant dams and related projects in Australasia'. In this article Mr Reich provides a brief description of the various forms of ADR used in large infrastructure projects.

On practice matters, members will find useful the article of Robert Hunt in relation to the Institute's new rules for the conduct of commercial arbitrations and the article by Toni de Fina on how to handle a party to an arbitration agreement who refuses to agree to the arbitrator's terms and conditions of engagement as a tactic to thwart the arbitration. This article is a commentary on

the case note of *Andrews v Bradshaw* that appeared in the last issue at p 59.

In his article, 'Pitfalls in mediation', George Golvan QC provides some refreshing advice for conducting mediations: relax, be warm and friendly, retain a good sense of humour and proportion and let the parties do much of the work. Sounds good to me!

Very observant readers will have noticed our aborted attempt at reprinting in the Silver Anniversary edition an article by David Byrne (now Mr Justice Byrne of the Victorian Supreme Court) entitled 'Evidence for arbitrators' that was first published in 1981. While one must read this article with the article's age clearly in mind, it is an excellent summary of some of the basic rules of evidence.

Observant readers will also note some new names and some names missing under the heading 'Journal committee' on p iv. I would like to express my sincere thanks to those members of the committee who have freely given of their valuable time for the benefit of the journal. They are Dr Clyde Croft SC, George Golvan QC, Maurice Phipps QC and Hugh Foxcroft QC. The Institute has been very fortunate to have had such a high calibre of personnel contributing to its journal. I would particularly like to express my gratitude to Dr Clyde Croft SC for his vision and personal support over several years and for a contribution to the journal and to the Institute that has been second to none.

At the same time I welcome the new members of the Committee and trust that we will continue to deliver a high quality journal for our members.

Finally, I thank all contributors to this issue of the journal and trust that our members and readers will find the contributions both enjoyable and of value. %

Grant Holley, Editor.