

# Into the electronic future

*Editor's commentary*

In this first issue for the year 2002, members and subscribers will find much of interest.

The theme of this issue is 'ADR and technology'. If our priorities include the provision of efficient and cost effective dispute resolution services to the commercial community it follows that we must take an active interest in what information technology has to offer in aid of these objectives. It is only from a position of knowledge that we can ensure that that our other priorities, those of fair and just dispute resolution, are not overlooked or compromised in the electronic process. Eugene Clark and George Cho from the University of Canberra provide us with a description of web based dispute resolution services and leave us with some challenges for the future. Recent growth in information technology (IT) is traced and the suitability of mediation as a dispute resolution mechanism for IT disputes is advocated by Yvonne Packbier and Eric Pratt QC in their article 'Mediation as an alternative for litigation in the IT industry'. For further reading I recommend that readers access the discussion paper prepared by the Consumer Affairs Division of the Treasury in October 2001 entitled 'Dispute resolution in electronic commerce'. A copy of this document can be viewed on the Treasury website at <[www.treasury.gov.au](http://www.treasury.gov.au)>.

In the President's address you will have read of the Institute's new *Expert Determination Rules* and *Mediation and Conciliation Rules*. These new rules are published in full in this issue, together with an article by Robert Hunt on the law relating to Expert Determination. Readers who read the article and the rules will come away with a firm grasp of the nature of expert determination and its place in the basket of dispute resolution options.

On a practical note we have an article on the Power of an Arbitrator to Award Costs by Denise Kelly of Clayton Utz. This article focuses on the decision in *Miles v Palm Bridge Pty Ltd*, a case in which the arbitrator departed from the general rule as to costs, and in which the Court reviewed the applicable principles. We also have casenotes on various issues including: the reliability of evidence of disputed conversations, the application of the Hudson formula in construction disputes and whether a tiered dispute resolution clause is an 'arbitration agreement' within the meaning of the *Commercial Arbitration Act 1984* (NSW).

For something light and interesting, the article by Damian Sturzaker entitled

'Arbitration in Asia' provides an enjoyable summary of the region's key arbitration centres, their rules and the effectiveness of their enforcement mechanisms.

As a body of readers we have been most fortunate, over the years, to have enjoyed the quality of contributions made to this journal. The contributions in this issue are no exception and I thank most sincerely the authors of the articles and casenotes.

With this issue you will receive a consolidated index up to and including volume 19. I am sure you will find this a useful document. My thanks go to Dr Clyde Croft SC and his researcher for voluntarily preparing this index.

Finally, may I wish members and readers every success for the year ahead and encourage you to make the most of your Institute by reading and contributing to its journal and by participating in its activities. ☺

*Grant Holley, Editor.*