



Editor's Commentary

Russell Thirgood, Editor

Sport is very much a part of the social and cultural fabric of Australian life, and I am constantly looking for excuses to explain why I enjoy watching it so much.

I hope (and suspect) that by the time this August edition of *The Arbitrator & Mediator* is published my beloved Brisbane Lions will be back on top of the ladder and well on the way to a third straight premiership! What can I say? As Brian Collis QC, Chairman of the AFL Tribunal stated in the *National Newsletter* (March 2003), "AFL incites passion and loyalty akin to tribalism in the supporters ...".

I am, therefore, very pleased that this edition's lead feature is on sports arbitration. Written by former Federal Attorney General, Robert Ellicott QC, it provides readers with an insight into the evolution of "the law of sport" and the practice of sports arbitrations. I'm sure that our readers will be very interested in this relatively new frontier for ADR and will note the developments that have taken place since we published Damian Sturzaker's article, "On track for the year 2000: Sydney and the Court of Arbitration for Sport" (*The Arbitrator & Mediator* Volume 18 Number 2 1999). Mr Ellicott concludes that he hopes that this field will be viewed (particularly by lawyers) as one in which a meaningful contribution can be made to the worthy aspiration of "excellence in sport" rather than as a source of large fees.

Once again, we are fortunate to publish a number of high quality articles. Robert Hunt, our Immediate Past President, provides arbitrators with a comprehensive analysis of the principles and law relating to conducting a view. Malcolm and Hilde Lovegrove guide our mediator colleagues on the art of holding pre-mediation caucuses and performing a written risk analysis. Michael Rochester contributes a detailed review of managing time-related claims with a focus on the Delay and Disruption Protocol, which was recently published by the Society of Construction Law. The results of a survey into private ADR in Australian workplaces along with a number of case studies are reported in Bernadine Van Gramberg's paper. For those of you who have practised in expert determination you are no doubt following the fortunes of the Age Old Builder's decision, which was initially handed down by the Victorian Civil and Administrative Tribunal. The Institute's Expert Determination Rules have been a focal point of this dispute. David Levin QC provides a critique of this decision and examines whether we have seen the end of expert determination. Given the controversy surrounding this subject, readers have also been provided with an additional case note. At the time of publication we do not know the result of the appeal, which was taken to the Victorian Supreme Court. That, no doubt, will form the subject of future contributions to the journal. That decision is eagerly awaited.

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Other case notes are provided by Rachelle Wellard, Robert Hunt and David Talintyre, while our CEO, Peter Condliffe, reviews the latest edition of Hilary Astor's and Christine Chinkin's text, *Dispute Resolution in Australia*.

I hope that you enjoy *The Arbitrator & Mediator* Volume 22 Number 2 August 2003, our winter edition. There are some advantages to cold weather and sodden Saturdays. Go the Lions!