Editor's Commentary

Russell Thirgood, Editor

Life is full of challenges. More than 2,300 years ago, Su Qin began the very challenging task of attempting to persuade the Lords of six weaker Chinese States to form a coalition against the strongest and most aggressive State. During this quest, Qin realised the need to focus on how to deal with the human factors and psychological makeup of the Lords. He developed techniques on how to accurately appraise the true intentions of the Lords and established a number of 'persuasion techniques' to ensure that his mission was a success. In this edition of *The Arbitrator & Mediator*, Selina Wong Baray examines those techniques and demonstrates that the processes used by Su Qin are very important for any mediation or negotiation. They include:

(a) categorising types of people and events;
(b) matching style of speech to please different personalities;
(c) speaking to people with different levels of intelligence;
(d) spending time on introspection;
(e) putting yourself in another's shoes; and
(f) mastering the art of building up and pinning down.

Su Qin succeeded in convincing all six Lords to form a coalition. They agreed to defend against the stronger aggressive State and appointed Qin as their prime minister to enforce the coalition agreement. He was the only person in Chinese history to have the honour of serving six States concurrently.

I hope that you enjoy reading Selina Wong Baray's article '*Persuasion Techniques (The Ancient Chinese Style)*'. However, a word of warning for all mediators – Qin was assassinated in 317BC!

This edition of *The Arbitrator & Mediator* contains a number of very interesting articles, practice notes and case notes.

Laurie James examines a decision of the Western Australian Supreme Court which demonstrates the fundamental importance of pleadings in arbitration hearings. Pleadings are designed to crystallise the issues in dispute between the parties. A respondent cannot be expected to meet a case against it that has been unpleaded.

Brad McCosker and Naomi Youngberg compare the practices that exist across Australian jurisdictions for referring out matters that require particular expertise. It is noted that the broadest scope for referral out to special referees exists in New South Wales, while the situation in Queensland appears to suffer from unnecessarily restrictive rules.

Practitioners will read with interest Professor John Zeleznikow's article about using negotiation support systems to reduce legal risk. Professor Zeleznikow examines a very sophisticated negotiation support system which interprets data to produce risk assessments. Any system that may reduce the complexities that are involved in dispute resolution will no doubt be welcomed with open arms.

Throughout a typical arbitration, an arbitrator is required to deliver a number of interlocutory findings. Kylie Downes and Dale Brackin have provided a useful analysis concerning whether or not costs orders made in the course of an arbitration are enforceable. The findings of Miss Downes and Mr Brackin may be surprising.

We are again privileged to hear from our National President in this edition. Ian Nosworthy discusses what he perceives to be the future of arbitration and mediation in Australia.

To assist you with the challenges that you face in your professional lives, this edition of *The Arbitrator & Mediator* contains a number of other informative papers. Joshua Wilson outlines the daunting task that arbitrators frequently face when part of their determination involves issues concerning the composition and construction of a contract comprised of a chain of documents. In this context, he examines a recent decision of His Honour Mr Justice Gillard in the Supreme Court of Victoria which may be of assistance to arbitrators. Michael Rochester follows the never-ending debate concerning 'global claims'; and Rachael Field explores the theory and practice of neutrality in mediation.

Amendments to the *Building and Construction Industry Security of Payment Act* 1999 (NSW) were passed by the New South Wales parliament on 11 December 2002 and commenced operation in New South Wales on 3 March 2003. To assist readers with coming to terms with this, Graeme Robinson (who is a member of our Journal Committee) and Stephen Chong provide an analysis.

Finally, so that you are all kept abreast of important recent judicial decisions, we have included a number of informative case notes from Graham Morrow, Bill Morrissey, Greg Hinchy and our immediate past president, Robert Hunt.

I trust that you will enjoy and benefit from this April 2003 edition of *The Arbitrator & Mediator.*