

disputes.

To address this problem, a number of public sector client organisations have engaged commercial negotiation consultants or the Australian Commercial Disputes Centre to run in house negotiation seminars. Contractors and subcontractors should take similar action or send staff to negotiation seminars.

The Australian Commercial Disputes Centre conducts a two day theory and practice course in the skills for successfully negotiating cooperative solutions to disputes for \$450, entitled Successful Negotiation. ACDC also conducts a course, entitled Manager As Negotiator And Mediator, in effective decision making and dispute resolution specifically designed for managers, which covers facilitation of meetings, communication skills and the development of a dispute management plan within an organisation for \$675. Contact ACDC for details.

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10. DISPUTES RESOLUTION COUNCIL OF AUSTRALIA

The Disputes Resolution Council of Australia has been convened under the auspices of The Institute of Arbitrators, Australia. Membership of the Council is open to professional bodies, trade or commercial representative organisations or other groups, which are active in the provision of commercial dispute resolution services on a national level within Australia.

The aims and objects of the Council are as follows:

- A. To provide a forum for the discussion, development and promotion of commercial dispute resolution services in Australia.
- B. To present the availability and application of such services in a reasonably cohesive form to the commercial community.
- C. To establish standards and practices that should reasonably be adopted in the provision of such services to the commercial community.
- D. To provide for the orderly and beneficial development of the provision of such services within Australia.

The following organisations were invited to attend the inaugural meeting of the Disputes Resolution Council of Australia:

- Australian Bar Association
- Australian Centre for International Commercial Arbitration
- Australian Commercial Disputes Centre Ltd.
- Australian Federation of Construction Contractors
- Institute of Chartered Accountants in Australia
- The Institution of Engineers Australia
- The Institute of Family Law Arbitrators
- The Law Council of Australia
- LEADR (Lawyers Engaged in Alternative Dispute Resolution)
- Royal Australian Institute of Architects
- The Royal Australian Institute of Judicial Administration Inc

The Dispute Resolution Council of Australia's initial work will

involve an examination of the following matters:

- Commonality - Appropriateness of Adoption of Common Terms and Descriptions.
- Education, Training and Qualification - Varying Need for Standards of Competence.
- Development of Court Annexed Procedures - Appropriateness of Use of Non-Judicial Processes Under the Supervision of the Courts.
- Future Requirements and Strategies.

According to a newspaper report on the formation of the Council, the purpose of the Council is to set suitable standards for the infant alternative dispute resolution industry. This report further stated that Australian arbitrators were concerned that unless acceptable standards are established, the industry may develop along the lines of the US commercial dispute industry, where operators own franchises for commercial dispute companies around the nation. According to this newspaper report, the development of the Council is an attempt to prevent inexperienced people from establishing such businesses.

It could be argued that the market place will respond favourably to those who provide a quality service and will sort out those who do not. However, there is obviously merit in the concern that the cause of ADR in Australia could be damaged, if training is inadequate or appropriate standards are not maintained.

Due to concerns at the proposals for the Council to adopt an accreditation role for ADR service providers, the Australian Commercial Disputes Centre declined to be represented at the meeting, but may participate in the Council at a later stage, depending upon the proposed objects and structure of the Council. The Australian Commercial Disputes Centre runs its own intensive negotiation and mediation training courses.

If the Dispute Resolution Council of Australia makes progress in the development of Court annexed ADR procedures, it will make a significant contribution to commercial dispute resolution in Australia.

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11. BOND UNIVERSITY'S DISPUTE RESOLUTION CENTRE

Bond University has announced the establishment of a Dispute Resolution Centre located within its Law School.

The Centre's Director shall be Jennifer David, who shall take up a position as Associate Professor. Sir Laurence Street shall act as Chairman of the Centre's Advisory Board. Jennifer David is also the Manager, Education + Research for the Australian Commercial Disputes Centre and it is understood that she will continue in that role.

The objectives of the Centre were defined at a planning workshop for the Centre as providing a national intellectual foundation for the emerging dispute resolution movement in Australia. In pursuit of that objective, the Centre will develop appropriate resources, initiate research, disseminate information and publish research findings, host conferences and seminars, maintain contact with similar Centres abroad and provide consultancy facilities to practitioners in the field.

A second objective will be to develop relevant course work

in methods of dispute resolution for students studying law and other disciplines. Undergraduate courses are now available and it is most interesting that ADR has been integrated into most law courses offered by Bond University.

A third objective, after consultation with existing bodies and practitioners in the field, will be to provide training facilities for those involved in negotiation, mediation and conciliation.

The planning workshop attended by interested organisations, Departments and private firms demonstrated active support for the Centre as a neutral ground for practitioners in the area to share information and expertise and to encourage empirical research in the area. There was a general consensus that there has been a lack of empirical research in the dispute resolution movement in Australia and that there is a need for practical empirical research on the methods employed by dispute resolution practitioners. It is expected that the Centre will disseminate the findings of research which it carries out, organises or sponsors.

It has been suggested that the Centre might provide hearing rooms on campus for holding arbitrations and mediations and that it might provide a dispute resolution library resource for practitioners.

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12. NSW LAW REFORM COMMISSION ADR ISSUES PAPER

The New South Wales Law Reform Commission shall shortly release an issues paper on alternative dispute resolution.

This issues paper will inquire into and comment upon issues such as the training and accreditation of mediators. As discussed in an earlier Issue of the Newsletter, it is expected that the issues paper will consider a proposal to protect the mediation process.

The Law Reform Commission's ADR issues paper shall be commented upon in appropriate detail in a future issue, when it has been released.

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13. CONTRACT CLAUSE TO ESTABLISH DISPUTE RESOLUTION PROCESS

The following dispute resolution clause has been drafted by the Law Society's Dispute Resolution Committee and approved by the Law Society's Council. It establishes a mechanism by which parties to a contract in dispute may employ alternative dispute resolution processes such as mediation, conciliation, independent expert determination or a mini-trial in an attempt to resolve the dispute without litigation or arbitration.

The Law Society offers this clause to its members in the expectation that they will find it useful in drafting a wide variety of agreements, including commercial agreements, leases, and agreements for sale of business.

Aspects of the clause worth noting are:

1. The clause is designed as a model only and members should feel free to vary its terms to suit particular circumstances; e.g. the time limits in paragraphs 3, 4 and 6 of the clause can be lengthened or shortened to suit the needs of parties to particular agreements.

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2. The clause does not *force* parties to engage in ADR techniques; instead, it requires them to designate persons with authority to settle the dispute, for discussions between those persons; and (if the dispute is not resolved by such discussions) for good faith negotiation directed towards agreement on a procedure for resolving the dispute without litigation or arbitration.
3. The dispute resolution procedure established by the clause thus is only compulsory in the sense that unless a party complies with at least the initial steps of the procedure, that party may not commence court proceedings or arbitration. Urgent interlocutory relief may nonetheless be sought at any time.
4. There are many agreements which contain their own inbuilt time limits. It may be that if the dispute resolution clause is used for those contracts it will be necessary to provide for the suspension of these time limits while the dispute resolution process is employed.

Dispute resolution

- 1.1 Unless a party to this agreement has complied with paragraphs 1-4 of this clause, that party may not commence court proceedings or arbitration relating to any dispute arising from this agreement except where that party seeks urgent interlocutory relief in which case that party need not comply with this clause before seeking such relief. Where a party to this agreement fails to comply with paragraphs 1-4 of this clause, any other party to the agreement in dispute with the party so failing to comply need not comply with this clause before referring the dispute to arbitration or commencing court proceedings relating to that dispute.
- 1.2 Any party to this agreement claiming that a dispute has arisen under this agreement between any of the parties to this agreement shall give written notice to the other party or parties in dispute designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute and each other party given written notice shall promptly give notice in writing to the other parties in dispute designating as its representative in negotiations relating to the dispute a person with similar authority.
- 1.3 The designated persons shall, within ten days of the last designation required by paragraph 2 of this clause, following whatever investigations each deems appropriate, seek to resolve the dispute.
- 1.4 If the dispute is not resolved within the following ten days (or within such further period as the representatives may agree in appropriate) the