

Dispute Resolution Handbook Available

The Australian Commercial Disputes Centre (Level 4, 50 Park Street, Sydney 2000) has released the *Australian Dispute Resolution Handbook*, by Michael Ahrens and Gavin Witcombe. Published with a grant from the Law Foundation of NSW, it is available free with a self-addressed envelope with a stamp value of \$1.20.

The handbook is designed to assist in the choice of an appropriate dispute resolution clause for insertion in contracts. It describes the various dispute resolution methods and organisations, such as ACDC and LEADR. And it includes a series of contract clauses to provide for mediation, expert determination, domestic arbitration, and so on.

Readers should be aware that the clauses providing for consensual means of dispute resolution (such as mediation) may need to be reviewed critically in the light of *Hooper Bailie Associated Limited v Natcon Group Pty Ltd & Ors* (unreported, 13 April 1992, Supreme Court of NSW, Giles J). That decision would seem to require such clauses to be in *Scott v Avery* form and to be fairly certain in operation in order to be enforceable.

Training Barristers to be Mediators

Through LEADR (Lawyers Engaged in Alternative Dispute Resolution), the Bar Association has now provided training to 65 barristers wishing to be mediators. The first four-day course, limited to 30 barristers, was fully subscribed within about 10 days of being advertised and was held in August. It seems to have been very favourably received by those attending it. The second course, held at the end of October and in mid-November, was stretched to allow 35 participants. If demand keeps up, it seems likely that the Bar Association will organise further courses in 1993. Those interested should contact Robert Angyal or Mary Walker, both members of the Bar's ADR Task Force.

Settlement 'Week' 1992

Settlement 'Week' 1992 ran from October 12-30 this year. Organised by the Law Society's Dispute Resolution Committee, with \$100,000 funding from the Law Foundation and the NSW State Government, Settlement Week 1992 will ultimately involve the mediation of about 500 Supreme Court and District Court cases, and 10 Family Court cases. Many cases will not actually go to mediation until November or even December, partly because many parties were slow in paying the \$400 fee per party required to pay the mediators, and also because many matters were volunteered late.

About 13 barristers are among the 124 mediators to whom Settlement Week cases were assigned. The panel of mediators was closed before the Bar's two courses for barristers wishing to be mediators had been completed.

Those barristers who are trained as mediators who wish to be considered for future Settlement Week panels should write to:

Mrs Bridget Sordo
Responsible Legal Officer,
Dispute Resolution Committee
Law Society of NSW
DX 362 SYDNEY

Mediation of Computer Disputes in Florida

According to *Litigation News*, the newsletter of the American Bar Association's Section of Litigation, the Florida Bar has set up a voluntary mediation process exclusively for computer hardware and software disputes. The project offers some 15 specially trained mediators with a strong background in computer litigation, plus mediation rules adapted for computer-related disputes. One unusual aspect of the rules is that they allow the mediator to hire an independent technical expert. □

Robbin' Who?

Commonwealth Director of Public Prosecution v Machtas

In the Court of Criminal Appeal
Gleeson CJ
Handley JA
Badgerly-Parker J

7 August 1992

(The respondent had pleaded guilty to 159 charges of forgery contrary to s 67(b) of the *Commonwealth Crimes Act* in relation to cheques. The DPP appealed on the ground that the sentence of imprisonment for a fixed term of 6 months imposed by the sentencing judge was inadequate. The forgeries had defrauded the Commonwealth Bank of approximately \$495,000.)

Scragg (Counsel for the respondent): "In this case your Honours, the crimes were not directed against members of the public or against the respondent's employer but against the Commonwealth Bank which is a large and wealthy institution. The objective criminality of these offences is therefore somewhat less than otherwise might have been the case."

Handley JA: "That is the principle recognised in the case of *The Crown v Hood*, is it not?"

Scragg: "I am not aware of that case your Honours, but we would rely upon it."

Gleeson CJ: "The case in question is *The Crown v R Hood*, Mr Scragg."

Scragg: "Yes, your Honour. But we submit that it is a mitigating factor in this case that these crimes were committed against the Commonwealth Bank."

Gleeson CJ: "The case that Mr Justice Handley was referring to concerned a Mr Robin Hood, Mr Scragg."

The Court subsequently allowed the Director's appeal and in his reasons for judgment the Chief Justice rejected the submission of counsel for the respondent that the objective criminality of the offences was reduced because the victim was the Commonwealth Bank. □