THE INSTITUTE IN THE 21ST CENTURY – THE WAY AHEAD

An Address on the 25th Anniversary of the Foundation of the Institute of Arbitrators & Mediators Australia

By Robert Hunt, President, Institute of Arbitrators & Mediators Australia

I am delighted to have the opportunity, in the year 2000, to address so many members and friends of the Institute across the length and breadth of Australia, on the occasion of our Silver Anniversary.

This is a time to celebrate our past, and the progress we have made over the last twenty five years. It is also a time to reflect on the opportunities and challenges which face the Institute as we move into the new millenium.

I would like to tell you something of the past and present, to share with you a vision of the Institute's future and to invite your input, as members and supporters of the Institute, on shaping that future.

THE PAST

Arbitration can trace its origins back into antiquity. It is mentioned in the writings of Plato in about 350 BC [1]. It was well established under Roman law as a means of resolving disputes by the first century BC, whereby parties to a dispute entered into an agreement (called a *compromissium*) to submit to arbitration and abide by the award. There are extensive references to arbitration among the writings of the Roman authors Cato, Cicero, Livy, Ovid and Seneca in the first century BC and first century AD. Cicero referred to arbitration as *'mild and moderate'* in comparison to litigation which he said was *'exact, clear-cut and explicit'*.

1 *'In the first place there shall be elected judges in the courts who shall be chosen by the plaintiff and defendant in common; they shall be arbiters rather than judges.'* – cited in Sharkey & Dorter *"Commercial Arbitration'* (1986) law Book Company, at p. 11.

Arbitration became common in trade or commerce in Europe in medieval times [2], and was well known and widely used in England long before there was any uniform legal system. Four hundred years ago in London, William Shakespeare felt so confident of his audience's knowledge of the difference between arbitration, litigation and mediation to refer to them in *The Rape of Lucrece* [3].

In Australia, arbitration has been used to resolve disputes since the second half of the 19th century. In fact, one historian suggests that arbitration is the oldest profession in Victoria [4]. The period from about 1870 to 1890 saw major development of the railway system in Australia. One noted arbitrator involved in railway disputes was Sir Edmund Barton, who later became the first Prime Minister of the Commonwealth of Australia [5].

In 1973, a Committee was formed under the auspices of the Royal Australian Institute of Architects and the Master Builders Federation of Australia to consider the desirability and practicability of establishing an Institute of Arbitrators in Australia, particularly in view of the success of the Chartered Institute of Arbitrators in Great Britain since its establishment in 1915. The Committee concluded that the establishment of an Institute of Arbitrators was both desirable and practicable, and that it should follow the general lines of the Chartered Institute (although with some differences in detail), and that it should be an independent body concerned with the whole field of commercial arbitration not merely that related to building and engineering.[6]

The Institute of Arbitrators Australia was incorporated, under the ACT Companies Ordinance, on 16 October 1975. The original Subscribers were John Doust of W.A. (company director), Peter Bryant of the A.C.T. (executive officer), Robert Eggleston of Victoria (architect), Joe McMahon

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2 I understand that the former Registrar of the London Court of International Arbitration had an arbitral award from the 14th century.

3 Lucrece said: *'Out, idle word, servants to shallow fools! Unprofitable sounds, weak arbitrators! Busy yourself in skill-contending schools, Debate where leisure serves with dull debaters; To trembling clients be you mediators. For me, I force not argument a straw, Since that my case is past the help of law.'*

4 See *'A History of the Colony of Victoria'* H. G. Turner, Heritage Publications, Melbourne, 1973, at pp. 147 – 148.

5 See *'Edmund Barton'* John Reynolds, Angus & Robertson Publishers, Melbourne, 1948, at pp. 44 – 46.

6 Details are given in an article by Charles Cullis-Hill, then Past President of the Institute, in the first issue of *The Arbitrator*, August 1981 Vol 1 no 1, at p.2.

of N.S.W. (company director), Charles Cullis Hill N.S.W. (architect) and Richard Butterworth of Victoria (architect). Co-incidentally, Charles Cullis Hill and Richard Butterworth both died earlier this year. The interim Council recorded a membership of 33 members as at 19 December 1975, which had grown to 206 by the initial Annual General Meeting on 25 June 1976.

The National Office of the Institute was located in Canberra from 1975 until 1984, when it relocated to Melbourne, by which time membership had grown to about 800 members.

In December 1997, the name of the Institute was changed to the Institute of Arbitrators & Mediators Australia.

THE PRESENT

Much has changed over the last twenty five years.

During that period, the increased use of alternatives to court based processes has occurred against a backdrop of perceived widespread concern about the state of the legal system. From the late 1980's, mediation and other forms of ADR have gained popularity at the expense of litigation (and arbitration), because they were seen as less formal processes (often with no lawyers involved) which offered substantial savings in time and legal costs.

Faced with a decline in the use of arbitration, the Institute took a number of initiatives from about 1996 to encourage its practising arbitrators to become more pro-active in determining the arbitral procedure, with a view to saving time and cost and thereby making the arbitration process an attractive option for disputants. As well as the detailed attention given to this issue at Conferences, Seminars, Members Forums, Master Classes, and in *'the arbitrator'* and other publications, the Institute's Council has emphasised the need for prompt and cost-effective resolution of commercial disputes in the new *Rules for the Conduct of Commercial Arbitrations (incorporating the Expedited Commercial Arbitration Rules)*, which were adopted by Council in August 1999.

The Institute has continued to grow in size, to more than 1,300 members today. While the membership in the late 1970's was essentially comprised of building industry professionals and a

handful of lawyers, today our membership includes professionals from a wide variety of other disciplines, including accountancy, health services, agricultural science, intellectual property, human resources, medicine, science, pharmacy, education, management consultancy, industrial relations, insurance and information technology.

Many present, although members of the Institute, may not know how its affairs are conducted. I propose to spend a few moments outlining that. The Institute is a non-profit organization, which receives no government (or other) subsidy. Its continued existence, and the level of services it can provide, depends on income derived from membership subscriptions and other activities such as room hire at its Dispute Resolution Centres in Sydney and Melbourne, education and training. The Institute is a national organization, rather than a federation of state bodies, although the Chapters are a very important part of our national structure and provide the local contact with individual members.

The conduct of the Institute's affairs is vested in the Council, which meets about 6 to 7 times each year (usually by teleconference). Since 1975, the Institute's Council has grown in size from 8 to 12, and the Articles of Association have been changed to provide that all Chapters with more than 40 members have a voice on Council. For 2000 – 2001, Council is comprised of three members from each of New South Wales and Victoria, two members from each of Queensland and Western Australia, and one member from each of South Australia and the A.C.T.

Between Council meetings, business is conducted by the Executive (comprising the President, Senior Vice-President, Vice-President, Treasurer and past President) and the Chief Executive Officer. We are very fortunate to have recently engaged Mr Peter Condliffe as our new CEO. Peter has extensive experience as both an administrator and practitioner in alternative dispute resolution, and is enthusiastic about the Institute and the role it can and should play in the future.

Council has established a number of Committees, namely Education & Professional Development, Professional Affairs, Practice Notes Rules & By-laws, Membership & Profile, Finance & Administration and Journal. Each of these Committees is chaired by a member of the Executive, and all Councillors are members of at least one of the new Committees. We welcome

expressions of interest from Institute members who are prepared to serve on one of these Committees.

The Chapters are responsible for the delivery of much of our educational and professional development program, including Master Classes, Seminars, Workshops, Forums and Discussion Evenings.

From its foundation until 1998, the Institute conducted its own training for aspiring arbitrators and mediators, seeking grading or accreditation by the Institute. This training usually took the form of weekend courses conducted by volunteers drawn from the ranks of its senior arbitrators and mediators. Following the success of a pilot course in South Australia in 1998, our arbitration training is now delivered in the National Professional Certificate Course, which is presented in a Joint Venture with the University of Adelaide and conducted in provider universities around Australia. The Chapters work in close association with the local provider universities in presenting Tutorials and Workshops.

The continued health of the Institute depends on the enthusiasm and commitment of individuals who, although usually busy professionals, are prepared to devote a good deal of time and energy to advancing the interests of the Institute and its members. I would like to acknowledge the enormous debt the Institute owes to past and present Councillors and Committee Members at national and Chapter level, whose selfless dedication has seen us through our first twenty five years. I would encourage other members of the Institute to take an active role, at national or Chapter level, in the conduct of its affairs in the future.

THE FUTURE

As I indicated at the outset, while recognising the progress which the Institute has made in the past 25 years, it is timely to consider the opportunities and challenges which the new millennium will bring, and the role which the Institute and its members can and should play in non-curial dispute resolution in the future. We cannot afford to simply sit back and rest on our laurels.

In looking to the future, we should keep in mind the Objects for which the Institute has been established, as recorded in our Memorandum and Articles of Association. Those Objects include:

(a) To promote, encourage and facilitate the practice of settlement of commercial disputes by arbitration and any other form of non-curial dispute resolution process.

(b) To serve the community, commerce and industry by facilitating efficient dispute resolution.

(c) To afford means of communicating between professional arbitrators on matters affecting their various interests.

(d) To support and protect the character, status and interests of arbitrators generally.

(e) To promote study of the law and practice relating to arbitration.

In changing the name of the Institute in 1997, it seems we overlooked widening the Objects in (c), (d) and (e) to include reference to mediation and other ADR processes. This situation will be addressed at our next General Meeting.

The Objects in our Memorandum and Articles of Association define what the Institute stands for. A consideration of those Objects throws up an important preliminary issue, namely the obligation to provide a public service to the community as well as promoting the interests of our members.

By way of comparison, it is worthwhile reflecting on the Mission Statement recently published by the American Arbitration Association, the largest and probably the most successful dispute resolution organization on the world, which says:

> *'Our Mission: A Dedication to Service and Education*
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> *The American Arbitration Association is dedicated to the development and widespread use of prompt, effective and economical methods of dispute resolution. As a not-for-profit organization, our mission is one of service and education.*
>
> *We are committed to providing exceptional neutrals, proficient case management, dedicated personnel, advanced education and training and innovative process*

knowledge to meet the conflict management and dispute resolution needs of the public now and in the future.'

Regardless of whether we are primarily motivated by public interest or the self-interest of our members, it seems to me that there are three key objectives on which we need to focus if the Institute is to grow and prosper in the future, namely:

1 To jealously maintain a standard of excellence in the services we offer, in the provision of cost-effective and expeditious dispute resolution services to the community and in our educational and professional development programs.

2 To lift the profile of the Institute, and ensure that the Courts, the legal profession and the wider community are aware of the excellence of the services we provide and our commitment to maintaining the highest professional and ethical standards.

3 To provide a level of service to our members of such a standard that they value highly their membership of the Institute.

In pursuit of those objectives, the Institute has recently agreed to form closer ties with LEADR (Lawyers Engaged in Alternative Dispute Resolution), an organization of comparable size to the Institute. We jointly believe that a closer association between us will provide the community with better access to a broad range of high-quality dispute resolution systems and dispute resolution practitioners, as well as greater opportunities to promote the use of those services both outside and within the judicial system.

The Institute and LEADR intend to work together in developing common standards of accreditation for ADR practitioners, so that the community can have the highest confidence in the quality and ability of persons accredited.

The areas of co-operation under immediate consideration are mediator training and a range of joint member activities within the various States and Territories. Further areas of co-operation will be explored and developed in the future.

THE REQUIREMENTS OF THE COMMUNITY

What the community demands is that the dispute resolution processes with which we are associated are conducted as expeditiously and cost effectively as possible. As Justice Drummond of the Federal Court of Australia succinctly stated in the 1996 John Keays Lecture:

> '*It is trite to observe that we live in an age of consumerism. If the arbitration industry is unable to satisfy the demands of consumers of its services for an efficient, economical and expeditious dispute resolution service, then it will continue to wither. I say "continue" because the process is already under way.*' [7]

While Justice Drummond's remarks in 1996 were specifically directed towards arbitration, it is obvious that efficiency, economy and expedition are required in all non-curial forms of dispute resolution.

THE QUALITY OF OUR DISPUTE RESOLUTION SERVICES

The Institute and its accredited dispute resolvers should be at the cutting edge of the drive towards more efficient, economical and expeditious dispute resolution services. Our vision for the future must therefore embody a whole-hearted commitment to integrity, innovation and embracing high standards of excellence in the provision of dispute resolution services. In addition, we must ensure that the Institute and its accredited dispute resolvers are identified as committed to achieving that objective.

The Institute has sought to stimulate the development of flexible and innovative approaches to dispute resolution. For example, there may be circumstances where the most efficient, economical and expeditious procedure for dispute resolution would involve a multi-faceted approach, in which structured negotiation, mediation, expert determination, arbitration and court proceedings are selectively used on different components of the one overall dispute, such that the appointee (whether initially appointed as arbitrator, mediator etc) in fact acts as a dispute

7 see Volume 15 number 2 of *The Arbitrator* - August 1996, at p. 76

manager.[8] Parties (and their legal advisers) should be actively encouraged by the appointed arbitrator or mediator to consider the use of this sort of approach or any other means of minimising the time and cost of resolving disputes.

If the Courts, the legal profession and the wider community can be confident of the ability and commitment of the Institute's graded arbitrators and accredited mediators to ensure that the dispute resolution process will be conducted fairly, expeditiously and cost effectively, then the community interest and the self-interest of our members will both be satisfied.

To provide that level of confidence, we need to consider four areas, namely:

(1) The Quality of our Initial Training.

(2) Continuing Professional Development (CPD).

(3) Accreditation Requirements.

(4) Providing a Suitable Structural Framework for Resolution of Disputes.

Quality of our Initial Training

Arbitrator Training

As earlier stated, since 1999 our arbitration training has been provided through the National Professional Certificate Course, satisfactory completion of which is a pre-requisite to grading as an arbitrator.

There has been a high level of demand for the Course in its first two years of operation nationally. About 170 students enrolled in the Course in 1999, and about 140 students enrolled in the Course in 2000 There have been some teething problems, which we have overcome, and we now have a Course in place which provides aspiring arbitrators with high quality training.

8 see *'The Arbitrator or Mediator as Dispute Manager – A Multi-faceted Approach to Dispute Resolution'*, Robert Hunt, Volume 19 number 1 of *The Arbitrator* - July 2000, at p. 10

Mediator Training

Mediation training, for accreditation as a mediator by the Institute, has been provided in Workshops conducted at Chapter level by professional trainers, including Professor Jennifer David and Professor Laurence Boulle and his team from Bond University.

To avoid the possibility of differing standards at Chapter level, it is obviously desirable that we introduce a co-ordinated national training program. We see that there may be advantages in offering such a program in association with LEADR on the basis that the co-ordination of training with LEADR should ensure that the quality of training is enhanced, and that training remains affordable, as well as offering other benefits in terms of uniform standards of accreditation. The Institute and LEADR have appointed a sub-committee which is presently preparing a report and recommendations on joint training.

Other Training

Given the increased popularity of Expert Determination or Expert Appraisal, the NSW Chapter presented an Expert Determination Workshop in June 1998, which was developed and led by Graham Easton. The Workshop has proved to be popular. Since that time, the Workshop has been presented on a number of occasions in Sydney, Brisbane, Canberra and Perth. Attendees receive a Certificate of Attendance. Although we published the *Rules for Expert Determination of Commercial Disputes* in 1997, the Institute does not accredit Expert Determiners or Appraisers.

In New South Wales, the Institute has been appointed as an accrediting body for adjudicators under the *Building & Construction Industry Security of Payment Act, 1999.* The New South Wales Chapter has conducted two accreditation courses to date, which have been completed by about 70 people.

The Joint Venture Agreement with the University of Adelaide provides for co-operation in the development of further courses in the area of arbitration and dispute resolution. An obvious attraction of presenting courses in this manner is the ability to offer a recognised tertiary qualification. However, this can only be offered on satisfactory completion of the prescribed

minimum attendance, which is 40 contact hours for a Professional Certificate. This places a substantial constraint on the types of courses which can be economically offered, in that there must be a substantial demand to defray the cost of development and presentation of a course in this manner. The Institute simply cannot afford to run courses at a loss.

Continuing Professional Development

As any practising arbitrator or mediator knows, while high quality initial training is necessary, it is not enough by itself to equip one for successful practice as a dispute resolver.

It is worth remembering the words of the Honourable Justice Michael Kirby AC CMG, delivered at the opening on 27 July 1999 of the new Dispute Resolution Centre in Melbourne, namely:

> *'Mediation and arbitration are not just court proceedings conducted in a different place. They require distinct skills, novel approaches, different techniques and a new psychology'* [9]

The Institute's professional development program is vitally important in equipping practitioners with those skills, approaches and techniques. We have stressed, and continue to stress, at our Conferences, Seminars, Members Forums, Master Classes, and in *'The Arbitrator'* and other publications, the need for practitioners to focus on resolving disputes fairly, expeditiously and cost effectively.

It may possibly be argued that the extent to which individual dispute resolution practitioners keep themselves abreast of current developments is a matter for the individual. However, any failure to do so on the part of individual practitioners reflects adversely on the Institute and other graded arbitrators or accredited mediators, and damage community perceptions of our ability to deliver dispute resolution services fairly, expeditiously and cost effectively.

For this reason, Council has decided to introduce compulsory Continuing Professional Development, effective from January 2001, as follows:

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9 see Volume 18 number 2 of *The Arbitrator* (September 1999), at p. 107.

1. There will be a mandatory requirement, for graded arbitrators and accredited mediators, to complete a prescribed amount of eligible activities per triennium (anticipated to be 75 hours per triennium, with a target of 25 hours per annum).

2. There will be a similar mandatory requirement for applicants for re-grading as arbitrators or for transfer to Member or Fellow, to complete a prescribed amount of eligible activities in the year preceding the application (presently anticipated as 25 hours).

3. The details of the CPD program (including the number of hours, rating of activities for CPD purposes and limits on particular types of activities) will be determined by the Education and CPD Committee, which will administer the program nationally.

4. The eligible activities are those concerned with the practice of non-curial dispute resolution, such as arbitration, mediation, expert determination, conciliation and Court references, including such activities as:

   (a) attendance at Institute Conferences, Master Classes, Seminars, Workshops, Forums, Discussion Evenings and other educational activities conducted by the Chapters, and similar activities conducted by other professional bodies approved by the Institute for CPD purposes;

   (b) satisfactory completion, lecturing or tutoring of undergraduate or postgraduate courses at a recognized tertiary institution, or other approved providers;

   (c) publication of papers and articles, and presentation of original written material at Institute CPD activities, or other conferences, seminars and courses approved by the Institute for CPD purposes;

   (d) professional practice (including pupil training) as an arbitrator, mediator or other ADR practitioner, or legal practice in arbitration or ADR;

   (e) approved pupillage;

(f) membership of Council, a committee or working group of Council, or of a local Chapter, dealing with substantive issues in the practice or arbitration and ADR, with reasonable attendance at its meetings;

(g) other activities as approved by the Education Committee.

5. The CPD Program will be administered as a self-monitoring program, with a CPD return to be submitted by the member concerned. Each year, the Institute will audit a proportion of returns submitted, requiring verification of the information contained in the return.

6. Compliance with the CPD requirements will be administered by the Professional Affairs Committee.

By introducing these requirements, we will demonstrate to the Courts, the legal profession and the community generally that the Institute is committed to the accountability of its members, in requiring them to undertake Continuing Professional Development activities which keep their expertise current and which are of benefit both to the members and the community at large.

By requiring participation in a high quality CPD program by graded arbitrators, accredited mediators and applicants for transfer to Member or Fellow, we should achieve and maintain high standards of professional competence and ethical behaviour, and promote public perception of the Institute and its members as proponents of the highest standards of professional excellence in the resolution of disputes.

Accreditation Requirements

The Institute has established Policies for grading of arbitrators and accreditation of mediators for listing in its Register of Practising Arbitrators and its Panel of Accredited Mediators. In 1998, Council introduced a system of triennial review of Grade 1 and Grade 2 Arbitrators, generally necessitating attendance at a Master Class and submission of at least one arbitral award within the three year review period.

The award requirement is obviously unsuitable for mediator review, and may operate unfairly in respect of arbitrators with a high degree of skill in promoting settlement of arbitrations before delivery of an arbitral award.

With the introduction of compulsory CPD for graded arbitrators and accredited mediators, these Policies will be reviewed by Council's Professional Affairs Committee (chaired by our Senior Vice-President, Ian Nosworthy), to ensure that the Institute, the Courts and the community can be confident that listing in our Register of Practising Arbitrators and Panel of Accredited Mediators attests to the highest standard of professional excellence.

In relation to mediator accreditation, as earlier indicated, the Institute and LEADR intend to work together in developing common standards of accreditation for ADR practitioners, which we believe will be in the interests of both organizations and their respective members and of benefit to the community generally.

The Structural Framework

The final component in offering an efficient and cost-effective system of dispute resolution is provision of a structural framework which is conducive to that purpose.

In 1995, the Institute introduced its *Rules for Conduct of Commercial Mediations*. In 1997, it introduced its *Rules for Expert Determination of Commercial Disputes.* Most recently, in August 1999, it introduced the new *Rules for Conduct of Commercial Arbitrations (incorporating the Expedited Commercial Arbitration Rules).* All of our Rules are available at the Institute's Website at www.iama.org.au.

Each of these sets of Rules provide a framework for just resolution of disputes in a manner which is both expeditious and cost effective, and which is consistent with prevailing statutory requirements (such as requirements for the conduct of arbitrations under the *Uniform Commercial Arbitration Acts*). Each of these sets of Rules have been drafted in such a way that the procedural provisions do not depend on appointment being made under the Rules, and may be readily utilised in other mediations, expert determinations or arbitrations by adoption of those procedural provisions by agreement of the parties.

These Rules will be kept under review by Council's Practice Notes Rules & By-laws Committee (chaired by our Vice-President, Janet Grey). The Committee would be pleased to receive constructive suggestions on how the Rules may be improved.

SERVICES TO OUR MEMBERS

It is fair to say that, over the past few years, there has not been an improvement in the level of services which we have provided to our Members. Due to some fairly substantial constraints imposed by our financial position, we have had to cut costs significantly to remain viable.

Council recognises that our Members have a right to expect that they will receive services commensurate with their membership fees. The Finance and Administration Committee (chaired by our Treasurer, Tony Commisso) will, in consultation with the CEO, be implementing steps to:

- improve administration generally, at national and Chapter level;
- implement improved communication and liaison with Chapters;
- upgrade the presentation and content of our Website at www.iama.org.au;
- develop a comprehensive database, including components which may be accessible from the Website (including arbitrator and mediator CV's etc).

It is not easy to discern what the 'rank and file' members want the Institute to be. Although we have a membership exceeding 1,300, only about 25% are graded arbitrators or accredited mediators, which suggests that a very large proportion of our membership are not motivated by the prospect of the Institute providing opportunities for members of the Institute to render dispute resolution services. To address this issue, members will receive a Questionnaire, aimed at identifying what we do well, what we could improve, and what is important to members. The Questionnaire should only take a matter of minutes to complete and return. I would urge all members to do so.

Consistent with Object (c) of our Memorandum and Articles of Association [10], the CPD program conducted at Chapter level will continue to provide occasions for communication between arbitration and ADR practitioners on matters affecting their professional interests. Following our agreement with LEADR, the Chapters will be scheduling joint activities with LEADR, which should provide a better service to members of the two organizations in enabling a broader range of affordable high-quality CPD activities to be offered, as well as providing a forum for personal and professional contact between individual members of the two organizations for their mutual benefit.

I would like to see a revival of Annual Conferences, attended by significant numbers of our members, as an occasion for professional and social contact. Regrettably, in the 1990's, the numbers attending our Annual Conferences dropped off to the point where they became difficult to justify on economic grounds. Less than 4% of our Members attended the *'Winds of Change'* Joint Conference with the New Zealand Institute in Auckland in February 2000, notwithstanding the high quality of both the professional and social program. It may well be that, in the future, our interests would be better served by conducting Joint Conferences with a body such as LEADR, which has a 'track record' of successful Annual Conferences.

Council's Practice Notes Rules & By-laws Committee is undertaking a review of our Practice Notes (which are well overdue for updating), starting with the Practice Note for the Preliminary Conference.

We will continue to publish a high quality professional journal. Given the Institute's change of name in December 1997, Council has resolved that, following publication of the Silver Anniversary edition of *'The Arbitrator'*, the name of the journal will be changed to *'The Arbitrator and Mediator'*. We will also continue to publish the National Newsletter and Chapter Newsletters, to keep Members informed on matters of topical interest.

PROMOTING OUR SERVICES

10 Namely *'To afford means of communicating between professional arbitrators on matters affecting their various interests'.*

There are two strategies we will be pursuing to raise the profile of the Institute and promote the services which the Institute and its members can offer.

Council has resolved that we will commence using a service called *'mediawire'*, to place press releases over a wide range of media targets on issues in which the Institute and its members have an interest and should be heard.

This service has operated in Australia and New Zealand for many years, and can be used to achieve national, regional or specialty penetration of press releases at a modest cost.

The second strategy we will be pursuing involves various initiatives aimed at increasing the opportunities for our graded arbitrators and accredited mediators (particularly the less experienced members of our panels) to provide dispute resolution services.

Perhaps more than most professions, it is difficult for less experienced arbitrators and mediators to obtain work. It is an unfortunate fact of life that, given a choice, parties will usually select a more experienced arbitrator or mediator.

In New South Wales, the *Building & Construction Industry Security of Payment Act, 1999* is intended to provide an expeditious, low cost procedure for adjudication of disputes over payment in the construction industry. The adjudication process provides an ideal opportunity for Grade 3 arbitrators (and others), who have completed the accreditation courses conducted by the New South Wales Chapter, to gain experience as dispute resolvers.

The number of students completing the National Professional Certificate Course, and the diversity of the professions from which they are drawn, requires that we consider taking some positive initiative to promote the use of arbitration and ADR particularly in non-building disputes. If we do not actively promote arbitration and ADR in those other areas, demand for our training Courses may well fall away and the new Members we have gained from those professions may see no benefit in remaining as Members of the Institute.

By way of comparison, it is interesting to note the success which the American Arbitration Association have had in promoting the use of arbitration and ADR in areas other than construction industry disputes. According to the 1999 Annual Report of the AAA:

- in 1999, more than 140,000 cases were filed with the AAA, in areas such as commercial finance, construction, labour and employment, environmental, health care, insurance, real estate, securities, and technology disputes;

- as part of an increasing trend for judges and lawyers to use alternative dispute resolution in class action claims, a court action against a major insurer was disposed of by 570 AAA appointees in 49 states resolving 50,000 cases over a 15 month period (including 580 cases which were administered entirely electronically);

- in 1999, the AAA administered 231 elections across the USA, including elections of union officials, labour contract ratification and various referenda;

- the AAA has developed panels and/or tailored rules or procedures for a number of areas, including accounting and related professional services; bankruptcy; commercial finance; construction; employment; environmental; health care; insurance and reinsurance; intellectual property; real estate; and telecommunications;

- the insurance industry is one of the most frequent users of ADR, and insurance claims disputes are a significant portion of the AAA's annual caseload;

- virtually all collective bargaining agreements between labour and management contain provision for arbitration of disputes which cannot be resolved; disputes arbitrated by the AAA include issues relating to discipline, termination, demotion, promotion, productivity, pensions and other benefits.

These statistics provide plenty of food for thought.

In the short term, the initiative to promote the use of arbitration and ADR in non-building disputes will involve talking to those of our Members and the 1999 Course graduates who are not involved in the 'traditional areas' (ie construction industry) to ascertain their views on how best to promote the use of arbitration and ADR in their respective industries and professions, as well as promoting the fact that we are training dispute resolvers in those particular areas. This will be done by Council's Membership and Profile Committee (chaired by Ian Nosworthy).

Another proposal recently considered by Council is the establishment and promotion of industry-funded Consumer Claims Schemes in Australia, along the lines of schemes which the Chartered Institute of Arbitrators operates in Britain, where Schemes are run for such disparate entities as British Telecom, British Rail, the Post Office, the Association of British Introduction Agencies, the Association of British Travel Agents, the Coal Board, Welsh Water, the National House Building Association, and the Finance and Leasing Association.

It appears likely that government and consumer associations would support the establishment of industry-funded Consumer Claims Schemes in Australia, particularly in such areas as:

- banking and insurance;
- sale and repair of motor vehicles;
- retail trading;
- the furniture industry;
- computer retailing and manufacture;
- AFTA (Australian Federation of Travel Agents).

This would be an attractive option for the Institute, for the following reasons:

- it would provide our present Grade 3 arbitrators (including graduates of the University Course) with an opportunity to obtain arbitration experience, at least until there were enough personnel from the particular industry trained in dispute resolution (by the Institute directly, or through the University Course);
- it would give us the opportunity to train the industry group dispute resolvers, either by channeling them into the University Course or conducting training similar to the Adjudicator training program presently being run by the New South Wales Chapter;
- it would provide a valuable and visible public service to the community.

Council's Membership and Profile Committee will be taking this proposal forward, in association with the Practice Notes Rules & By-laws Committee, which will be responsible for developing the Rules for the proposed Schemes.

Another area in which our graded arbitrators could (and should) be used more extensively is as Court-appointed Referees. In New South Wales, there is a well-developed system of Court References which has functioned effectively since 1985. It has been used in most construction disputes and various commercial disputes in the Supreme Court and District Court since that time. A feature of the system is that appointment of a Referee may be made by the Court even if opposed by one party.

One consequence is that it is not unusual for graded arbitrators in New South Wales to conduct more Court References than arbitrations.

Unfortunately, that practice has not caught on in other States and Territories. Notwithstanding that the various Courts have power to appoint Referees, Judges in Victoria, Queensland, South Australia and Western Australia have declined to do so when appointment has been opposed by one party. The rationale has been that the Court should not burden a party with the additional cost of a private dispute resolver when the Court is available free of charge to litigants.

To overcome this, we need to be able to demonstrate to the Courts that time and cost would be saved by appointment of a Referee, and not increased. One practical difficulty is that, unlike New South Wales, a Referee in Victoria, Queensland, South Australia and Western Australia is generally bound to conduct proceedings in the same manner (as near as circumstances will permit) as a trial before a judge of the Court.

It may well be that, if Judges in Victoria, Queensland, South Australia and Western Australia become more confident of the quality of the Institute's graded arbitrators, they would be more inclined to consider appointment of Referees.

IN CONCLUSION

While I was finalising this address, the Sydney 2000 Olympics were taking place. Having been in Sydney before and during the Olympics, some things occurred to me which I believe are relevant to consideration of our future.

Australians tend to be overly modest about our achievements and abilities (with the exception of the prowess of the sporting teams we support). An integral part of our national psyche is an aversion to 'skites' or 'big-noters'.[11]

The organization of the Olympics showed the world (as well as ourselves) that Australians are capable of great things. The Olympics demonstrated what we can achieve when we put our mind to it, and provided an event of which all Australians can be justifiably proud. The technological wizardry and intricate planning which provided the spectacle of the Opening and Closing Ceremonies were marvels to behold. Notwithstanding dire predictions beforehand, the transporting and traffic management of many hundreds of thousands of people every day was achieved relatively quickly and efficiently, with the assistance of an army of enthusiastic volunteers who took obvious pride in doing their job well.

I believe that the Institute and its members are similarly capable of great things, and that we should not be shy about the valuable contribution which we can make to non-curial dispute resolution in Australia and elsewhere if we take pride in doing our job well.

Looking ahead, it is hard not to be excited about the opportunities we now have. To realise our potential, we need the participation and support of our members. On behalf of the Council, I would encourage you to give us the benefit of your ideas on what we should be doing, and how we should be doing it, to achieve a result of which we can all be proud.

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11 This is something which US swimmer Gary Hall Jnr. and the US mens 4 x 100 metres relay team seemed to have some difficulty in recognizing which, in turn, led to accusations of anti-American prejudice from some sections of the US press.