

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 para-

graphs 3, 4 and 6 of the clause can be lengthened or shortened to suit the needs of parties to particular agreements.

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

parties in dispute shall within a further ten days (or within such further period as the representatives may agree is appropriate) seek to agree on a process for resolving the whole or part of the dispute through means other than litigation or arbitration, such as further negotiations, mediation, conciliation, independent expert determination or mini-trial and on:

- (a) The procedure and timetable for any exchange of documents and other information relating to the dispute;
- (b) Procedural rules and a timetable for the conduct of the selected mode of proceeding;
- (c) A procedure for selection and compensation of any neutral person who may be employed by the parties in dispute; and
- (d) Whether the parties should seek the assistance of a dispute resolution organisation.

1.5 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause for any purpose other than in an attempt to settle a dispute between that party and other parties to this agreement.

1.6 After the expiration of the time established by or agreed under paragraph 4 of this clause for agreement on a dispute resolution process, any party which has complied with the provisions of paragraphs 1-4 of this clause may in writing terminate the dispute resolution process provided for in those paragraphs and may then refer the dispute to arbitration or commence court proceedings relating to the dispute.

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#### 14. LAWYERS ENGAGED IN ALTERNATIVE DISPUTE RESOLUTION

An organisation entitled LEADR - Lawyers Engaged In Alternative Dispute Resolution has been formed.

According to LEADR's promotional brochure, LEADR was born out of discussions between partners in a number of major Australian commercial law firms who shared a belief in the need for lawyers to be at the forefront of applying alternative dispute resolution techniques in relevant business matters. LEADR's aim is to promote lawyers as the professionals best equipped to find speedy, cost-effective ways of resolving disputes without litigation.

According to LEADR, the increasing use of Alternative Dispute Resolution methods - negotiation, conciliation, mediation, mini-trial, independent expert appraisal and neutral fact-

finding - are key weapons in the lawyer's armoury.

The founders of LEADR believe that lawyers are particularly well-equipped to provide ADR services and that the effective use of these methods will stop the drift of clients away from their lawyers.

The aim of LEADR is to foster the use of ADR techniques in appropriate situations and to ensure its members are competent, skilled and trained in them.

The intentions of LEADR is to:

- promote lawyers as the professionals best equipped to provide ADR services
- help lawyers improve their negotiating skills and learn ADR techniques
- promote the acceptance of ADR as the dispute resolution procedure in appropriate cases
- establish a system of accreditation
- consult and co-operate with the courts and with other associations and bodies having similar objectives.

The promoted benefits to lawyers of joining LEADR include:

- gaining new clients through the group's promotion of ADR to business and government
- opportunities to participate in training programmes
- improving the public image of lawyers
- opportunities for developing this legal specialisation
- being kept informed of current developments in ADR by regular newsletters.

LEADR is a company limited by guarantee incorporated in the ACT. Membership is open to barristers and solicitors at \$125 per annum. Those interested should contact:

Val Basham-Mercer  
 The Law Council of Australia  
 PO Box 1989  
 CANBERRA ACT 2601  
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#### 15. ACDC APPOINTS AN INSURANCE MANAGER

The Australian Commercial Disputes Centre has appointed Mr Peter J. Hopkins BA, LLB, A.A.I.I. as its Insurance Programme Manager. Mr Hopkins' primary responsibility will be to develop and manage an alternative dispute resolution programme specifically for the insurance industry.

Mr Hopkins is an Associate of the Australian Insurance Institute and previously held the position of Corporate Solicitor and Claims Broking Manager at Bain Clarkson Pacific Ltd, International Insurance Brokers.

This new position may well have relevance to ACDC's capacity to deal with complex multi-party construction disputes which involve insurers, such as disputes concerning defects, which often involve a multiplicity of parties, including design professionals, project management professionals, contractors, specialist subcontractors and manufacturers. Claims in relation to injuries also frequently involve a multiplicity of parties. In such disputes, the involvement of the insurers in the dispute resolution process is often essential to settlement.