



## President's Message

*The Hon Michael Kirby AC CMG, President*

In the olden days, when justices of the High Court of Australia retired, they potted in the garden, read the *London Times* and took up lawn bowls. Today, as evidence that 70 is the new 50, they take up new pursuits. Justice Toohey conducted a Royal Commission in the UK. Justice Gaudron became involved in international institutions. Other judges were appointed to judicial posts in Hong Kong. Justices Dawson, McHugh and Callinan embraced ADR. In May 2009, after an astonishingly brief 'retirement', I was elected President of IAMA.

This has been a busy time to come into office. Amongst the many things happening have been:

- The successful 2009 conference in Melbourne, addressed by the Federal and Victorian Attorneys-General.
- The appointment of the new CEO, Paul Crowley.
- The election of a new Executive and Council.
- The conduct of a day-long Council planning session to initiate a re-think of IAMA's organisation and role.
- The completion of major submissions on reform of the federal and State legislation on commercial arbitration.
- The examination and overhaul of IAMA's finances to reflect the global financial downturn.
- The renewal of the DRC lease in Sydney.
- A new initiative for closer co-operation between Australian ADR bodies with the aim, in the long term, to create an overarching liaison body to promote dialogue and co-operation.

An impetus for law reform was given in an address, at the beginning of the law year 2009, by Chief Justice Spigelman of New South Wales. He urged harmonisation of domestic and international arbitration legislation. Fortunately, for once, this judicial admonition was not ignored. Federal and State legislation is now under consideration. It is appropriate to pay tribute to Federal Attorney-General (Mr Robert McClelland MP) and the State and Territory Attorneys-General, working through the Standing Committee (SCAG). It is worth observing that many requests were earlier made by IAMA and its members for action on this front, only to be ignored by those who then had different agendas.

The 2009 IAMA conference in Melbourne addressed the impact which current global and local economic conditions are having on ADR. To some extent, the economic slowdown has been reflected in court litigation and consequently on referred mediations and arbitrations. By the same token, the conference was generally upbeat about the prospects of ADR in Australia. ADR's features of speed, privacy and cost-saving make it a viable option, often preferable to court hearings in such times.

The Melbourne conference was the first that I had attended since addressing the original conference of the Institute in Canberra back in June 1976. The fact that I was there shows how long I have been around. But it must be said, that in the intervening 33 years, much has happened in ADR in Australia. The Melbourne conference was a wonderful opportunity to explore current issues in the fields of arbitration, mediation and adjudication.

At the annual dinner, I listed some of the key papers and commentaries that were presented during the conference:

- The outstanding opening addresses by the Attorneys-General (Mr McClelland and Mr Halls) and by Mr Michael Gill (Fairfax Business Media).
- Dr Chester Brown's examination of the protection of the public interest in international arbitrations.
- Harold Werksman's description of the "ah ha" factor in mediation practice.
- Toni De Fina's suggestions about lump sum arbitrator fees.
- Beth Cubitt's critique of contemporary Australian arbitration practice.
- Olivia Tan's description of online mediation as practiced in ASEAN countries.
- Dale Bagshaw's outline of ADR in indigenous communities.
- Chris Ronalds' analysis of arbitration in employment and discrimination disputes.
- Bruzo Zeller and Christy Heining's examination of arbitration clauses in invalid contracts.
- Dato' Kevin Woo's analysis of new building arbitration rules in Malaysia.
- Sue Laver's description of Telstra's mediation procedures.
- Ian Bailey's review of Australian commercial arbitration reforms.
- Albert Monichino's proposal for a comprehensive federal law on all forms of arbitration law.
- Bronwyn Lincoln's description of freezing orders.
- Doug Jones AM, the President of ACICA, got away with a dig at the imperfections of retired judges in conducting ADR. In the audience was Sir Laurence Street, who has done so much to put mediation on the map in Australia. But the ex judges present took it on the chin.
- Anna Booth's wrap up with thoughts for the future.

There were many other excellent papers in the cornucopia of expert information and advice. It was both an intellectual and highly practical feast.

Looking to the future, there are many challenges before IAMA, probably more than ever before:

- The completion of a legislative reform agenda, preferably to bring Australian law into line with the UNCITRAL Model Law.
- The expansion of ADR to help address unmet needs for dispute resolution for people of limited means.
- The desirability of institutional co-operation between Australia's many ADR bodies.
- The stepping up of education in ADR at Australia's law schools and tertiary institutions.
- The improvement of gender representation and other elements of diversity in IAMA's Council and Chapters.
- The enhancement of membership retention in hard economic times.
- The provision of an even better conference in 2010 in Sydney, preferably at a non-5 star hotel, with places for student and other young observers, and invitations to more overseas participants.

- The focus on Australia's bid to be a regional centre for arbitration of disputes which will only be taken seriously if we can get our legislation in order, co-ordinate our institutions, and improve our physical facilities and enhance our skills base.

In August 2009, I attended the Annual Conference of AMINZ in Wellington, NZ and affirmed the Memorandum of Understanding between that body and IAMA in the presence of the NZ Attorney-General, the Hon Christopher Finlayson MP. There were good trans-Tasman vibes everywhere.

I congratulate the IAMA staff, in the National Office and in State and Territory chapters, for their outstanding work in 2008-9. I thank Gianna Totaro for her loyal service as Acting CEO. I record Gianna's coming retirement from IAMA. We will miss her imaginative and feisty presence but offer warm felicitations for her career that lies ahead. All IAMA members were shocked on hearing, on the eve of the Melbourne conference, that Gianna's father was killed in a motor accident. This was a blow felt by the whole IAMA family. I pay tributes to the outgoing Treasurer, Ken Stout, for his outstanding service and to Warren Fischer, outgoing Vice President, who helped persuade me to become involved.

In a time of challenge and change, IAMA is redefining itself. We are determined to become more professional, efficient, inclusive and modern in outlook and performance. There should be more women in IAMA and its governing bodies. As Justice Gaudron used to say about advocates, there is no evidence that the relevant skills lie on the Y chromosome in the human species. I pay tribute to Professor Angela O'Brien for her sterling work as outgoing IAMA President. We need more women coming forward. Upon one view, in mediation especially, women have distinct genetic advantages.

To all the new friends who have made me so welcome in the world of arbitration, mediation and adjudication, after 34 years as a judge, I say thanks. To all members of IAMA, I give a commitment to a period of change, renewal and improvement.

Of course, a time of change and transition can often be uncomfortable. I have been struck by the affection that members of IAMA feel for the Organisation. We should not be shocked by strongly differing views concerning the future of IAMA. Blandness and pacificity do not make for creative organisations. But civility and mutual respect will get us through to the next phase and make IAMA an efficient and highly professional body appropriate to the challenges of the 21st century.

