

has been extended in the review proposal to entitle legal representation where any other party is legally *qualified* or is represented by a person with legal qualifications. It is proposed that the term "legally qualified" be defined to include legal practitioners, whether admitted in the jurisdiction or not, or any other person with an appropriate qualification in law, whether acquired in Australia or overseas. It would be left to the arbitrator to decide whether or not the person had an appropriate qualification in law.

It was also considered that a more substantial amount to justify an automatic right to legal representation was required than the current S.A. figure of \$2,500; it is uncommon for legal representatives to appear in disputes involving less than \$20,000.

It is also understood that there is a proposal to include a provision to the effect that a party's representative will not be regarded as having committed any offence or of having breached any provision in any other Act solely by reason of the fact that the representative was not admitted to practice in the jurisdiction in which the arbitration was conducted.

There is apparently a further recommendation that Western Australia should repeal as anomalous an additional provision in its version of the Act to the effect that a person who is admitted or entitled to practice as a barrister or solicitor in any part of Australia may not appear before an arbitrator or umpire on behalf of a party, unless the person is a certified practitioner as defined in the W.A. Legal Practitioners Act.

Due to the provisions of the Queensland Law Society Act, the right of representation in arbitrations under the 1973 Queensland Arbitration Act would seem to be limited to legal practitioners admitted in Queensland. It is understood that there is a consequent recommendation to include the proposed amendments to Section 20 of the "uniform" Act in the Queensland Act in order to overcome this problem. Of course, it remains to be seen whether the Queensland Government will see fit to do so.

## 7. LEGISLATION SOUGHT TO PROTECT THE MEDIATION PROCESS

To ensure the efficiency of the Alternative Dispute Resolution process, AFCC has written to the New South Wales Attorney General seeking legislation to protect organisations such as the Australian Commercial Disputes Centre and The Institute of Arbitrators, Australia and their mediators, conciliators and experts from being called as witnesses or from being compelled to produce their files in subsequent court or arbitration proceedings. It is expected that similar submissions will be made in the other States, in due course.

At present, ACDC requires disputants to sign a document in which the disputants agree not to call the mediator etc. as a witness in subsequent proceedings. However, it remains to be seen to what extent the Courts or arbitrators will uphold that agreement and treat ACDC and the mediator as privileged from involvement in subsequent proceedings, in the face of particular circumstances in which evidence from officers of ACDC or from the mediator might be highly relevant with respect to matters such as a settlement agreement. There is some potential that this agreement might be considered to constitute an attempt to oust the jurisdiction of the Court.

There have been examples to date of attempts to involve the

mediator and facilitating organisation in subsequent proceedings.

Consequently, AFCC is seeking legislation to support and foster the ADR process and organisations such as ACDC and the I.Arb.A in their work. It should be stressed that it is not intended that there should be legislation governing the whole ADR process (which is best left flexible and subject to the agreement of the parties), as in the case of the Commercial Arbitration Acts with respect to arbitration, but that legislation should be in place simply to protect confidentiality.

Support for the proposal has been sought from relevant ADR organisations, such as ACDC, I.Arb.A, the Alternative Dispute Resolution Committee of the Law Society and the Alternative Dispute Resolution Association of Australia.

## 8. NEW CONSTRUCTION MEDIATION VIDEO

The Australian Commercial Disputes Centre has prepared a video entitled "Mediation in Action", which shows a hypothetical construction dispute being resolved by mediation. This video was prepared with the assistance of Westgarth Baldick, Solicitors. It may be purchased from the Australian Commercial Disputes Centre for \$50, or hired for \$20.

## 9. ACDC OPENS IN QUEENSLAND

The Australian Commercial Disputes Centre is now fully operational in Queensland, following the appointment of Mr David Paratz as ACDC's new Queensland Manager. Mr Paratz has practiced as a barrister in Brisbane for seven years, mainly in commercial law.

ACDC, which was originally established by the New South Wales Government, now has offices in Brisbane, Perth and Sydney. Contact names and numbers are as follows:

- Brisbane, David Paratz, telephone 07 831 1699
- Perth, Shane Henderson, telephone 09 421 7555 (possibly changing to 09 220 3400)
- Sydney, David Newton or Pat Cavanagh, telephone 02 267 1000

## 10. RAIA PROPOSALS TO LIMIT LIABILITY

Due to concerns at the increasing incidence of claims against architects and the potential extent and duration of liability, the Royal Australian Institute of Architects has developed the following proposals (which are reprinted from the RAIA's submission):

### 1. Law:

- [a] An absolute limit, from completion of a building, be placed on claims against any of those involved with its construction. It is suggested that this time limit be six years.
- [b] The present "several concurrent tortfeasors" provisions of the law be removed, so that each participating party in the building process would be liable only for its own proportion of the damage or injury.
- [c] A statutory limit be placed on liability in respect of any one building. It is suggested that this be one and a half times the cost of the building, with a minimum