A Word from the CEO

There has been a lot happening in ADR in Australia over the last month. Not only did ACDC launch its 2011 professional development program but the *Civil Dispute Resolution Bill 2010* passed through the Australian Parliament on 24 March.

The object of the Bill is to ensure that, as far as possible, parties take "genuine steps" to resolve disputes before certain civil proceedings are commenced.

The Bill implements key recommendations of the National Alternative Dispute Resolution Advisory Council (NADRAC) in its 2009 Report The Resolve to Resolve – Embracing ADR to improve access to justice in the federal jurisdiction' by encouraging people to resolve disputes before going to court.

As the Attorney General of Australia, the Hon Robert McClelland MP explained, the Bill requires prospective litigants to lodge a statement with the court detailing what steps they have taken to resolve their dispute or, if they haven't, the reasons why. Importantly, it does not prescribe or mandate any particular steps that must be taken but allows the parties involved to decide what commonsense steps are most appropriate in their circumstances having regard to the nature and circumstances of the dispute. This contrasts with detailed pre-action protocols, such as those in the UK which have been criticised for front-loading litigation costs.

The approach is similar to that taken in Part 2A of the *NSW Civil Procedure Act 2005* which commenced on 1 April 2011 and which was the subject of our legal update last month. Under the NSW Act, parties are required to take "reasonable steps" to resolve the dispute before commencing proceedings and it remains to be seen whether there is a real difference between "genuine steps" under the new Federal Act, and "reasonable" steps in NSW. It is clear that examples of both "genuine" and "reasonable" steps parties could decide to take include ADR processes such as mediation or conciliation.

How successful the new legislation is will be gauged in due course, but it is clear that parties in the affected jurisdictions need to consider the impact of the reforms on the management of their disputes and they should also keep the new requirements in mind when preparing or reviewing dispute resolution provisions in their contracts.

On the arbitration front, the High Court is expected to clarify an arbitrator's obligations when it hands down its decision in the appeal from the decision of the NSW Court of Appeal in *Gordian Runoff Limited v Westport Insurance Corporation [2010] NSWCA 57*. This decision should be of interest to all involved in commercial arbitration in Australia and is the subject of our legal update this month. AIDC was one of the bodies involved with ACICA as *amicus curiae* to make submissions to assist the court in the proceedings.

I encourage you to register for the upcoming mediation professional development sessions and events. These interactive skills workshops and seminars are a part of an ongoing program of Mediation Professional Development sessions for practising and newly qualified mediators. Bookings are now open also for our May Mediation Course Training which will be held at the AIDC and I look forward to welcoming you here.

Michelle Sindler CEO, AIDC
