

**The Hon. Trevor Morling QC**

In this issue, we interview the Hon. Trevor Morling QC on the topic of mediation. Mr Morling QC is the Chairman of the Australian International Disputes Centre and was for many years a judge of the Federal Court of Australia. He also held commissions as an appeal judge in Tonga, Vanuatu and Western Samoa and was a long-serving Chairman of the Australian Electoral Commission. After retiring from the Bench, Mr Morling was actively engaged as an arbitrator and in Europe and, for more than a decade, has been fully engaged in domestic mediations in Australia.

**What led you to mediation?**

I suppose it was because I was approached by solicitors asking me to mediate. I did not initiate steps myself to seek appointment as a mediator. But having been asked to mediate I rapidly came to the view that it was a very worthwhile exercise.

**What is the most satisfying aspect of the mediator's role?**

It is that at the conclusion of the mediation, one almost always feels that it has been productive. By that I mean, that the mediation has either succeeded and the matter has settled or, if the matter has not settled, at least the disputants have a better understanding of the issues in dispute and therefore a better understanding of the risks they run if the case goes to trial.

**What has maintained your personal interest in mediation?**

The high success rate (possibly about 75%) in mediations leading to settlement. It is always gratifying to have taken part in a mediation which has succeeded. Particularly if you have been able to assist the parties to moderate their views to such an extent that they have been prepared to settle.

**What have you learned as a mediator (if anything) that you wish you knew when you were starting out?**

Perhaps one thing I have learned is the importance of gaining the confidence of the parties. To achieve this, the parties must understand that you are doing your best to assist them to reach settlement, which gives to both sides a satisfactory result, having regard to the risks they run if they do not settle.

**How do you see the role of lawyers in mediation?**

In the mediations in which I am involved, the parties are almost always represented by lawyers. I think the presence of lawyers contributes to an effective mediation. The few mediations I have conducted where one of the parties has not been legally represented have usually been unsuccessful. In my experience, the effectiveness of a mediator is frequently enhanced by his ability to discuss with the legal advisers any issues arising in the dispute.

**Over the next five years, where do you see mediation in Australia?**

I think parties are increasingly likely to resort to mediation to resolve their disputes. There are at least two reasons for this. First, the desire of litigants to avoid the increasing cost of litigation. Secondly, most

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litigation is attended by considerable doubt as to what the outcome will be and my experience is that most parties wish to avoid the risk of an expensive loss in court if they can settle on acceptable terms.