

LEADR Team Introduces Mediation to India

By Pat McIntyre, Chairperson NT Chapter LEADR

I was fortunate to have been invited to form part of a training team which returned to Australia from India on 1/2/98 somewhat exhausted but nevertheless having obtained unique insights into the Indian legal system and into consensual dispute resolution in an international context.

Mr. Justice Armand of the Supreme Court of India (the equivalent of our High Court) welcomed a training delegation from Australia to New Delhi on 20/1/98 for the inaugural mediation Training Workshop (the first of two) which were sponsored by the Australia-India Council, organised by the Australian High Commission in India, and conducted by LEADR. Local support was provided by the Indian Council of Arbitrators and the national organisation of Chambers of Commerce in India.

In his address, which was widely published in the Indian national press, Mr. Justice Armand commented upon the role and function of Courts and the erosion of public confidence in the legal system brought about by the cost and delay. He described a justice system "in crisis", a "devalued", "the cause of community and commercial frustration and despair" and "in need of urgent solutions." He spoke of the need in India for structured consensual dispute resolution, not only to address a "profound backlog" of cases, but also "for the economic growth of India" currently hampered by what he described as "appeal-itis" and in need of modernisation in the face of global moves, especially in international commercial agreements, toward consensual dispute resolution.

The training of facilitators in dispute resolution was, he said, a necessary next step following the passage of the new *Arbitration and Conciliation Act* by the Indian national parliament. That Act provides legislative recognition of conciliation and mediation as

integral elements of the justice system in India. The Act provides, among other things, for accreditation of mediators, confidentiality of the proceedings, and perhaps more unusually, that upon registration of a mediated settlement agreement in the courts, such agreement takes effect as an order of the court. The latter is designed to avoid litigation that might otherwise be necessary to enforce the agreements.

There is a limited time period after mediation, during which the mediated agreement can be challenged in court, but only upon the basis of one of a limited number of criteria provided for in the Act (e.g. fraud).

A second workshop was conducted in Mumbai between 27-30 January 1998.

The workshop participants included judges from several State High Courts (equivalent of our State Supreme Courts); courts administrators; corporate, public sector and private sector barristers & solicitors; senior executives from public and private sector corporations involved in telecommunication, electricity, banking, media, shipping, construction, import/export, aviation, manufacturing and various other industries in addition to various post-graduate and undergraduate students of management and law.

In all, in excess of 100 people participated in LEADR's mediation training program, many of whom had travelled from as far afield as Calcutta, Chennai, (Madras), and Trivandrum to do so.

Both workshops were very successful. We were told that following the success of the New Delhi course, the Chief Justice of the High Court in Mumbai has decided that arrangements will now be made for the entire bench of that Court to undertake such training.

Anyone concerned by delay in our local milieu may be interested to know that Indian litigation lawyers do not ex-

pect to see the end of Court proceedings which they issue. The average duration of cases has grown from 6 years in the early 1950's to a present figure of 30 years!

The workshops were certainly a two-way street. I will provide some comments about some lessons we bring back from our new friends in India in the next issue of *Balance*.

LEADR has also provided training to the Judges of the Supreme Court of NSW; the High Court of NZ; the Supreme and District Courts of SA. We will conduct another workshop in Singapore later this month.

I have attached a program of LEADR workshops scheduled for 1998.* Members of the Law Society are welcome to local chapter functions, notice of which we will provide to *Balance*. For further information please contact any of our local Chapter Committee:-

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P.S. Those local practitioners who know him will understand my delight to have been surprised by the attendance of Michael Abbott QC, President of the S.A. Bar Association, at the closing ceremony of the New Delhi workshop and the reception that evening at the Australian High Commission. His business card revealed him to be a member of the Australia-India Council.

* Available from the Law Society
Next LEADR workshop in Darwin is scheduled for 24-27 June.