

## Call for Broader and Better Collaboration in Promoting Consensual Dispute Resolution

By Patrick McIntyre

**On Friday 15th May 1998, thanks to the local efforts of our Deputy NT Ombudsman, Tom Stodulka and with the facilitation of International Institute for Negotiation and Conflict Management (IINCM), an important workshop meeting took place at Montego's meeting room, Parap.**

Representatives and individuals from a broad range of associations and organizations public and private; involved in the training, delivery and practice of alternative dispute resolution techniques, (including the Law Society and various law firms), were invited to meet to explore the need for and the possibility of better and more cohesive collaboration in the promotion of consensual dispute resolution in the NT.

Those who participated included representatives from:-

- Health & Community Services Complaints Commission
- Office of Commissioner for Public Employment
- Ombudsman for the Northern Territory
- THS, Royal Darwin Hospital
- Territory Health Services Staff Development
- Territory Health Services Mental Health Unit
- Defence Force Headquarters Northern Command
- Resolve Family Conflict Resolution
- Northern Territory Correctional Services
- Jackman Gooden Architects
- Anti Discrimination Commission
- PAWA
- NT Police Service
- LEADR
- Child & Family Protective Services
- Northern Territory Legal Aid Commission
- Employees' Assistance Scheme
- Department of Education
- Mediation Association Northern Ter-

ritory (MANT);

and a number of private practitioners from a range of professional backgrounds

Whilst a more detailed report of the outcomes from the meeting will follow in the next issue of *Balance* (when a more thorough collation of the working materials will have been completed), I am able and excited to report at this early stage at least the following:

The meeting was unanimous in identifying the need and resolving to explore ways to promote greater information flow and collaboration between the meeting participants;

Most participants were surprised and delighted at the enormous number and type of CDR projects happening in fields as disparate as police operations; school boards and school student peer mediation; health complaints, corporate conflict & management system design, Aboriginal community development.

Whilst the emergence of so many autonomous and field specific projects is exciting and encouraging, the participants expressed a desire to meet, engage with and generally network across 'project' and professional lines.

The participants identified some specific initial benefits that might be obtained through greater collaboration. This is particularly so in training and professional development where time and infrastructure costs are high and there is currently considerable "overlap".

We resolved to report back to our various organisations and to meet again for the purpose of review and further input as to what "best next steps" might be undertaken.

We resolved to encourage other interested people and organisations to attend the next meeting; the date and place for which is yet to be fixed.

The downside was the clash with the Law Week Dinner; accounting for some members being unable to attend each

function; a clash unfortunately dictated by the logistics of so many. Any practitioners who were unable to attend but who are interested in attending the next meeting are asked to contact Tom Stodulka (Tel: 8981 8699).

Given that so much personal, commercial and community conflict arises from difficulties in multi-party decision making, there is a great opportunity here for legal practitioners to become more broadly engaged in the delivery of wise counsel.

At the sharp end we have proposed amendments in the areas of Supreme, Local and Work Health Court practice. At the broader end, through this forum, there is an invitation and opportunity for legal practitioners interested in consensual decision making to more visibly and effectively promote and utilize preventative law techniques.

Those practitioners involved in the delivery of these techniques find them personally and professionally rewarding. From another perspective they can be an opportunity for the legal profession to be better seen for what it is; an instrument for rational, civil discourse and creative decision making.

We are a profession that has much to offer the emerging structures for consensual decision making in Boardrooms and school committees, in commercial negotiations and particular litigation. In public policy development and in the design and implementation of rational and transparent processes for multi-party negotiation and consultation the legal profession has unique skills and experience. Our professional heritage calls us to be at the forefront of conflict management and corporate decision making systems design and implementation.

If the legal profession is to avoid becoming increasingly irrelevant and

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## Native Title – your step-by-step guide

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### WHY ARE THE AMENDMENTS IN THE 10 POINT PLAN UNFAIR?

- *For various reasons.*

NT Lawyers for reconciliation say that the most important reason is that in practice the proposed amendments will leave indigenous Australians with almost no say over development even though their native title rights are put seriously at risk. They will have no say when development is to occur on (a) past or present pastoral leases; (b) forestry, water or mining reserves; (c) defence areas; or in (d) towns, the sea or parks. They will keep the right to negotiate over very little of Australia, possibly less than 10%.

The right of indigenous Australians to negotiate over development on their land is the most important right which recognition of native title has given them. The right to compensation for the loss of native title rights in much of arid and remote Australia will often be worth very little. The right to negotiate may result in employment, better health and education, and cultural security for communities of indigenous Australians, and gives them a stake in development (so that they are partners rather than mere bystanders).

The proposed amendments also promote the wholesale destruction of native title by allowing upgrading of pastoral leases to freehold at public expense. They also provide for a 6 year time limit in which to bring all native title claims. In a country as large as Australia, with scattered and diverse communities of indigenous Australians, this deadline is simply impractical.

Some indigenous Australians argue that the proposed amendments will mean the Racial Discrimination Act does not apply to the NTA, and that the tests for the right of native title claimants to negotiate for access to pastoral leases for ceremonial activities etc may be made too difficult.

**IF YOU WANT MORE INFORMATION** please contact John Duguid (8981 5544 or Tony Young (8981 8322) during business hours.

## Work Health – Achievements and Plans for the Future

**The Minister for Work Health, Mr Denis Burke, MLA has provided the Law Society with a copy of a statement outlining the government's work health achievements to date and plans for the future.**

The paper includes strategies aimed at preventing workplace injury, which he expects that the Work Health Authority will implement.

Whilst the Minister identifies workplace safety and fair compensation as key concerns of the NT Government, he notes that the cost of workers compensation in the NT last year was \$25 million.

Practitioners interested in the text of Mr Burke's statement may obtain a copy from the Law Society.

## High Court Rules – Amendments to Second Schedule – 4.5% Rise

The Second Schedule to the High Court Rules specifies the amount which solicitors who are entitled to practise in the High Court, may charge and be allowed on taxation of costs by the Taxing Officer of the Court in respect of proceedings in the Court.

The amounts in the Schedule were last varied by Statutory Rule No 11, made on February 1997 and which came into operation on 3 March 1997.

The Federal Costs Advisory Committee, in its report to the Justices dated February 9 1998 recommended an increase of 4.5% to the solicitors' costs as set out in the Second Schedule.

The Court has agreed to the recommendation of the Committee and the increase, which came into operation on Monday 4 May 1998, will apply in respect of all work done and services performed by solicitors after 3 May 1998.

A copy of the Schedule may be obtained from the Law Society.

## Commencement of Legislation

The NT Attorney-General's Department advise that the *Real Property (Unit Titles) Amendment Act* will commence operation on the date of publication in the Northern Territory Gazette of the notice signed by the Administrator on 13 May.

It was anticipated that this would appear in Gazette G19 of 20 May 1998.

The Department advises further that the *Local Court Amendment Act* and *Small Claims Amendment Act* which will, amongst other things, increase the jurisdiction of the Local Court and Small Claims Court to \$100,000 and \$10,000 are to commence on 1 June 1998. New Local Court Rules and Small Claims Rules will also commence on that date.

Practitioners are reminded an "unofficial" version of the Rules may be obtained from the Law Society by providing a disk on to which they may be copied. Printed copies of the Rules will be available from the Government Information Centre shortly.

## Mediation

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misunderstood by an intelligent, well educated and dynamic society; perhaps there is no 'alternative' to lawyers engaging as leaders in consensual dispute resolution!

The next LEADR Mediation Training Workshop in Darwin will be conducted between 15th and 18th July 1998.

Please contact LEADR Sydney on telephone (02) 9233 2255 Fax 02 9232 3024 to register.

For those for whom that is an inconvenient time, the Accord Group will deliver its training 11th – 13th August 1998 (Tel: 02 9264 2327). Alternatively, the Institute of Arbitrators and Mediators will in 1999 offer its arbitration and mediation training through various Australian universities (For details please contact Chri Cureton at Clayton Utz 8943 2555).