President's Message

Ian Nosworthy, President

One of the key factors which underpins the effectiveness of domestic arbitration in Australia has been the uniform *Commercial Arbitration Legislation*.

In the two decades since that legislation was introduced, the impact of modern technology – particularly the computer and the photocopier – has continued to make dispute resolution more difficult and costly. There is therefore a need for our legislation to keep pace with the times.

There has been new arbitration legislation enacted in the United Kingdom and New Zealand. It has also been recognised that in some areas revision of the existing legislation might improve it. Accordingly, in March 2002 the Standing Committee of Attorneys-General agreed to NSW conducting a review of Australia's uniform *Commercial Arbitration Legislation* having regard to the New Zealand and English Arbitration Acts and the UNCITRAL Model Law on international commercial arbitration.

SCAG has been asked to consider a series of amendments to the uniform legislation, in particular:

1. ensuring the severability and survivorship of the arbitration agreement, even if the main agreement is invalid or otherwise struck down;
2. providing for the resignation of an arbitrator and giving the court the power to grant the resigned arbitrator liability relief and make orders for payment of costs;
3. adding to the general powers of arbitrators and the obligations of parties to arbitration to:
   - (i) permit arbitrators to order the provision of security for the cost of arbitration;
   - (ii) permit arbitrators to appoint experts, legal advisers and assessors, subject to the rights of the parties to be given a reasonable opportunity to comment on that information;
   - (iii) give arbitrators power to make orders for preservation of property;
   - (iv) clarify the role of the chairman and the conduct of a multi-party tribunal;
   - (v) give the tribunal the power to take the initiative in ascertaining the facts and the law, to adopt inquisitorial processes, and draw on its own knowledge and expertise;
   - (vi) require arbitrators to act fairly and impartially, giving the parties a reasonable opportunity to put their case and adopting procedures suitable for the particular case;

(vii) give arbitrators the power to strike out a proceeding for want of prosecution;
(viii) permit arbitrators to rule on their own substantive jurisdiction;
(ix) provide for immunity of arbitral institutions;
(x) require the parties to take substantive jurisdictional objections as their first step in proceedings;
(xi) make the parties jointly and severally liable to pay the arbitrator such reasonable fees and expenses which may be appropriate in the circumstances;
(xii) permit an extension of time for a party to take a step before proceedings are commenced.

I am particularly pleased that governments have shown a willingness to entertain detailed recommendations which IAMA has made, and which have also been made by IAMA members who prepared the submissions made by the Law Council of Australia. The cooperative approach to law reform reflects an acknowledgment of the importance of the process, and the need for effective non-curial dispute resolution processes.

These are significant matters for your Institute, and your Council will welcome positive input for further progressive changes to this important legislation.

It is to be hoped that the bulk of these recommendations will soon find their way into a uniform revision of the *Commercial Arbitration Acts*.