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The ADR Bulletin

ADR developments in the region

Promoting Australian ADR abroad

Sandra Purser

'… the trend towards ADR as a formal process for the settling of disputes has continued to gain momentum in the Asia-Pacific region.'

Australian mediators and alternative dispute resolution centres are taking a leading role in encouraging the use of dispute resolution techniques in the Asia-Pacific region.

To take a case in point, the Dispute Resolution Centre at Bond University, initially at the invitation of the Australian Government and more recently as a result of its own efforts, has been actively promoting the adaptation of mediation techniques for use in Indonesia. This was done primarily through presenting a series of courses to selected organisations and promoting awareness of the benefits associated with successful mediation.

Prior to that program, LEADR was involved in a similar program in India.

The initiative for these programs stems from the work of the International Legal Services Advisory Council (ILSAC), an advisory council to the Attorney General which, among other things, seeks to identify measures to enhance the international performance of Australia's commercial dispute resolution centres and services. It also aims to monitor development and trends in international commercial dispute resolution.

The areas of particular interest to ILSAC include the role of the legal profession and opportunities to improve the marketing of Australia's competence in this area. The Council is chaired by the Hon Sir Laurence Street AC KCMG QC, who has an international reputation as a mediator. The current activities relating to international commercial dispute resolution are undertaken through a working group chaired by Ms Barbara Filipowski.

India

The impetus for the introduction of mediation techniques to India arose out of the New Horizons Australia-India Legal Conference of 1996 as a possible initiative to relieve congestion in the courts. An activity which was funded through the Australia-India Council involved the visit to Australia of Mr GK Kwatra, Secretary of the Federation of Indian Chambers of Commerce and Industry (FICCI) and Executive Director of the Indian Council of Arbitration. Mr Kwatra was a guest speaker at an international conference on mediation held by LEADR (at that time known as Lawyers Engaged in Alternate Dispute Resolution) in Perth in May 1997. His visit to Australia was extended to include a study tour and the undertaking of a mediation course conducted by LEADR.

As a result of this initiative, mediation courses were delivered in India by a team of Australian mediators through LEADR. These courses were funded by the Australia-India Council and were held over a period of one and half years from January 1998 to October 1999 in Delhi, Mumbai, Calcutta and Bangalore.

The programs in India were supported by a 'train the trainer' program which was conducted in Australia and involved training four leading mediators from India in order for them to be able to train others in their country in a more cost effective manner.

Since that time the trend towards ADR as a formal process for the settling of disputes has continued to gain momentum in the Asia-Pacific region.

Indonesia

In August 1999 the Indonesian Government passed legislation on commercial arbitration which introduced the new concept of ADR in that country. Prior to this, the Indonesian *Environmental Management Act* Law No 23 1997 enabled the use of alternative dispute resolution in the settlement of environmental disputes in Indonesia.

During the 1990s Indonesia had been undertaking a program of legal reform which received added impetus in the late ➢

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➢ 1990s following the financial crisis.

One of the five areas of reform agreed upon by the Indonesian Government with the International Monetary Fund (IMF) in January 2000 was banking reform. The Government's Financial Sector Policy Committee (FSPC) was working with the Indonesian Bank Restructuring Agency (IBRA) to ensure effective banking reform. The Jakarta Initiative Task Force (JITF) was established to speed corporate sector recovery and, among other things, assist in promoting the recovery of the banking and financial sector. The agreement with the IMF strengthened the JITF's role in corporate restructuring and the FSPC was able to direct that certain cases be referred by IBRA to JITF for resolution. Formal mediation processes could be applied, but if these were unsuccessful then bankruptcy action could be taken.

Late in 2000 the Attorney General's Department invited the Dispute Resolution Centre of Bond University School of Law to conduct a series of courses on ADR in Indonesia. The courses were part of a project undertaken by the Attorney General's Department and funded by the Australian Agency for International Development (AusAID) under the APEC Support program.

The rationale for the project was:

- the relatively recent introduction of ADR as a form of settlement in commercial disputes in Indonesia;
- the economic benefits which could be realised through the use of effective ADR techniques in the resolution of commercial disputes; and
- the skill, capacity and experience of Australian lawyers and trainers in the use of these methods.

The first stage of the project was a study visit to Australia in July-August 2000 by representatives of four Indonesian organisations with an interest in ADR. The organisations were the Jakarta Initiative Task Force, the Indonesian Centre for Environmental Law, the Indonesian Board of Arbitration and the Ministry of Justice and Human Rights.

The visit provided the participants with an introduction to various applications of ADR in Australia. They were provided with the opportunity to develop links with Australian practitioners and were able to exchange information on the use of ADR in Indonesia.

Attendees visited Brisbane, Sydney, Canberra, Melbourne and Perth. In Sydney the participants attended an international conference on ADR and met with Australian and other international practitioners. During the study tour the Indonesians were able to follow up with contacts made at the international conference as well as visit and view a whole range of organisations and monitor the use of ADR in the Australian community. Organisations visited included the Community Justice Centres, accountancy firms, the Federal Court, academics and barristers with ADR practices. In NSW the visitors were advised on the farm debt mediation arrangements and in Perth they visited the National Native Title Tribunal. The program concluded with participation in a four day mediation workshop held by LEADR in Perth.

The second stage was training in ADR techniques in Indonesia. The project provided for Australian participation in four training courses in Indonesia held in November 2000 and January 2001.

The first course undertaken by Bond University was held with the Jakarta Initiative Task Force on 23-25 November 2000. This course was designed to assist members of the task force with negotiations on debt restructuring between creditors and debtors for companies experiencing difficulties due to Indonesia's financial crisis. The course was so successful that a lecturer from Bond University was subsequently appointed to the Task Force for 12 months. The secondment is funded by AusAID.

Subsequent courses were conducted with the Ministry of Justice and Human Rights and the Indonesian Board of Arbitration and were attended by private and public sector lawyers, judges, arbitrators, arbitration officials and law academics. Links were made with universities interested in establishing their own mediation training programs, such as the Universitas Tarumanagara and Pancasila University.

The project resulted in the introduction of more than 50 Indonesian lawyers and officials to mediation theory, processes and techniques, and the beginnings of a network of Australian-Indonesian contacts with an interest in ADR.

Significant outcomes included improving the performance and success rate of those members of the JITF engaged in mediating corporate restructuring proposals between debtors and creditors. The encouragement and support provided for the beginnings of a small and self-sustaining ADR practice in Indonesia, which would be supported by members of the Indonesian legal profession, is another important outcome.

It is hoped that similar projects in Vietnam, China and the Philippines will be undertaken. ●

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