

PROFILE - ALAN L. LIMBURY - MEDIATOR AND ARBITRATOR

Woolloomooloo, Australia

EDUCATION:

City of London School and Keble College, Oxford.

QUALIFICATIONS:

- BA (Jurisprudence), University of Oxford, 1963.
- MA, University of Oxford, 1968.
- Master of Dispute Resolution (MDR), University of Technology, Sydney, 1997.
- Barrister, United Kingdom (Inner Temple), 1964.
- Admitted as a legal practitioner before the High Court of Australia and the Supreme Courts of the Australian Capital Territory, New South Wales, Queensland and Victoria.
- Associate Member, Institute of Arbitrators Australia, 1990.
- Specialist Accredited Mediator, Law Society of New South Wales, 1994.
- Member, The Chartered Institute of Arbitrators, 2004.
- Associate Member, The Institute of Arbitrators & Mediators, 2004.

EXPERIENCE:

Forty years experience in the conduct and resolution of major commercial disputes; advising how to reduce exposure to legal challenge, particularly in trade practices, intellectual property, franchising and administrative law; and in dealing with government departments. Of particular importance is an excellent relationship with the members and staff of the Australian Competition and Consumer Commission (ACCC).

Since 1986, and virtually full time since 1996, wide experience mediating over 750 significant commercial disputes in Australia, New Zealand and the UK in which the parties have usually been legally represented. Also representing clients in mediations. Topics include advertising, agency, airlines, banking, building and construction, confidential information, copyright, distributorship, enforcement of guarantees and mortgages, environment, exclusive dealing, family provision, farm debt, film distribution and exhibition, franchising, fraud, healthcare complaints, industrial injury, information technology, insurance, matrimonial property, mergers, misleading conduct, motor accidents, motor vehicle dealerships, parallel imports, partnership, passing off, patents (infringement, licensing and validity), price fixing, professional negligence, railways, real estate, resale price maintenance, retail tenancy, software licensing and distribution, termination of agency and distributorship, testamentary dispositions, third line forcing, trademarks (infringement, licensing and validity) and unconscionable conduct.

Also experienced in arbitrating commercial disputes in which the parties are legally represented, domain name disputes, complaints about advertising of therapeutic goods and merits review of administrative decisions.

EMPLOYMENT HISTORY

- 1964 – 1972** Allen Allen & Hemsley.
- 1972 - 1974** Baker and McKenzie.
- 1974 - 1996** Minter Ellison (Partner, 1976-1996).
- 1996 -** Strategic Resolution (an ADR consultancy) (Managing Director).
- 1997 -** Sole Practitioner, Solicitor and Barrister, specializing in trade practices and intellectual property.

SPECIALISED COMPETENCE:

- Negotiation.
- Mediation, arbitration and conflict management, including facilitation of dispute resolution processes.
- Superior problem solving and analytical skills.
- Ability to conceptualize and distil the essence of an issue.
- Intelligent, clear and creative thinking.
- Strong written and oral communication skills.
- Leadership and teambuilding.

TRAINING AND EXPERIENCE IN ALTERNATIVE DISPUTE RESOLUTION (ADR):

- Trained in negotiation and ADR at Harvard in 1986, 1987 and 1991.
- Assisted Harvard Professor Roger Fisher in teaching negotiation in Australia in 1988 and 1994 and as a Teaching Fellow at Harvard in 1991. Regularly teaches negotiation using Harvard exercises.
- Mediation trainer with Harvard Professor Frank E.A. Sander and mediators Linda Singer and Michael Lewis: Harvard Mediation Workshops, Sydney 1994 and Harvard June 1995.
- Trained in mediation by ACDC (1986); CDR (Colorado, 1988); Institute of Arbitrators Australia (Advanced) (1989); Law Society of New South Wales (Advanced) (1993) and UTS Sydney (Advanced)(1993).
- Trained in arbitration by the World Intellectual Property Organization (2000 and 2004).
- Passed entry course examination for The Chartered Institute of Arbitrators, December 2003.
- Described in the 1996/97 edition of *Legal Profiles* as "the leading practitioner" in ADR in Sydney.

CURRENT APPOINTMENTS:

- Deputy Chairman, National Electricity Tribunal.
- Member, Health Services Advisory Committee.
- Chairman, Complaints Resolution Panel under the *Therapeutic Goods Regulations*.
- Chairman, Complaints Panel of the Australian Self-Medication Industry.
- Member, Dispute Resolution Committee of the Law Council of Australia.
- Member, Trade Practices Committee of the Business Law Section of the Law Council of Australia.
- Member of the Intellectual Property mediation panel of the National Arbitration Forum (the first non-American to be so appointed).

- Member of the mediation panels of the Law Society of New South Wales, LEADR (advanced panel), the Australian Commercial Disputes Centre, the World Intellectual Property Organization, the New South Wales Land & Environment Court, the NSW Retail Tenancy Unit and the NSW Rural Assistance Authority.
- Member of the panels of arbitrators of the World Intellectual Property Organization, the National Arbitration Forum, LEADR and auDA for resolving domain name disputes.
- Member of the National Arbitration Panel of arbitrators for resolving Inter-Registry Transfer disputes over domain names (TDRP)
- Member of the panel of arbitrators of the Independent Pricing and Regulatory Tribunal of NSW to hear access disputes.
- Member of the LEADR panel of adjudicators to determine cases under the *Building and Construction Industry Security of Payment Act 1999* (NSW).

PREVIOUS APPOINTMENTS AND ACTIVITIES:

- Established the first ADR practice group in an Australian law firm (1987).
- Contributed to the adoption by the NSW Law Society of a model contract clause for the resolution of disputes (1987) and guidelines for solicitors who practise as mediators (1988); to the adoption by the Law Council of Australia of its policy on ADR (1989); model legislation and rules for court-annexed mediation (1993) and ethical standards for mediators (1996) [See <http://leadr.com.au/ADREthic.html>].
- Founding member and director of LEADR (Leading Edge Alternative Dispute Resolution), (Chairman 1991-1993).
- Chairman, Business Law Section of the Law Council of Australia and of its Trade Practices Committee.
- Chairman, Dispute Resolution Committee, Law Council of Australia.
- Founding member and President, Licensing Executives Society of Australia and New Zealand.
- Member, Administrative Appeals Tribunal (Commonwealth) 2001-2004.
- Member, Law Society of New South Wales Specialist Accreditation Board Advisory Committee on ADR; US Trade Mark Association; Customs Law and Intellectual Property Committees of the Business Law Section of the Law Council of Australia; Industrial and Intellectual Property Society of Australia; mediation panel of the National Electricity Code Administrator Limited; Attorney-General's consultative group on Australia/New Zealand business law harmonization and its sub-committee on anti-dumping and trans-Tasman competition law (1989-1991); eResolution panel of arbitrators for resolving domain name disputes; Advertising Review Expert Committee concerned with Trans-Tasman harmonization of therapeutic goods advertising (2002).
- Conciliator appointed under s.89 of the *Health Care Complaints Act 1993* (NSW).
- Legal advisor to the Medical Services Committee (NSW).
- Honorary solicitor to the Inventors' Association of Australia.

PUBLICATIONS AND SEMINARS:

Numerous articles on ADR, trade practices, anti-dumping and intellectual property, including

papers commissioned by the Australian Trade Practices Commission on the interface between intellectual property and competition law and the application of competition law to the legal profession. A selection follows:

ADR

- "How to Resolve Disputes Online", NSW Law Society Journal, October 2002.
- "Alternative Dispute Resolution: How Should it be Used?" (with G.L. Davies QC), Australian Legal Convention, Adelaide, 1991.
- "A Practitioner's View of ADR," paper presented at 1990 Annual Conference of the Australian Institute of Judicial Administration.
- "Alternative Dispute Resolution--A Better Way of Dealing with Trans-Tasman Differences," in *CER and Business Competition--Australia & New Zealand in a Global Economy*, CCH, 1990.
- "Mediation and the Role of the Lawyer in Alternative Methods of Dispute Resolution" paper presented to LES Conference, January 1989.
- "Part of the Impact of the ADR Movement: Focus on Negotiation" paper presented to University of Sydney Faculty of Law Seminar, October 1987.
- "How ADR Can Be Used in Licensing" paper presented to a joint meeting of LES Australia & New Zealand and the Intellectual & Industrial Property Society, April 1987.

Intellectual Property

- "Intellectual Property Litigation in Australia--The Cimetidine Example," 1987-1994; paper presented to ARCS Symposium, Sydney, September 1994.
- "The Regulation and Approval of Pharmaceutical Substances," paper presented to Changing Dynamics in the Pharmaceutical Industry Conference, Sydney, October 1994.
- "Appellations of Origin" a paper presented to the Intellectual & Industrial Property Society Conference, Melbourne, March 1989.
- "Australia's Activities in International Collaboration and Assistance to Asian Countries," paper presented to LES International Conference "International Collaboration in Technology Transfer Towards the 21st Century", Tokyo, 1985 (subsequently published in *Les Nouvelles*).
- "Protection of Business Names in Technology Transfer"- paper presented to an International Seminar on Technology Transfer to Asian Countries, Manila, 1983.
- "Parallel Imports"- paper presented to the Victorian Intellectual Property Society, December 1983.

Trade Practices

- "Application of the Trade Practices Act to Intellectual Property" (with Michael O'Bryan), Trade Practices Commission, July 1991.
- "Protecting your Business Reputation-Trade Practices" *Australian Law Journal*, December 1983.

Anti-Dumping

- "Dumping: Offensive and Defensive Strategies," 1987.
- "Judicial Review of Customs' Anti-Dumping Decisions," February 1986.

SOME CAREER HIGHLIGHTS:

- 1971** Represented Concrete Industries (Monier) in the “*Concrete Pipes*” case in which the High Court of Australia upheld the power of Federal Parliament to make laws to regulate the conduct of companies, thereby paving the way for the *Trade Practices Act 1974*.
- 1984** Member of the “Negotiating Committee for the Medical Profession” in resolving the 7-year "Wran ban" on NSW specialist surgeons.
- 1994** Mediated a multi-million dollar fraud claim between a farmer and one of New Zealand's leading banks (thereby saving a five week trial).
- 1995** Member of the Trade Practices Commission negotiating team in relation to undertakings which allowed the Caltex/Ampol merger to proceed.
- 1995** Negotiated with the Trade Practices Commission penalties exceeding \$A20 million imposed by the Federal Court of Australia upon Pioneer, Boral and CSR in relation to price fixing of pre-mixed concrete in Queensland.
- 1996** Facilitated the negotiation of a new method of electing directors to an agricultural co-operative, subsequently endorsed by legislation.
- 1996** Conducted the first three mediations in which the ACCC participated, in which penalties totalling \$A3.5 million for price fixing and resale price maintenance were agreed by the parties and endorsed by the Federal Court of Australia; proceedings against a major insurance company alleging third line forcing and misleading conduct were dismissed by consent; and another leading company agreed to pay penalties and costs totalling \$A5 million for the breach of the merger provision of the *Trade Practices Act*.
- 1996** Represented Freight Corp in negotiating with Rail Access Corporation access to the NSW rail network upon the disaggregation of the former New South Wales State Rail Authority.
- 1996** Mediated (over 4 months) a dispute resolution process for ownership and use of intellectual property originally developed by a vertically integrated government instrumentality, which had been divided into separate entities.
- 1996** Audited the community consultation aspects of the Environmental Impact Statement on proposed sites for Sydney's second international airport.

- 1999** Mediated the first case brought by the ACCC under the unconscionable conduct provisions of the *Trade Practices Act*, involving a long running dispute between a petrol company and a former franchisee.
- 2000** Mediated online, over 5 months, a dispute between an Australian resident and an overseas financial institution.
- 2001** Mediated in London, under the auspices of the World Intellectual Property Organization, a multi-million pound patent dispute. See <http://arbiter.wipo.int/mediation/case-example.html> and <http://arbiter.wipo.int/mediation/scenario.html>.
- 2001** Mediated disputes between the ACCC and a union and between the ACCC and an airline.
- 2002** Advised the Wilkinson Committee Review of the Impact of Part IV of the *Trade Practices Act* on the Recruitment and Retention of Medical Practice in Rural and Regional Australia.
- 1998-2002** Represented throughout trial and two appeals the successful appellant to the High Court of Australia in the most important patent case in Australia since 1981: *Aktiebolaget Hässle v. Alphapharm Pty Limited* [2002] HCA 59. See http://www.austlii.edu.au/au/cases/cth/high_ct/2002/59.html
- 2000-4** Arbitrated over 170 domain name disputes under the ICANN Uniform Domain Name Dispute Resolution Policy (UDRP), the Start-Up Trademark Opposition Policy for .biz (STOP) and the .au Dispute Resolution Policy (auDRP).
- 2003** Appointed by the Federal Treasurer as a member of the Health Services Advisory Committee, a medium of consultation between the ACCC and doctors, other health professionals and health consumers to achieve a better understanding of, and compliance with, the *Trade Practices Act 1974*.
- 2003-4** Arbitrated under the *Commercial Arbitration Act 1984 (NSW)* a commercial dispute raising issues as to contractual interpretation, misleading and deceptive conduct and estoppel, in which the disputants were represented by counsel and solicitors.