

PROFILE - ALAN L. LIMBURY
MA (Oxon.), MDR (UTS), FCI Arb. (Mediation), FCI Arb. (Arbitration),
Spec. Acc. Med. (Law Soc. NSW), Adv. M. LEADR, MIAMA.

NEGOTIATOR, MEDIATOR and CHARTERED ARBITRATOR



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Mediation experience

Alan has been mediating since 1986 part time and since 1996 full time, with wide experience as sole mediator in over 1,500 commercial and intellectual property disputes of all kinds in Australia, New Zealand and the UK, in which parties are legally represented. Alan has particular expertise in the following fields:

- Administrative Law
- Advertising
- Agency, Dealership & Distributorship
- Banking & Finance
- Building & Construction
- Commercial Litigation
- Competition Law
- Consumer Protection
- Environment
- Health Care
- Information Technology
- Insurance and Reinsurance
- Intellectual Property – including Trade Marks, Copyright & Patents, Trade Secrets, Passing Off, Licensing, Distribution & Franchising
- Local Government
- Partnership
- Personal injury and clinical negligence
- Pharmaceutical Industry
- Professional Negligence
- Retail Tenancy

Alan also has experience in assisting companies to devise negotiation strategies and to prepare, together with their in-house and external lawyers, for negotiations to resolve long running litigious disputes.

Personal style

Alan is a practitioner of principled negotiation and interests-based mediation taking a non-judgmental approach, while not shrinking from reality-testing and raising possible options for agreement. He is creatively facilitative, seeking a broad focus, persistent and patient throughout. Alan has a calm, respectful approach, remaining ostensibly optimistic. He often rigorously tests lawyers in confidential session with their clients to obtain a realistic appraisal of their prospects in court or before an arbitrator. An empathetic mediator, Alan is able to help craft a process to suit the needs of the parties while being mindful of but not rigidly bound to any format. He is strictly observant of confidences.

He has been described in the 1996/97 edition of Legal Profiles (the last edition to have a separate ADR section) as ‘the leading practitioner’ in ADR in Sydney and by The Times of London in June 2007 as “the leading Australian mediator”.

Feedback

From parties:

“Very constructive analysis of dispute, lateral thinker, very good listener, provided constructive feedback”.

“Very helpful in identifying alternatives; very fair; I had a chance to have my say; he put me at my ease; it was excellent – could not have been improved”

“He acted as a calming influence in the discussions, listened attentively to both parties”

“Mr. Limbury provided calm, impartial direction and effectively found common ground. What a gentlemen. Powerful yet gentle. An inspiration”.

From lawyers:

“Alan has particular expertise in assessing options and settlement scenarios in cases where deep seated emotions often underpin the dispute. He brings a rational and sympathetic approach to dealing with such disputes”.

“Mr. Limbury is an extremely effective mediator, whose skill and knowledge of the mediation process have been a key element in securing successful resolution of some very difficult disputes”.

“At all times Mr. Limbury was courteous, patient and pleasant in his dealings with the parties and with members of the legal profession”.

“Thanks also for your unrelenting efforts to assist the parties to find common ground - this excellent settlement would not have been reached had it not been for your involvement”.

From a fellow mediator:

“I cannot speak highly enough of his performance as a mediator. It has been a pleasure co-mediating with him. In my experience [over 18 years as a mediator], if anyone can co-mediate effectively he/she can also be a very good sole mediator. Alan’s ability to listen and work as a member of a team (in this case a co-mediation team) assist him to be a most effective mediator”.

Other dispute resolution experience

1964-1996 Commercial litigation lawyer in Sydney law firms
1976-1996 Partner, Minter Ellison, Sydney. Chairman, Trade Practices, Intellectual Property and Alternative Dispute Resolution Groups.

Wide experience as a litigation lawyer at trial and on appeal in commercial disputes, including intellectual property (trade marks, patents, copyright and confidential information), restrictive trade practices, unfair competition and administrative law.

Since 2000 Experience in 11 commercial arbitrations raising issues of contractual interpretation, misleading and deceptive conduct, intellectual property rights, international technology licensing, margin lending and estoppel.

Experience as arbitrator in over 330 domain name disputes.

Three years as a member of the Australian Administrative Appeals Tribunal, in determining appeals from governmental administrative decisions.

Eight years as Chairman of the Complaints Resolution Panel established under the *Therapeutic Goods Regulations* to determine complaints about the advertising and promotion of therapeutic goods to consumers.

Acting as expert in several expert determinations, including in determining whether large numbers of applicants satisfied the requirements necessary to entitle them to be paid compensation under a multi-million dollar enforceable undertaking given by a public listed company to the corporate regulator.

In 1996, auditing (with Dr. Rosemary Howell) the community consultation process conducted for the Environmental Impact Statement on proposed sites for Sydney's second international airport. This involved negotiating with government the terms of the auditor's independence, attending and addressing numerous community consultation meetings convened by the EIS consultants throughout the areas likely to be affected; inspecting those areas; raising community concerns with the Federal Minister for the Environment and preparing a report for presentation to Parliament.

Professional background

Qualifications

- BA (Hons.)(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.
- Legal Practitioner, High Court of Australia and Supreme Courts of the Australian Capital Territory, New South Wales, Queensland and Victoria (from 1965).
- Trained in negotiation and mediation at Harvard University 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.

- 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 Associates, Colorado, 1988; Institute of Arbitrators Australia (Advanced), 1989; Law Society of New South Wales (Advanced), 1993 and University of Technology, Sydney (Advanced), 1993.
- Specialist Accredited Mediator, Law Society of NSW, 1995.
- LEADR Advanced Mediator, 1997.
- Trained in arbitration by the World Intellectual Property Organization, 2000 and 2004 and by the Chartered Institute of Arbitrators, 2003-4.
- Fellow (Arbitration), Chartered Arbitrator and Accredited Mediator, The Chartered Institute of Arbitrators, 2005
- Member, Accredited Mediator and Grade 1 Arbitrator, Institute of Arbitrators & Mediators Australia, 2005.
- CEDR Accredited Mediator, 2005.
- Qualified Dispute Resolver, The Academy of Experts, 2005.
- Fellow (Mediation), the Chartered Institute of Arbitrators, 2008.
- Professional Dispute Board Member, the Dispute Board Federation, 2008-2009.
- Accredited as an Experience Qualified Mediator under the Australian National Mediator Standards by LEADR (2008 and 2010), the Institute of Arbitrators and Mediators Australia (2008), The Chartered Institute of Arbitrators (Australia) (2008), the Law Society of NSW (2009) and the Law Society of South Australia (2009).

Current positions

Academic

- Lecturer in Mediation of Commercial Disputes (postgraduate) in the Faculty of Law, The University of Sydney.

Legal

- Sole Practitioner, Solicitor and Barrister of the Supreme Court of New South Wales.

Mediation

- Member of the mediation panels of the Australian Self-Medication Industry, the World Intellectual Property Organization, the National Arbitration Forum (Intellectual Property Panel), CEDR Solve Direct, The Chartered Institute of Arbitrators, ADR Group Ltd., ADR Chambers International, Middlesex and Thames Valley Mediators, the Law Society of New South Wales, LEADR (Advanced Panel), the Institute of Arbitrators and Mediators Australia, The Chartered Institute of Arbitrators (Australian Branch), the Australian Commercial Disputes Centre, the New South Wales Supreme Court, the NSW Retail Tenancy Unit and the NSW Rural Assistance Authority.

Arbitration and Adjudication

- Member of the Chartered Institute of Arbitrators Panel of Arbitrators.
- Member of the Singapore International Arbitration Centre International Panel of Arbitrators.
- Member of the panel of arbitrators of the Independent Pricing and Regulatory Tribunal of NSW to hear infrastructure access disputes.

- Member of the LEADR panel of adjudicators to determine cases under the Building and Construction Industry Security of Payment Act 1999 (NSW).

Domain names

- Member of the panels of domain name arbitrators of the World Intellectual Property Organization, the National Arbitration Forum and the Asian Domain Name Dispute Resolution Centre (for gTLD disputes); the Czech Arbitration Court (for both .eu and gTLD disputes); Nominet UK (for .uk disputes); and WIPO, LEADR, the Institute of Arbitrators and Mediators Australia and auDA (for .au disputes).
- Member of the National Arbitration Forum and Asian Domain Name Dispute Resolution Centre panels of arbitrators for resolving Inter-Registry Transfer disputes over domain names.
- Expert appointed to the CoCCA (Council of Country Code Administrators) Domain Name Complaint Resolution Service.

Other

- Chairman of the Practice and Standards Committee of the Chartered Institute of Arbitrators and Member of the Board of Management of the Institute.
- Director and Vice-President, Mediation, The Chartered Institute of Arbitrators (Australia) Limited.
- Chairman, Medicines Australia Code of Conduct and Appeals Committees.
- Chairman, Complaints Panel of the Australian Self-Medication Industry.
- Chairman, Code Appeals Committee, Medical Technology Association of Australia Limited.

Previous positions and activities

- Adjunct Professor, Faculty of Law, The University of Sydney (2009-2010).
- Chairman, Mediation sub-committee, The Chartered Institute of Arbitrators (2005-2008).
- Chairman, Standing Expert Committee on ADR, Law Council of Australia (member 1989-2009).
- Deputy Chairman, National Electricity Tribunal (1998–2007).
- Member, Health Services Advisory Committee (2001-2007).
- Chairman, Complaints Resolution Panel to determine advertising complaints under the Therapeutic Goods Regulations (1998-2006).
- Member, Administrative Appeals Tribunal (Commonwealth of Australia) (2001-2004).
- 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, 2000 and 2007) and the rôle and responsibilities of lawyers in mediation (2007).
- Founding member and director of LEADR, (Chairman 1991-1993).
- Chairman, Business Law Section of the Law Council of Australia and of its Trade Practices Committee.

- Founding member and President, Licensing Executives Society of Australia and New Zealand and Chairman of the LES International Membership Committee.
- Member, Law Society of New South Wales Specialist Accreditation Board Advisory Committee on ADR; Law Society of New South Wales Dispute Resolution Committee; US Trade Mark Association (now INTA); Trade Practices, 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); mediation panel of the NSW Land & Environment Court; mediation panel of the Dispute Board Federation (2009).
- 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.
- Member, The Australian Institute of Company Directors.

Other skills and experience

- Member of the Australian delegation to the WIPO Conference considering possible amendment to Article 6bis of the Paris Convention for the Protection of Industrial Property to accord recognition to appellations d'origine (1981).
- Mediator and judge at the first ICC International Commercial Mediation Competition in Paris (2006); Mediator and member of the Drafting Committee (2007 and 2008); mediated the Final in 2008; mediator and judge (2009); mediator, judge and member of the Advisory Committee (2010); Co-Chair, Drafting Working Group for the 2011 competition.
- Mediation trainer for the ICC in Singapore and Hong Kong, 2008.
- Regularly assists Dr. Rosemary Howell in teaching ADR to undergraduate and postgraduate students and Principled Negotiation to postgraduate students at the University of New South Wales, Sydney.
- Fluent in French as well as English.

Publications & Papers

- "Practical Skills Workshop: Hybrid dispute resolution processes: *Getting the best while avoiding the worst of both worlds?*" CIArb's Mediation Compendium (London, 2009).
- "Making Med-Arb work in Australia", New York Dispute Resolution Lawyer, Spring 2009, Vol. 2 No. 1.
- "Should there be a distinct 'Mediation Privilege'?" Chapter III, the Newsletter of the Law Council of Australia Federal Litigation Section, March 2009, Vol.2.
- "Compulsory ADR before proceedings begin?", LEADR Update, March 2009.
- "Observing mediation from the public gallery – Opes Prime", LEADR Update, December 2008.
- "Reaction to Amanda's corner - Mindfulness: expanding the use of mediation in public law and policy making" IBA Legal Practice Division Mediation Committee Newsletter, July 2007.

- “Whither confidentiality? - Some thoughts prompted by *Brown v. Rice and Patel* [2007] EWHC 625 (Ch) (14 March 2007)”, Chartered Institute of Arbitrators Mediation Seminar “*The Experts Speak*”, London, 11 June, 2007.
- “Making Med-Arb Work”, ADR Bulletin, Vol. 9 No. 7, May 2007.
- “An Australian Perspective on Some Topical Issues in Mediation”, Chartered Institute of Arbitrators Mediation Lecture Series, London, 20 September 2006, Arbitration, Vol. 73 No. 1 (2007) at p.64.
- “‘Why judges shouldn’t be mediators’ and ‘mandatory mediation’ – an Australian perspective”, The Expert & Dispute Resolver, Summer 2006, Vol. 11, No. 1.
- “Online Alternative Dispute Resolution”, IAMA News, June 2006, p25.
- “Med-Arb, Arb-Med, Neg-Arb and ODR”, Institute of Arbitrators and Mediators Australia Forum, 3 August 2005.
- “How should mediators communicate online?” Institute of Arbitrators and Mediators Australia 30th Anniversary Conference, Canberra, May 28, 2005.
- “Domain Name Disputes: when must trade mark rights exist?” Internet Law Bulletin, Butterworths, March/April 2005, Vol. 8, No. 1, 9-10.
- “Difficulties and Skills of ODR Mediation Practice”, Third United Nations Annual Forum on Online Dispute Resolution, Melbourne, Australia, 5-6 July 2004.
- “How to Resolve Disputes Online”, NSW Law Society Journal, October 2002.
- “Online Dispute Resolution – A Practitioner’s View, Domain Name Systems and Internet Governance Conference, Sydney, May 2002.
- "The Regulation and Approval of Pharmaceutical Substances", Changing Dynamics in the Pharmaceutical Industry Conference, Sydney, October 1994.
- "Intellectual Property Litigation in Australia - The Cimetidine Example," 1987-1994; ARCS Symposium, Sydney, September 1994.
- "Alternative Dispute Resolution: How Should it be Used?" (with G.L. Davies QC), Australian Legal Convention, Adelaide, 1991.
- "Application of the Trade Practices Act to Intellectual Property" (with Michael O'Bryan), Trade Practices Commission, July 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," 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" Licensing Executives Society Conference, January 1989.
- "Appellations of Origin", Intellectual & Industrial Property Society Conference, Melbourne, March 1989.
- "Part of the Impact of the ADR Movement: Focus on Negotiation", paper presented to The 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.
- "Australia's Activities in International Collaboration and Assistance to Asian Countries", 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", International Seminar on Technology Transfer to Asian Countries, Manila, 1983.
- "Parallel Imports", Victorian Intellectual Property Society, December 1983.

- "Protecting your Business Reputation - Trade Practices" Australian Law Journal, December 1983.