



Catherine Gale and Diane Diel, who is visiting Australia to promote collaborative law.

Photo: ARSINEH HOUSPIAN

Pulling together for a collaborative goal

Samantha Bowers

New federal laws requiring parties to take "genuine steps" to resolve disputes before commencing court proceedings should increase the take up of collaborative law in civil disputes, lawyers say.

The US-based president of the International Academy of Collaborative Practitioners, Diane Diel, was in Australia this week to raise awareness of collaborative law – a collegiate dispute resolution process that aims to keep parties out of court by forcing them to retain new lawyers if they start court proceedings.

Only six years old in Australia, collaborative law developed in the family law sphere, where the ongoing relationship between the parties is paramount.

But it would have the same benefits for a range of disputes, Ms Diel said, "because the dispute doesn't embitter, it empowers all to move forward".

Monash University law dispute resolution academic Tania Sourdin, a member of the National Alternative Dispute Resolution Advisory Committee, said the genuine steps requirement under the new Civil Dispute Resolution Act, due to apply in federal courts from next month, would provide an "impetus" for civil lawyers to use collaborative law.

This was ultimately a matter for

the courts to determine, but she expected the court would characterise collaborative processes as genuine steps under the act.

"It seems to me that it's really at the heart of what the Attorney-General and others want – in that people are genuinely sitting down and attempting to resolve their differences before they proceed with litigation," she said.

Federal Attorney-General Robert McClelland agreed this week it was a matter for the courts, but said "given the object of collaborative law is to resolve a matter, I would

The dispute doesn't embitter, it empowers all to move forward.

Diane Diel, International Academy of Collaborative Practitioners

anticipate that genuine participation in such a process would likely be accepted as satisfying the requirement".

Just as compulsory mediation of family disputes had created "fertile ground" for collaborative law to develop in family matters, it was "reasonable to expect that operation of the CDRA may similarly encourage the development of collaborative law in other areas of civil law", Mr McClelland said.

Law Council of Australia president-elect Catherine Gale, a family

lawyer and collaborative practitioner, said she hoped Ms Diel's visit would "start to awaken thoughts amongst not only the lawyers, but more importantly the business community", about the potential for collaborative dispute resolution.

Professor Sourdin, who teaches the only university subject in collaborative law offered in Australia, said the requirement for lawyers to disqualify themselves could be a barrier to civil collaborative practice because commercial lawyers would not want to give up major clients if the process failed and they had to withdraw.

But in the US lawyers had created information barriers, or "Chinese walls", to enable matters to pass to a different lawyer in the same firm if the parties went to court.

"So there is actually a bit of a workaround," she said.

Ms Diel said ultimately clients would drive commercial firms to overcome any reluctance about practising collaborative law.

"Business managers, who have relationships with business lawyers ... don't want to spend their corporate time and energy in a court process," she said.

"At the end of the day it'll be consumer driven towards [protecting] those relationships, and I think those that don't find a way to undertake the risk will, in the end, experience some regret about not leading that innovation."

A-Gs to discuss sport match fixing

Alex Boxsell

Match fixing in sport, a proposed national contract law and progress on establishing a national legal profession regime will be discussed by federal and state attorneys-general in Adelaide today.

The meeting of the Standing Committee of Attorneys-General (SCAG) began yesterday afternoon. It will also discuss how the group would change when it is renamed the Standing Council on Law and Justice.

The name change was due to take effect on June 30, but was delayed after the June 15 meeting of the Council of Australian Governments was postponed, because it required the authorisation of COAG.

The delayed COAG meeting also postponed the final approval of the national profession reforms, which have the broad approval of all states except South Australia and Western Australia.

The Law Council of Australia said it was disappointed when the meeting was cancelled and urged COAG to approve the reforms out of session.

It is understood the SCAG meeting this week will include a debate on which jurisdiction should host the proposed national legal services board and commissioner, after NSW Attorney-General Greg Smith suggested they should be based in his state.

SCAG will also consider a national response to the classification of R18+ video games, family violence, cyber crime, and the harmonisation of real property and contract law.

Federal Attorney-General Robert McClelland told the SCAG

harmonisation forum in May SCAG could play a direct role in negotiating reforms that would reduce transaction costs and barriers to mobility.

"Contract law is foundational to every business transaction that takes place in Australia. However, at present Australian contract law is contained in volumes of reported cases across the eight states and territories," he said.

"At a time when other countries are moving to harmonise and streamline their laws, there could be great benefit for businesses in developing a single consolidated Australian contract law with simplified, broad principles."

The harmonisation forum also discussed efforts to improve dispute resolution and change the fragmented nature of real property laws.

Federal Minister for Justice Brendan O'Connor said last month he wanted to see a nationally consistent approach to penalising those who try to manipulate sporting games for financial advantage.

Match fixing has been discussed by federal and state sports ministers, but has now been referred to SCAG for analysis of the legal issues.

SCAG last met in Wellington, New Zealand, in March, and decided to remove the issue of creating a judicial complaints-handling mechanism from its agenda in favour of it being addressed by individual jurisdictions.

Ministers at the Wellington meeting also discussed progress on implementing an Australian and NZ agreement on trans-Tasman court proceedings, to make resolution of disputes between the two countries more efficient. This reform was due to enter into force in the second half of the year.



Australian
Institute of
Architects

Legal Counsel

A unique opportunity has arisen for a 3-6 year PQE lawyer to make your mark in one of Australia's leading professional associations.

The Australian Institute of Architects has well over 10,000 members across Australia and internationally. The role of the Institute is to support its members; directly by imparting knowledge and celebrating design excellence and indirectly by influencing government to create sustainable design standards which shape Australia's future.

Reporting directly to the General Counsel this unique opportunity will provide you with access to a variety of challenging, complex and interesting legal matters, a supportive working environment, and flexible working arrangements.

Your role will be diverse and include:

- providing legal advice to senior members of staff throughout the Institute;
- drafting and reviewing a wide variety of contract types;
- assistance with non-asset insurance including professional indemnity, directors and officers, and public risk insurances;
- protecting and managing intellectual property rights;
- reviewing advisory publications to members;
- legal research;
- interpretation of the Institute's constitution; and
- managing external legal advisors.

Suitable candidates will need to demonstrate:

- 3-6 years PQE;
- flexibility to work as an 0.8 full time equivalent;
- the ability to work with autonomy;
- exposure to either professional indemnity insurance or construction law and professional services procurement;
- excellent drafting and communication skills; and
- an ability to travel where required.

Location:

This position may be based in either Melbourne or Canberra for the suitable candidate.

For a confidential discussion please contact Craig Burrows (Managing Director) on +61 3 9614 5522 or email craig.burrows@burrowslegal.com.au.

Quote reference: CKB 12071. Applications close Friday 29 July 2011.

KEMP STRANG
MEMBER OF THE KENNEDY STRANG LEGAL GROUP

The partners are delighted to announce the following senior appointments from 1 July 2011:

 John Fam Senior Associate	 Mark Faraday Senior Associate
 Stephen McMahon Senior Associate	 Marc Saadie Senior Associate

LEVEL 17, 175 PITT STREET, SYDNEY NSW 2000 GPO BOX 475, SYDNEY NSW 2001 DX 605 SYDNEY
P. +61 2 9225 2500 F. +61 2 9225 2599 www.kempstrang.com.au
AFFILIATED FIRMS PRACTISING SEPARATELY IN SYDNEY • MELBOURNE • BRISBANE • ADELAIDE

BURROWS LEGAL

www.burrowslegal.com.au