

64 Fort Street
Auckland 1140
New Zealand

+ 64-9-915 5700
+ 64-9-915 5701
www.wilsonharle.com

ADR AND MEDIATION: A NEW ZEALAND PERSPECTIVE

42nd Annual MLAANZ Conference
Perth, Australia
17 September 2015

Kerryn Webster

Barristers and Solicitors

W I L S O N ■ H A R L E

SNAPSHOT OF ADR IN NEW ZEALAND

- Brief history
- State of affairs in New Zealand today
- Maritime disputes
- Arbitration and mediation – treated separately
- Statistics / Research

RESEARCH / STATISTICS

- Research – interesting but inconclusive and not up to date
- 2004 study by Centre for Research and Evaluation and Social Assessment for Ministry of Justice
- Statistics on whether ADR causing reduction in litigation – conflicting

ARBITRATION

- Well established in New Zealand following Arbitration Act 1996
- Confidentiality
- High standard of arbitrators, counsel and judiciary
- Judiciary supportive
- AMINZ

ARBITRATION

- February 2015 New Zealand Attorney General:
 - Support for specialist arbitration panel in High Court
 - Support for New Zealand to become a centre for international arbitration

- April 2015 – Chartered Institute of Arbitrators Australian and AMINZ signed memorandum of understanding under which both will encourage arbitration in cross-border disputes

ARBITRATION IN MARITIME CLAIMS

- Arbitration overseas.
- Specialist maritime panels in New Zealand.
 - MLAANZ
 - AMINZ?
- Challenge to make Australasian dispute resolution regular part of Maritime Commercial documents.

MEDIATION

- Widely accepted in New Zealand.
- In many areas of New Zealand law, mediation has been government driven
- Commercial disputes have been the exception – development ad hoc, pragmatic, driven by consumers of legal services
- Mediation included clauses in more and more contracts, experienced commercial parties turning to mediation.

MEDIATION

- Advantages but also some concerns
- Winkelmann J – mediation stands alongside litigation, not a replacement
- Mediation in New Zealand is strong and vibrant, but rate of increase plateaued
- Still “alternative”, not replacing litigation

MEDIATION IN MARITIME CLAIMS

- Acknowledgment that maritime industry slow to take up mediation
- But not a fad – mediation is set to stay and develop in maritime context
- Examples – but carried out in private, outcome confidential
- Recent example – mediation of business claims relating to grounding on Rena – success story?

CONCLUSION

- While uptake may have plateaued, New Zealand's ADR position is in good health
- ADR sitting alongside litigation but not replacing it
- Current position: New Zealand has a number of “effective and acceptable means” to resolve disputes, including on maritime and shipping issues