

The Commission can guide businesses that may confront non-tariff barriers to export markets, both directly and indirectly:

- by taking a pro-active role in developing cooperative arrangements with foreign competition agencies in Australia's export markets, it can assist in creating a less restrictive international environment in which Australian firms can compete; and
- as a source of information for domestic firms on competition law issues they may face in foreign markets.

Conclusion

In conclusion, I would like to reiterate that the merger laws and the Commission's administration of them are consistent with enabling Australian firms to realise greater international competitiveness. In this respect, the Commission's thinking is outlined in the new guidelines on *Exports and the Trade Practices Act*. I hope that this publication can further clarify how the Commission can guide Australian industry to meet the challenges of an increasingly competitive international environment.

Benchmarks for dispute avoidance and resolution

The Commission receives many complaints from small businesses, particularly those in commercial relationships with larger businesses in franchise, retail tenancy and supply type arrangements. Its belief that many of these issues are best dealt with by the businesses themselves led to the formation of a round table on small business dispute avoidance and dispute resolution.

As a totally voluntary initiative the round table was formed in 1996 with representatives of:

- small and large businesses;
- the Commission's Small Business Advisory Group; and
- alternative dispute resolution specialists.

The work of the round table and its smaller task groups centred on making the business case for embedding dispute resolution practices in everyday operations, for using alternative dispute resolution processes when disputes arise and for developing benchmarks for both dispute avoidance and dispute resolution.

The round table found a strong business case for implementing and using dispute resolution practices, and using alternative dispute resolution mechanisms. It found that this approach:

- brought cost savings by preventing management focus from being diverted;
- meant that disputes could be dealt with quickly and the process controlled by the parties themselves;
- represented an overall less costly form of settling disputes;
- acted as a compliance/risk avoidance mechanism for businesses to avoid contravention of the unconscionable conduct provisions of the Trade Practices Act;
- encouraged business people to develop business solutions to business problems;
- allowed for more creative remedies and outcomes compared with litigation;
- provided a self-regulatory approach to dealing with disputes;
- reduced the risk of bad publicity flowing from disputes and concomitant low morale;
- provided the benefits of confidentiality that most dispute resolution processes provided;

- reduced stress with concomitant health benefits for all parties; and
- enhanced the Australian business community's ability to form strong business relationships with culturally different businesses because dispute avoidance and resolution is more suited to the Asian business approach which relies on consensus.

The round table brought together a number of business groups with very differing views. Despite the differing views, round table participants deliberated with significant goodwill.

After several meetings of the round table and smaller task groups from November 1996 to August 1997, a guide was developed which contains benchmarks for avoiding and resolving disputes.

The guide sets out benchmarks that are not prescriptive but offer ways of addressing problems in the marketplace which might lead to disputes. The benchmarks include:

- recommendations relating to better information disclosure in agreements between businesses;
- recognition of language and cultural differences when dealing with business people from a non-English speaking background;
- recognition of mutual interests of smaller and larger businesses in a commercial relationship;
- the use of 'partnering' (use of professional facilitators to deal with potential and actual conflict between parties); and
- the development of conflict management systems in companies, including staff training and management practices.

At the launch of the guide on 10 October 1997 the Hon. Peter Reith MP, Minister for Workplace Relations and Small Business, noted that the guide reflected the needs of both small and large business and provided them with sensible, market-based solutions.

The guide, he said, would also be fundamental to the implementation of the Government's new fair trading strategy. He cited the merits of alternative dispute resolution, not least being that it was a low-cost option for small businesses which could ill afford the cost of protracted litigation. 'In this way commercial relationships can be preserved, rather than destroyed through litigation'.

He also saw a role for the guide as a reference set of principles that could be included in voluntary or mandatory industry codes, such as the Franchising Code and the OilCode.

Commission Chairman Professor Fels, in his address, emphasised that the round table was made up of both small and large businesses which saw benefits for business flowing from the implementation of the recommendations in the guide. He said that one of the reasons the Commission supported the guide's development was the potential for the benchmarks to be used by business as a self-regulatory approach to dealing with disputes. He reiterated the Commission's view that business disputes are best dealt with in the arena from which they come.

The guide conveys the following communique from participants of the round table.

The round table acknowledges that disputes between businesses of all sizes (big, medium, small, micro) exist and will continue to exist. By applying the principles of mutual interest and good faith to business relationships these guidelines aim to:

- add value to and enhance commercial relationships, thereby avoiding many disputes arising; and
- minimise the costs, inefficiencies and damage often incurred through conventional and/or adversarial processes.

Applying the alternatives to litigation discussed in these guidelines should result in easier and earlier access to dispute resolution processes and more economic outcomes.

The Commission will continue to work with the round table to develop ways of promoting the strategies recommended in the guide. It will also work with other groups such as State/Territory fair trading and small business agencies and organisations to encourage the

promotion and implementation of these benchmarks.

Round table participants are:

- Alternative Dispute Resolution Association
- Australian Chamber of Commerce and Industry
- Australian Council of Professions
- Australian Federation of Business and Professional Women Inc.
- Australian Institute of Petroleum Ltd
- Australian Law Reform Commission
- Australian Petroleum Agents and Distributors Association
- Australian Retailers Association
- Business Council of Australia
- Council of Small Business Organisations of Australia
- Jennifer David & Associates Pty Ltd
- International Institute for Negotiation and Conflict Management
- Law Council of Australia, including Baker & McKenzie
- Metal Trades Industry Association
- Property Council of Australia, including Minter Ellison and Westfield Shopping Centre Management
- Real Estate Institute of Australia
- Registrar of Retail Tenancy Disputes (NSW)
- The Accord Group

The Commission received several letters from participants commenting on their experience of the round table process and the guide that resulted from a round table initiative, which bear testimony to the effectiveness of this process:

The very genuine efforts by the ACCC to generate an efficient, effective and economical solution for dispute resolution is an example to be followed by Government agencies and private enterprise across Australia ... It was a great privilege to be involved in this process.

Much of the benefit I personally derived from the process reflected the positive attitudes, professional contribution, friendly relationships

and camaraderie from a wide ranging group who, more often than not, are on opposite sides of the negotiating table.

(Alan Briggs, Director, Westfield Shopping Centre Management Co. Pty Ltd)

As an industry body closely involved with retail leasing issues we are keenly aware of the advantages derived from efficient, low cost and relatively informal dispute resolution mechanisms. Indeed we are already pressing for the adoption of similar principles in relation to retail lease legislation throughout all Australian States and Territories.

We have welcomed the opportunity to participate in the development of the guidelines which, if widely adopted, will significantly improve the Australian business environment.

(Peter Verwer, CEO, Property Council of Australia)

BPW [the Australian Federation of Business and Professional Women] is an association committed to the protection of business and professional women's interests. BPW participated, with other industry and professional associations, in round table meetings held to gather support and information for the formulation of the disputes guide. BPW would like to thank the Commission for inviting its participation in those meetings. BPW found the meetings useful forums for the effective analysis of the views and needs of representatives of small and large business interests and for the formulation — with the assistance of those with a background in alternative dispute resolution — of the disputes guide.

(Yolanda Lee, Australian Federation of Business & Professional Women)

The round table itself has demonstrated that both large and small businesses can forge meaningful and cooperative alliances based on the principles of equity, efficiency and good faith. The guidelines offer encouragement to those businesses intent on developing networks of mutual exchange.

(RN Herbert, Chief Executive, Metal Trades Industry Association of Australia)

The round table brought together representatives from small and large businesses and dispute resolution experts. The round table idea was ambitious and also proved highly effective. This collaborative approach, hosted by the ACCC, culminated in the guidelines which are being launched today.

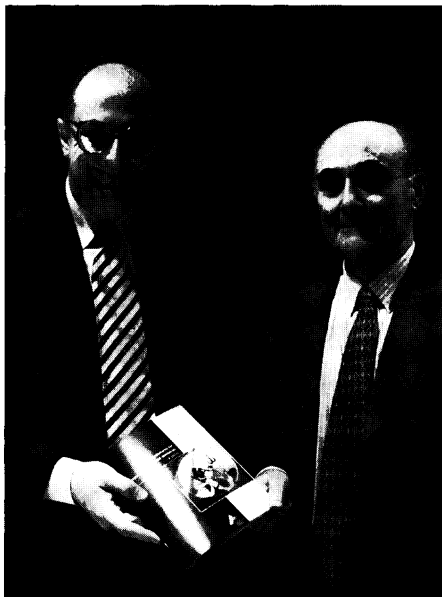
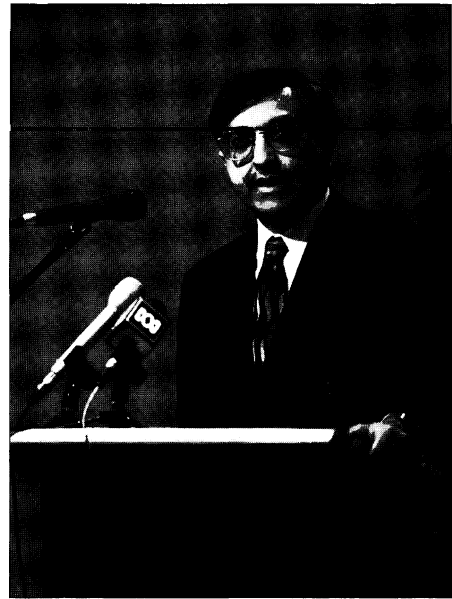
(The Accord Group (an international network of dispute resolution specialists))

The guide is available free from Commission offices and from the Commission's website.



Above: First meeting of the round table, 19 November 1996, Canberra

Below: ACCC Commissioner Sitesh Bhojani, Chairman of round table, welcoming guests and introducing speakers at the launch of the guide, 10 October 1997, Melbourne



Below: The Hon. Peter Reith, MP and Professor Allan Fels, together with representatives of round table participants, at the launch of the guide

Above: The Hon. Peter Reith, Minister for Workplace Relations and Small Business, and Professor Allan Fels, ACCC Chairman, launching the guide

