

AUSTRALIAN COMMERCIAL DISPUTES CENTRE LIMITED

The Centre owes its existence to the work of the Commercial Disputes Consultative Committee established in July last by the Attorney General, the Hon. Terry Sheahan, BA, LLB, MP and consisting of the Chief Justice, Sir Laurence Street, and two other Supreme Court Judges, Mr. Justice Rogers and Mr. Justice Smart, together with leading members of the legal profession and the business and commercial community. The recommendations of this Committee were adopted by the Government and resulted in the establishment of the Centre.

The Centre is a non-profit making, independent, public company whose principal objects are to facilitate the resolution of commercial disputes by means of conciliation, mediation, arbitration and similar techniques (collectively known as Alternative Dispute Resolution (ADR) techniques or mechanisms) and to provide facilities and services in aid of these techniques.

The Centre is centrally located at the Remington Centre, 175 Liverpool Street, Sydney and provides facilities, on neutral ground, that include -

- . hearing rooms
- . private consultation rooms
- . secure storage for documents, equipment and exhibits
- . telex, FAX and telephone services
- . photocopying
- . full support services including typing and word processing facilities.

Recording, transcription and interpreting services will be provided when required.

Panels of persons experienced in ADR techniques will be available from which the parties to a dispute may select a mutually acceptable conciliator, mediator or arbitrator.

Now let me tell you something about ADR methods and the advantages to the business and commercial world which flow from the use of these methods. The critical feature that marks out alternative dispute resolution mechanisms from regular court systems is that the former draw their authority from the agreement of the parties. That agreement may be found in a clause in a contract itself or it may arise after a dispute has crystallised when the parties determine to seek some alternative means of resolving their contest. This concept of consensus pervades the whole field of alternative mechanisms and it is coming increasingly to be recognised as having significant advantages when compared with the confrontationalist, antagonistic philosophy that tends to pervade ordinary court cases.

The Centre is essentially a service concept with the primary function of facilitating the managing and resolution of commercial disputes. This managerial aspect of its role is novel and I should, perhaps, briefly indicate what is contemplated.

Not infrequently in on-going commercial relationships a matter of dispute may arise between the parties. Unless they happen to be able, through their own efforts to achieve a compromise or resolution, there has not been available to them any structured mechanism short of a full dress court action to resolve the dispute.

To resolve the dispute without resorting to court proceedings the parties should agree to the resolution of the dispute by means of conciliation or mediation or, in an appropriate case, arbitration in proceedings administered and serviced by the Centre.

There are strong signs that many companies are dissatisfied with the cumbersome and expensive methods presently used by them for the resolution of their commercial disputes and that they are ready to embrace the ADR techniques being promoted by the Centre.

Overseas experience has shown that business organisations have benefitted greatly from the use of ADR techniques in preference to litigation. The use of these techniques has dramatically reduced overall litigation expenses and has significantly shortened the time taken to settle commercial disputes.

The use of ADR techniques produces other advantages:

- . control of the procedures for settling disputes is retained by the parties' executives rather than their lawyers.
- . the procedures used, particularly in mediation and conciliation, are entirely flexible and can be tailored to suit the needs of the parties.
- . in mediation and conciliation, differences between the parties can be resolved by pragmatic, business-oriented means, rather than by adherence to strict legal principles.
- . the adversary process of the Courts, which is so often damaging to business relationships is replaced, particularly where mediation or conciliation is used, by a process of co-operation and compromise on the part of the parties' executives, who can be expected to have a greater appreciation of the commercial issues of their dispute.
- . assistance and advice from experts in the subject matter of the disputes can be used to bring about a mutually acceptable solution.

The Australian Commercial Disputes Centre stands ready to provide all facilities and services that will help resolve disputes by the use of ADR techniques. Because the Centre is non-profit making, these facilities and services will be provided at cost. Any special facilities or services required by the parties to a dispute will be arranged on the same basis. The most important function of the Centre is to provide all necessary facilities and services for the

Australian Commercial Disputes Centre Limited Page 3

resolution of commercial disputes and to encourage the use of those facilities and services in the interests and to the benefit of the business and commercial community.

The Centre recommends that all business and commercial organisations embody in future commercial contracts entered into by them an appropriate clause expressing the intention of the parties, without creating any legal obligation to do so, that any dispute arising under the contracts be settled by one of the ADR techniques. Specimen clauses will be provided by the Centre to anyone requesting them. Although these clauses are recommended for inclusion in future contracts, there is no reason why the facilities and services offered by the Centre should not be used to resolve disputes under existing contracts, if the parties agree to that course.

The Centre's telephone number is 267 1000 and any enquiries about assistance that can be provided by the Centre will be welcomed.

H. Rossiter, A.O., Q.C.,
ACTING SECRETARY-GENERAL

21st May, 1986