

AUSTRALIAN COMMERCIAL DISPUTES CENTRE

Sir Lawrence Street, KCMG.

On 17 January 1986, the Premier, Mr Wran, announced that the Australian Commercial Disputes Centre would begin operations in Sydney on March 3. He said the Centre would provide an innovative approach to the settlement of costly and lengthy commercial legal disputes thereby relieving the courts of work and overcoming delays. The establishment of the Centre would enhance Sydney's position as the leading financial centre in Australia and encourage international corporations to conduct their business in New South Wales and give local companies further business confidence in the State.

The new Centre was to be funded initially by the Government but was to become self-funding. The Centre was to provide a dispute resolution service which would allow speedier, cheaper and less formal resolution of disputes, both domestic and international, by conciliation, mediation or arbitration. It was also to offer dispute management advice and facilities including hearing rooms, document preparation and secretarial services for the parties to a commercial dispute. Educational and training courses were to be organised and sponsored for mediators and arbitrators.

While the Centre was to be independent of both the Government and the Courts, the Supreme Court would be available to assist the parties to a commercial dispute should they so desire.

On 28 January 1986, the Chief Justice, Sir Lawrence Street, KCMG, opened a residential course on dispute resolution sponsored by the Australian Commercial Disputes Centre and held at Wesley College over 28-31 January 1986.

In his speech, the Chief Justice recounted the history of the establishment of the Centre. It was, he said, the culmination of the work of a Committee in which judges, members of the legal profession and members of the commercial community participated. In December 1985, the Committee recommended to the Government, the establishing of the Centre, and that recommendation was accepted. On 2 January 1986, the Centre was incorporated as a company limited by guarantee. The Centre had been brought into being essentially and primarily with the aim of providing a comprehensive

dispute resolution service in the commercial area. His Honour continued:

"The critical feature that marks out alternative dispute resolving mechanisms from regular court system 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.

To the forefront among the services provided by the Centre would be mediation or conciliation conducted by a person having competence as a mediator and relevant experience which would command the confidence of the parties to the dispute. If the mediation resolves the dispute by arriving at a solution accepted and agreed to by both parties that, no doubt, would be the most desirable outcome possible. Perhaps one of the most significant advantages is that the dispute would have been resolved within a consensus approach thereby preserving unimpaired the goodwill which is so essential to an ongoing commercial relationship between the parties. The conflict approach that inevitably underlies formal Court proceedings can, not infrequently, at least sour, if not destroy, mutual trust and confidence between the parties to their ultimate detriment and to the detriment of the free flow of trade and commerce.

Apart from the consensus attractions of a successful mediation, there are the dual benefits for the parties of expedition and avoidance of the

extensive demands, both financial and of executive time, that are inevitably part of a major commercial litigation in the Courts.

Consideration is being given to conferring on the Supreme Court jurisdiction to make orders in aid of mediations and arbitrations being managed by the Centre. Such orders might include orders for sale of deteriorating goods with complete protection to all concerned where questions of ownership may, at the outset, be far from clear; or they might be orders for the production of documents by strangers such as bankers. A variety of other orders in aid could be available to serve the particular requirements of the mediation or arbitration in hand. In this context it would be contemplated that the Court's role would be specifically directed towards assisting a current mediation or arbitration towards a successful conclusion."



His Honour also rejected as "wholly unfounded" comments that the Sydney Centre could be seen as a competitive exercise by New South Wales in response to the opening in Melbourne of the Australian Centre for International Commercial Arbitration. He pointed out that the genesis of the Sydney Centre was to be found in the first few months of 1984 when a recommendation was made to the Government that steps be implemented to modernise the facilities available in New South Wales for resolving commercial disputes. That recommendation had led to legislation for the establishment of the Commercial Division within the Supreme Court and, also, to appointing the Committee whose advice led to the establishment of the Centre. The Sydney Centre, he said, was intended to provide a different and far wider service than that to which the Melbourne Centre was primarily directed, namely international commercial arbitration. The Sydney Centre, on the other hand, embraced the holistic concept of providing an overall management service with primary emphasis on mediation and aiding the resolution of domestic commercial disputes.

His Honour appended to his speech, a clause for insertion in contracts providing for invoking the Court's services in conciliation disputes and providing a series of alternative arbitration clauses according to which international arbitration rules the parties might wish the Centre to apply. *Bar News* sets out hereunder the appendix to his Honour's speech.

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AUSTRALIAN COMMERCIAL DISPUTES CENTRE — STANDARD DISPUTE CLAUSE

(A) **Conciliation.** It is the intention of the parties, without creating any legal obligation, that any dispute, controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof shall be the subject of conciliation administered by the Australian Commercial Disputes Centre in Sydney, Australia.

(B) **Arbitration.** Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in Sydney, Australia in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law in force at the date of this contract. Such arbitration shall be administered by the Australian Commercial Disputes Centre, Sydney, which shall be the appointing authority.

To assist parties in making an appropriate choice the Committee considers the following alternatives to Clause (B) should be provided:

For the **Institute of Arbitrators Australia Rules** to apply:-

"Any dispute or difference whatsoever arising in connection with this contract shall be submitted to arbitration at the Australian Commercial Disputes Centre in Sydney, Australia in accordance with and subject to the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitrations."

For the **London Court of International Arbitration Rules** to apply:-

"Any dispute or difference between the parties in connection with this agreement shall be referred to and determined by arbitration at the Australian Commercial Disputes Centre in Sydney, Australia under the International Rules of the London Court of International Arbitration."

For the **International Chamber of Commerce Rules** to apply:-

"Any dispute or difference between the parties in connection with this agreement shall be referred to and determined by arbitration at the Australian Commercial Disputes Centre in Sydney, Australia under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules."

For the **American Arbitration Association Rules** to apply:-

"Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration at the Australian Commercial Disputes Centre in Sydney, Australia in accordance with the Commercial Arbitration Rules and supplementary procedures for international commercial arbitration of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof."