

Video Review - Dispute Resolution In Australia, Australian Commercial Disputes Centre, 1992, 28 minutes, \$90.

- Review by John Tyrill

The Australian Commercial Disputes Centre has produced a video about the range of dispute resolution methods used in Australia and the services the Centre provides. In addition to its instructive and educative role, this video provides an excellent snapshot of the current level of development and acceptance in Australia of non-adversarial dispute resolution methods, including the extent of judicial support they enjoy.

The video has been produced and is narrated and edited in a most professional manner. Importantly, it is easy and interesting viewing.

This video would be an excellent method for organisations, particularly large ones, to easily and cheaply inform staff and management of the range of alternative methods of dispute resolution and facilitation services available.

Presenters include Sir Laurence Street K.C.M.G., the former Chief Justice of the New South Wales Supreme Court and one of the country's most experienced mediators, Mr Justice Rogers, Chief Justice of the Commercial Division of the NSW Supreme Court, Dr Warren Pengilley previously a Trade Practices Commissioner, Roger Gyles QC, Royal Commissioner in the Royal Commission Into Productivity in the Building Industry in New South Wales, academics and executives from construction authorities and construction industry associations.

The video describes:

- ACDC's services;
- commercial mediation;
- non-binding expert appraisal;
- binding expert determination;
- expert recommendation;
- arbitration and the range of organisations, including ACDC, offering arbitration facilitation services.

Lawyers experienced in mediation describe their experiences and benefits clients have enjoyed through mediation, including the opportunity for the parties to discuss the matter with the other side and to present their positions before a respected, neutral third person, conciliatory approaches to commercial settlement, maintenance and further development of relationships and, most importantly, significant savings in costs and time. Lawyers also discuss the need for solicitors to provide clients with information about non-adversarial methods of dispute resolution and their potential cost savings.

Sir Laurence Street states mediation works because the parties come to it with a positive approach and also that an outcome of mutually agreed settlements is better than

the win/lose outcome of litigation.

Dr Warren Pengilley points out that approximately 90% of litigation is settled, but only after the expenditure of a great deal of time and money. He suggests preferably the same result can be achieved much earlier by mediation.

Comments are made by a number of speakers about improvements in construction industry efficiency by non-adversarial, quicker and cheaper dispute processes such as mediation.

Roger Gyles QC states 'hard dollar' contracts often lead to adversarial relations and comments about the importance of long term relationships, including by co-operative, networking contracting and partnering and by alternative dispute resolution methods.

The video comments that business and government use mediation (and other forms of non-adversarial dispute resolution) because:

- the process is less expensive than litigation;
- the process can be as fast as the parties wish;
- the parties select the process themselves;
- the parties select the mediator or expert;
- the parties come together at a time convenient to them;
- the process is entirely confidential;
- the process is conducted on a without prejudice basis;
- neither side need 'expose' confidential information;
- the process can be used either before or after litigation or arbitration is commenced;
- nothing is wasted if the dispute does not settle;
- settlements are final and binding;
- settlements can be based on non-monetary terms;
- the parties achieve a business rather than a court imposed solution;
- the parties' relationship is preserved and is often enhanced.

The point is also made that management of the dispute

is important. The Australian Commercial Disputes Centre's services include:

- informing reluctant parties about the range of services and various methods of dispute resolution available;
- working with parties to determine the most appropriate dispute resolution method for the particular dispute;
- providing disputants with information about potential experts and mediators;
- providing appointment agreements;
- facilitating the exchange of documents.

Mr Justice Rogers, CJ Comm. D. states it is desirable for parties to agree on dispute resolution methods and techniques and facilitation organisations at the time of negotiating the contract.

He also says even the most intractable disputes can be settled with the assistance of a skilled mediator and that there is obviously a great advantage for the parties to arrive at a consensual settlement of their dispute ahead of a court imposed solution. In his view, if a dispute is otherwise amenable to mediation it should be forced to that process even over the objection of one or more of the parties.

Rogers, CJ Comm. D. states the point of mediation is that it is the parties who work out their parameters, who arrive at settlement and who walk away content there has been a resolution, whereas with litigation the parties seldom walk away feeling there has been a satisfactory outcome.

ACDC's video is recommended buying and viewing. It will be of interest to those who know a great deal about mediation and the other dispute resolution methods and of great benefit for those who do not.