

Commercial Court



NOTICE TO THE PROFESSION 8 /2009

ALTERNATIVE DISPUTE RESOLUTION

The Judicial Officers of the Commercial Court with the approval of the Chief Justice advise the profession as follows:

1. The Commercial Court encourages the parties to resolve their commercial disputes by means other than judicial adjudication in adversarial proceedings and therefore to explore alternative means of dispute resolution through such mechanisms as negotiated settlement, mediation, early neutral evaluation and conciliation.
2. The Commercial Court considers that settlement of disputes by the parties other than by adversarial adjudication:
 - (a) enables the parties to achieve negotiated solutions whilst preserving commercial relationships and market reputation;
 - (b) provides the parties with a wider range of solutions and outcomes than available at trial;
 - (c) preserves the parties' control over their own affairs and outcomes;
 - (d) saves the parties time, money and other resources; and
 - (e) promotes the efficient use of judicial and other public resources.
3. At any stage of the proceeding (including during trial) the list judge may at the request of the parties direct that any proceeding in the Commercial Court be referred for such alternative form of dispute resolution as may seem appropriate to the circumstances of any case to dispose of a dispute efficiently, quickly and economically.
4. Legal practitioners in all cases should consider with their clients and the other parties concerned the possibility of attempting to resolve the dispute or

particular issues by alternative dispute resolution and should ensure that their clients are fully informed as to the most cost effective means of resolving their dispute.

5. The legal practitioner with the care, responsibility and conduct of a proceeding on behalf of a party must inform the list judge at the first directions hearing whether:
 - (a) the party has been informed of:
 - (i) the alternatives available to resolve the dispute other than by judicial adjudication in adversarial proceedings;
 - (ii) the benefits and advantages to that party of resolving the proceeding other than by judicial adjudication in adversarial proceedings;
 - (iii) all matters which the legal practitioner considers to be material to that party's evaluation and decision of whether the dispute ought to be determined other than by judicial adjudication in adversarial proceedings including, but not limited to, a consideration of the costs, delays and potential risks of the proceeding;
 - (b) there have been discussions with all opposing legal practitioners in an attempt to resolve the dispute in the proceeding other than through litigation;
 - (c) he or she is of the opinion that the proceeding is one which ought to be referred for resolution by means other than judicial adjudication in adversarial proceedings.
6. A party may at any time seek directions designed to resolve a proceeding by means other than judicial adjudication in adversarial proceedings.
7. In appropriate cases, a list judge may determine, with the agreement of all the parties, that a dispute or a particular issue in a dispute be the subject of a without prejudice, non binding, early neutral evaluation. If there is to be an early neutral evaluation the judge in charge of the Commercial Court will nominate a judge to conduct the early neutral evaluation.
8. The judge who is to conduct any early neutral evaluation will give such directions for its preparation and conduct as he or she considers appropriate but will take no further part in the case either for the purpose of hearing the applications or as the judge at trial.

June 2009

Byrne J
Hargrave
Judd J
Pagone J
Robson J

Efthim AsJ
Daly AsJ
Gardiner AsJ
Kings AsJ