A study as to the establishment of a Centre for Natural Resource Arbitration in Perth.

A report for the Winston Churchill Memorial Trust of Australia
The Winston Churchill Memorial Trust of Australia

Report by Kanaga Dharmananda SC

A study as to the establishment of a centre for natural resource arbitration in Perth

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Dated
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Introduction

The Churchill Fellowship awarded to me in 2012 allowed me to travel across the world to leading arbitration centres to study and consider the workings of each of the centres and matters relevant to their success. My study concerned the viability and desirability of establishing a centre for natural resource arbitration in Perth, Western Australia. My Fellowship confirmed my enthusiasm for the establishment of such a centre and the benefits likely to flow from its operation. The opportunity to travel to a number of leading arbitration centres would not have been possible without the Churchill Trust and its commitment to supporting the individual interests of its fellows, enabling the advancement of ideas for the benefit of Australia. I formally acknowledge this support.

My visit to arbitration centres in the New York, London, Paris, Geneva, and Zurich gave me the opportunity to observe the dynamics of vibrant and effective arbitration institutions. In the process, I was able to engage with many experienced and knowledgeable individuals all working to achieve effective dispute resolution processes and institutions. This engagement offered an occasion to obtain valuable insights and was immensely enriching personally and professionally.

I have had a number of people who encouraged and supported me in my endeavour. I would like to thank them for their support, in particular Michael Feutrill and Craig Colvin SC, who are both involved with me in the creation of a centre in Perth, and my referees Ms Kirsty Sutherland and Mr Stewart Kaye.

I acknowledge with gratitude the assistance of the staff of the Churchill Fellowship Trust.

I formally acknowledge and give thanks to each of the lawyers, arbitrators, administrators, barristers, and solicitors I met for their willingness to share their knowledge and experience. I am grateful to each of the people in organisations who gave willingly of their time and gave me an invaluable insight into aspects of the practice of international arbitration. Lastly, I express my gratitude to my family who came along on parts of this journey with me.

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Executive Summary

My Fellowship confirmed that there is a sound basis and good reason to establish a centre for natural resource arbitration in Perth. The centre could offer a specialist facility in the heart of Australia’s resource industry that is near to Asia and able to draw from the resource expertise here.

Highlights

There were many highlights during my Fellowship which gave me a wealth of information. A key benefit was to engage in a helpful dialogue with arbitration professionals as to what makes for a successful, vibrant centre.

Recommendations

Based on my research, visits, and discussions, my key recommendations are as follows:

- The establishment of a centre for the resolution of natural resource disputes in Western Australia should be advanced. It is proposed that the centre be known as the Perth Centre for Energy and Resource Arbitration – PCERA.

- There should be engagement with parties likely to use the services of the centre, as well as academia, local and State Government for the purposes of obtaining support for the centre.

- Further research should be undertaken to develop a database of arbitrators as well as to form the advisory committee or “Court” likely to be of enormous value to the operation of the Centre.

- Close consideration should be given to obtaining space for the purposes of providing hearing facilities to such arbitrations as are presently being conducted in Perth, Western Australia and to house the Centre.

Implementation and Dissemination

- Circulate my paper widely among the legal sector and other interested parties and industry bodies and present at conferences and interest groups as appropriate.

- Enter into a dialogue with key officers of parties likely to use the centre in Western Australia and advance opportunities to engage formally about the advancement of the centre.
Program of Meetings

New York, United States of America

Professor Constantine Katsoris - Fordham Law School

Mr Thomas Ventrone, Vice President - International Centre for Dispute Resolution (ICDR) - American Arbitration Association

Mr Robert Hora, Partner - Milbank, Tweed, Hadley & McCloy LLP

Mr Christopher J Gaspar, Partner - Milbank, Tweed, Hadley & McCloy LLP

Mr Chris Parker, Partner - Herbert Smith Freehills

Mr Alex Yanos, Partner - Freshfields Bruckhaus Deringer

Mr Elliot Friedman, Associate - Freshfields Bruckhaus Deringer

Mr Yogesh Rai, Counsel - BNP-Paribas Investment Partners USA Holdings Inc

London, United Kingdom

Ms Sarah Lancaster, Registrar - The London Court of International Arbitration

Mr Adrian Winstanley, Director General - The London Court of International Arbitration

Mr Mike Jenkins, Facilities Manager - The International Dispute Resolution Centre Ltd (IDRC)

Professor Loukas Mistelis, Director, School of International Arbitration - Queen Mary University of London

Mr Michael Payton, QC Senior Partner - Clyde & Co

Mr Maurice Kenton, Partner - Clyde & Co

Mr Anthony Boswood QC - Fountain Court

Mr Timothy Howe QC - Fountain Court

Mr Nick Yeo, Barrister - Fountain Court

Mr Justin Jowitt, Partner - Paul Hastings
Mr Hemendra Rai, Founding Director – Maven Search Limited

Paris, France

Mr Andrea Carlevaris, Secretary General - ICC International Court of Arbitration

Mr Olivier Purcell, Partner - Holman Fenwick Willan

Mr Simon Greenberg, Senior Associate - Clifford Chance

Mr Andrew McDougall, Partner - White & Case

Mr Michael Polkinghorne, Partner - White & Case

Mr John Gaffney, Senior Associate - King & Spalding

Mr James Castello, Partner - King & Spalding

Mr Roland Ziadé, Counsel, Cleary Gottlieb Steen & Hamilton LLP

Mr Georgios Petrochilos, Partner - Freshfields Bruckhaus Deringer

Mr Ben Juratowitch, Partner - Freshfields Bruckhaus Deringer

Zurich, Switzerland

Dr. Rainer Füeg, Executive Director and formerly President, Swiss Chambers’ Arbitration Institution

Ms Elena Stancato-Opromolla - Secretariat of the Arbitration Court of the Swiss Chambers’ Arbitration Institution

Geneva, Switzerland

Mr Matthew Parish, Partner - Holman Fenwick Willan

Mr Eric Biesel, Director - Arbitration and Mediation Department - Geneva Chambers of Commerce, Industry and Services

Ms Joya Raha, Legal Counsel - Arbitration and Mediation Department, Geneva Chambers of Commerce, Industry and Services
Meetings with international practitioners in Perth before travel

Ms Paula Hodges Partner - Herbert Smith Freehills, London Office

Mr Simon Chapman, Senior Associate - Herbert Smith Freehills, Hong Kong Office

Ms Karyl Nairn QC, Partner - Skadden Arps, London Office

Mr Damian Honey, Partner - Holman Fenwick Willan, London Office
Background

The study in context

As a barrister and fellow at the University of Western Australia, where I teach International Commercial Arbitration and International Investment in Mineral Resource, I encounter issues and disputes connected to natural resource regularly. In large part, anyone involved in the professional services industry in Western Australia will in one way or another engage with the resource industry.

There is an increasing interest in the efficient and effective resolution of disputes that arise in the resource industry. The term “natural resource” is capable of covering the following matters: petroleum including crude oil, condensate, LNG, natural gas and LPG, minerals, ores, and water.

I note from my work and from my research that the quality and effectiveness of dispute resolution processes can vary greatly, particularly when it comes to arbitration.

While working on matters involving disputes in the natural resource industries and in view of developments in Western Australia, some colleagues, and I gave consideration to the best design and practice for a centre for the resolution of natural resource disputes. In 2012, this interest led me to apply for a Churchill Fellowship with the aim of investigating and examining the operation and organisation of leading arbitral institutions and seeing what I could learn from them to develop or advance an arbitration centre in Perth, Western Australia.

The resource boom

The focus on an arbitration centre dedicated to natural resource must be understood in the context of the economic activities in Australia over the last decade. This short period has seen a marked rise in commodity prices and the development of a significant number of resource projects in Western Australia. Despite some recent inactivity, it is still envisaged that there will be immense investment in projects for the extraction of natural resource. The graph below reveals the extent of the likely, continuing investment.¹

¹ Source: ABARES May 2011 Report
KordaMentha observed in a recent report entitled *Mining Service – Riding the Crest of the Mining Boom* that the Australian mining services sector has enjoyed average annual growth of 11.5% over the past five years. The major commodities of the Australian mining industry are coal, iron ore and gold. Together these three resources account for almost 80% of the overall mining industry in Australia. In the same report, it is observed that Australia’s terms of trade during the mining boom of the last decade has been both the largest and longest since the gold rush of the 1850s. Much of the increase in commodity prices is tied to China’s economic growth fuelled by increased modernisation and the expansion of the retail economy. This has caused great increases in demand for resource and energy over the last decade.

A recent report by KPMG, *Demystifying Chinese Investment in Australia – Update March 2013*, reveals that Australia maintained its top ranking as the most significant recipient of Chinese direct investment since 2005 when large scale overseas investment began in China.
By reason of Chinese demand for resource commodities, there has been in effect a tenfold increase in the real value of mineral exports to China from Australia rising from 5 billion in 2002-3 to around 50 billion in 2010-11.\(^2\)

**The resource industry in Western Australia**

The following sections draw from the *Western Australian Mineral and Petroleum Statistics Digest 2011-12* published by the Department of Mines and Petroleum of the Government of Western Australia.

In 2011-12, mineral exploration expenditure in Western Australia alone was $2.1 billion. The bulk of Australia’s mineral exploration activity occurs in Western Australia. The State accounted for over 50% of natural mineral exploration expenditure in 2011-12. A similar amount was spent on petroleum exploration in 2011-12.

The value of Western Australia’s mineral and petroleum industry topped $100 billion in 2011-12. This is a remarkable outcome, in the context of negative impacts on commodity prices, resulting from the strength of the Australian dollar and global economic conditions which remained uncertain in 2011-12.

Iron ore was the State’s highest value commodity amounting to $61.1 billion of total mineral sales. There was strong demand from China and record levels of export quantities were achieved. The petroleum sector in Western Australia in 2011-12 was valued at around $24 billion. The petroleum sector, which includes crude oil, condensate, LNG, natural gas and LPG (butane and propane), saw an increase in the value of sales despite a decrease in the quantity sold.

There was $45 billion invested in relation to the mining industry in 2011-12 according to Department reports. Western Australia still has an estimated $167 billion worth of resource projects under construction or in an advanced stage of development and a further $151 billion has been added as planned or possible projects in the coming years.

**Contracts and disputes**

The lifespan and development of any resource project will involve numerous contracts. Through each phase from exploration to export, there will be contracts in place of one sort or another. Many of these are long term contracts.

\(^2\) See the KordaMentha report at 10.
Many of the numerous contracts required for a project may result in some form of dispute between long-term contracting parties. Those disputes that are not settled will need to be resolved. The traditional course has been to resolve the matter by way of litigation in court. However, there is an increased interest in arbitration as a means of dispute resolution. This is especially so where parties to a contract are not all familiar with the Australian legal system or would prefer for a number of reasons to have their dispute resolved by a tribunal of a “nationality” other than that of the counter-part business.

**Arbitration as a method of dispute resolution**

Arbitration is a private dispute resolution method that arises pursuant to agreement. The High Court of Australia\(^3\) recently quoted from Lord Bingham and put the matter in the following way:

> “In *The Rule of Law*, Lord Bingham of Cornhill described arbitration as involving:

> ‘the appointment of an independent arbitrator, often chosen by the parties, to rule on their dispute according to the terms of reference they give him. This can only be done by agreement, before or after the dispute arises, but where it is done the arbitrator has authority to make an award which is binding on the parties and enforceable by the process of the courts.’

That description of private arbitration, and of the relationship between private arbitration and the courts, is as apt for Australia as it is for the United Kingdom and the United States of America. Arbitration has a long history as an alternative method, distinct from litigation, of resolving civil disputes. The features of private arbitration identified by Lord Bingham underpin the widely shared modern policy of recognising and encouraging private arbitration as a valuable method of ‘settling disputes arising in international commercial relations’, a policy reflected in the objects of the IA Act. Parties from different legal systems can agree to resolve an international commercial dispute by arbitration and choose both the law (or laws) to be applied and the processes to be followed.”

(citations omitted).

Arbitration is a convenient means by which to resolve many types of disputes that arise in the resource sector. A hallmark of the process is for matters to be resolved quickly, efficiently, and with less formality than in court. Much will turn on the arbitrator selected and the institution that supports the arbitration.

**Ad hoc arbitration is on the rise in Western Australia**

One very clear trend in Western Australia has been the number of ad hoc arbitrations, which are not conducted under the auspices or with the support of any institution. Such arbitrations often involve the parties working together to agree on matters such as

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\(^3\) *TCL Air Conditoner (Zhongshan) Co Ltd v Judges of Federal Court* [2013] HCA 5.
arrangements for hearings and the scope of the arbitrator's role in the course of a dispute. This renders the process more difficult than would otherwise be the case if institutional rules were selected, and an institution provided a guiding hand over the arbitration.

In this context, and in the face of a number of ad hoc arbitrations where no particular institution is selected to administer the arbitration, my attention turned to the possibility of creating a centre to meet this emerging need. This centre would be dedicated to natural resource arbitration in Australia and would naturally be located in Perth, given the centrality of resource to the economy in Western Australia and to the working lives of Western Australians.

Why do we need a natural resource arbitration centre in Perth, Western Australia?

There is little doubt that, in the coming decades, Western Australia will remain a centre for the exploration, exploitation, and export of natural resource. Australia’s engagement with Asia through trade is spearheaded by the project developments in Western Australia. Although not a universal truth, it is common for disputes to arise in the context of contracts made between parties. In the face of the plethora of various contracts, involving international parties, as well as contracts with local parties, made within the domain of natural resource in Australia, and particularly in Western Australia, it is sensible to offer a place where these disputes may be resolved in an efficient and effective manner. While there are a multitude of institutions already operating, none caters specifically to resource and no institution is primarily based in Perth, Western Australia. It is admittedly true that parties may and do seek to use institutions outside Western Australia and outside Australia for the resolution of disputes concerning natural resource within Australia.

There may, however, be a place for a further institution that has as its focus natural resource disputes. There is within the Western Australian community, particularly the legal community, a vast amount of experience in natural resource matters. There are dedicated centres relevant for learning at both the University of Western Australian and Curtin University.

The complexity of legal issues that arise in the context of natural resource may cause people within the industry to view the traditional process of dispute resolution by litigation in court as too complicated or too protracted or otherwise insufficiently flexible to meet their needs. Although with the rise of the Commercial and Managed Cases List in the Supreme Court of Western Australia, such allegations may not merit full weight to be accorded to them, there is something to be said for the establishment of a centre that:
• is close to the location of the resource;
• is informed by adherence to principles of (informal) effective and efficient justice; and
• aspires to deploy available expertise in the context of the natural resource industries which are of such importance to Western Australia.

Fellowship aims

For my Fellowship I travelled to: New York, USA; London, England; Paris, France; Zurich, Switzerland; and Geneva, Switzerland and visited four of the leading international arbitration institutions in the world. While these organisations have a different history and vary in terms of size and available funding, each organisation is dedicated to facilitating methods for parties to resolve their disputes in an effectual and efficient way. I was greatly enriched by my interaction with officers of each organisation as well as my discussions with leading practitioners in the field of international arbitration who regularly use the services of established arbitral institutions.

As part of my Fellowship, I wanted to discover:

• the “best practice” in international arbitration and administration;
• the factors relevant to the successful operation of an arbitral institution; and
• areas for further research and inquiry.

This paper contains the essence of my findings.

Why did I travel where I did?

In determining my itinerary, I looked for organisations and institutions who are leaders in international arbitration. The International Chamber of Commerce (ICC) headquartered in Paris, is a well-known giant in the area of international arbitration.

In a similar way, the American Arbitration Association (AAA), with an enormous caseload, is also a world leader in arbitration. Its International Centre for Dispute Resolution, or ICDR, is a leading institution for the resolution of international arbitration disputes.

The London Court of International Arbitration (LCIA) enjoys a rich history and has since the 1980s forged a very strong reputation in the field of international arbitration, with a recognised world brand.
Switzerland has always enjoyed a reputation for neutrality. On 1 January 2004, the Swiss Chambers’ Rules of international arbitration came into effect. The six chambers of commerce of Basel, Berne, Geneva, Lausanne, Lugano and Zurich gave up their individual international arbitration rules and adopted the Swiss rules. The Swiss rules allow for the seat of the arbitration to be anywhere in the world. Arbitration by Swiss Chambers has a very long tradition and these harmonised rules have made the Swiss Chambers Court of Arbitration and Mediation a formidable force in international arbitration.

While in the cities hosting these leading institutions, I visited practitioners in the field of international arbitration to discuss their views as to the challenges and advantages of establishing a centre in Perth, Western Australia. These discussions led to many of the insights reflected in the paper.

Rather than report by reference to each institution and locality, I set out my findings by reference to some of the key topics affecting my project. No particular view is, without more, to be attributed to any particular individual.
Findings

Origins and History

The question I sought to address was whether there was something in the origins of an institution that dictated its success.

Each of the leading institutions has a rich history. However, there is no uniformity in relation to the origins of each institution.

*American Arbitration Association – ICDR*

The American arbitration Association itself has been in existence since the 1920s. The International Centre for Dispute Resolution was established in the mid-1990s to administer international arbitration proceedings initiated under the institution’s rules.

*London Court of International Arbitration*

The LCIA can trace its history to a scheme that was adopted in 1891, although it was named the London Court of Arbitration in 1903. In 1981 the name of the court was changed to London Court of International Arbitration. This was to both reflect and capture the nature of the work it was interested in – predominantly international work. It is fair to say that those within the LCIA recognise that the mid-1980s were a transformative period in that, under the guidance of Sir Michael Kerr, the first president of the LCIA Court, much work was done to consolidate its position in the international area. The LCIA is a private not-for-profit company limited by guarantee.

*ICC International Court of Arbitration*

The International Court of Arbitration is part of the International Chamber of Commerce. The ICC is a large business organisation and has many hundreds of members across many countries in the world. The ICC’s International Court of Arbitration was created in 1923 and was envisaged as a means by which dispute resolution services could assist in the promotion of business.

*Swiss Chambers’ Arbitration Institution*

The Swiss Chambers Rules of International Arbitration came into effect on 1 January 2004. Various chambers of commerce within Switzerland gave up their individual rules and adopted the Swiss Chambers’ rules. Each of the individual chambers had an established
position and many of them dated back to the early part of the 20th century. The unification of the rules and the international arbitration arms of the organisations meant that the various chambers of commerce could operate in a unified way insofar as international arbitration was concerned. This has created a clear sense that the individual chambers were to work cooperatively and not on an individual basis.

General Comments

In discussions with professionals who have used the services of the various institutions, and from discussions with officers of the institutions, it was recognised that although the long history of an organisation may assist in its brand recognition, the vitality of the institution depended upon its current work and the work of its secretariat and the arbitrators it appointed.

At present, it appears there is no institution dedicated to the resolution of natural resource disputes. The Center for Global Energy, International Arbitration, and Environmental Law at The University of Texas School of Law offers an extensive and unique curriculum to students interested in these areas of the law. The Center is also a place for interdisciplinary analysis, and discussion of the issues relevant to energy, arbitration, and the environment. The Center does not provide an arbitration service.

There is, therefore, a real opportunity for such an institution to be created. In that sense it may be time for history to be made.

Facilities and Services

In terms of the facilities and services offered by each of the four institutions, it is apparent that each offers a first-rate dispute resolution service in the form of arbitration. Other services such as mediation, fact finding, or arbitrator selection are also offered by some of the institutions.

There are however some differences in how arbitration services are delivered.

ICDR

The American Arbitration Association has hearing rooms within its offices. I was informed that the AAA will move to new premises in the coming months. The hearing rooms which I saw were modern, functional, and employed or had available for use various modes of communicating technology.
Such facilities need not always be used and given its global reach, ICDR proceedings are conducted around the world.

The ICDR maintains specialised administrative facility supervised by multilingual attorneys in New York, a European office in Dublin and has a panel of more than 500 arbitrators and mediators.

The ICDR itself has 12 case managers and a significant budget. It operates out of a number of locations. In 2011, there were 994 case filings. The ICDR has a committed policy in relation to continuing legal education and sponsors practice moots, seminars and conferences in various parts of the world.

Swiss Chambers

This Swiss Chambers generally operate on a leaner basis. In Zürich and Geneva, there are one or two officers dedicated to managing the international arbitration caseload. Although it is possible to use rooms in the Chamber’s premises for the purposes of arbitration, this is uncommon and, generally, the parties will hire facilities within conference centres or hotels in Geneva or in Zürich.

The Swiss Chambers can draw upon the expertise of the Arbitration Court of the Institution. This consists of members representing the arbitral community and the seven chambers. Some assistance in advancing the profile of the Swiss Chambers is carried out by members of the Arbitration Court.

ICC

The ICC has a dedicated facility for the purposes of conducting hearings. It is known as Les Espaces ICC. The meeting rooms and conference rooms are state-of-the-art and are configured specifically for the purposes of hearings, as appropriate. There are large rooms designed for hearings and meetings that can seat up to 40 people. There are seven rooms for breakout sessions and smaller meetings of up to 18 people.

There is video conferencing equipment and equipment to enable simultaneous translation. The facilities are in the 16th district in Paris and are conveniently accessible by Metro.

The ICC’s Court Secretariat itself has a permanent staff of more than 80 lawyers and support personnel. The Secretariat is headed by the Secretary General. The Secretariat itself is divided into eight case management teams, each dealing with cases from particular
regions or language groups. Seven of the teams are based in Paris and the eighth is based in Hong Kong with the same management structure.

Each team has a lead counsel and has two or three deputy counsel together with administrative assistance. The Secretary General is involved in the allocation of cases.

The Court and Secretariat’s activities are supported by marketing efforts that operation around the globe.

The numbers of participants in ICC arbitration increased in 2011 (2,293 parties, 1,341 arbitrators nominated and appointed). ICC arbitrations were seated in over 100 cities in 63 countries throughout the world, and the range of laws applied was varied.

As an institution, the ICC is composed of over 120 members from some ninety countries. The ICC Court brings the combined experience of practitioners representing many legal traditions. The Secretariat of the Court, with a staff of over 80 covering some 30 nationalities has a broad range of language skills and legal knowledge. During 2011, the Secretariat handled 1,500 open cases, while the Court met to decide matters for cases to proceed and approved 508 awards.

LCIA

The London Court of International Arbitration is a not-for-profit company limited by guarantee. The LCIA board which is made up of arbitration practitioners is concerned with the operation and development of the LCIA’s business. The board does not involve itself in the running of cases although it does have an interest in the administrative functions for the LCIA Court.

The LCIA Court is made up of 35 members who are involved in international commercial arbitration from around the world. The LCIA Court determines the application of the LCIA rules. There is a President and a Vice President, together with a Registrar and Deputy Registrar involved in the workings of the LCIA.

The LCIA Secretariat is headed by a Registrar who is responsible for the day-to-day administration of all disputes referred to the LCIA. The LCIA itself is managed by the Director-General.

In the same building as the LCIA, there is a facility known as the International Dispute Resolution Centre, or IDRC. The IDRC has arbitration or hearing rooms, a mediation room and facilities enabling hearings for up to 100 people. The premier suite has state of
the art technology and is fully equipped with audio-visual equipment as well as facilities to enable translations to occur.

The IDRC has as its shareholders various institutions and entities that have an interest in the use of the City of London for the purposes of arbitration.

The IDRC enjoys the support of the major bodies in London concerned with dispute resolution, namely, ARIAS (UK), CEDR, Chartered Institute of Arbitrators, the LCIA, Independent Mediators, In Place of Strife, the London Maritime Arbitrators Association, RESOLEX, the Society of Construction Arbitrators and the Worshipful Company of Arbitrators. In addition, the Corporation of London has given its support and is a shareholder, as are the LCIA and CEDR.

Other shareholders include law firms and barristers. The effectiveness of the structure is such that persons may support the arbitration centre without necessarily appearing to have a stake in the business of the institution itself. The rooms themselves are well-equipped, comfortable, and are apparently in much demand.

**Key Findings**

The key finding from my discussions about facilities is that while they are important and may even assist in generating revenue in the early years, the structure for the maintenance and operation of hearing facilities is the most important issue. Ideally, the facilities should operate on a commercial basis and various stakeholders can subscribe for shares in the structure that owns the facility. The subscribers would then, in turn, have an interest in ensuring its success including by making use of the facilities themselves.

It is also apparent that at least at the initial stages, there may not be any need for significant numbers of staff at any centre. What is important is that such cases as are filed with an institution are managed effectively. The LCIA and the Swiss Chambers operate with a small but effective staff who are knowledgeable and dedicated to their work. A similar approach may be taken by a new institution. Little by way of expenditure on marketing may need to be incurred directly but it appears imperative that, from the perspective of raising the profile of any new institution and ensuring that the institution is used for the purposes of particular disputes, a representative of the institution attend the various (international) arbitration conferences and other meetings to propagate the existence of the institution and its mission.

My fellowship also confirmed that as a newly-formed arbitration centre, the proposed centre in Perth would greatly benefit from the outset in terms of profile, credibility and
exposure from having a physical presence to house the Centre and offer hearing facilities to current arbitrations in Perth.

Relevant factors for the success of an arbitration institution

In the course of interviews with arbitration practitioners and in the course of discussions held with officers of leading arbitration institutions, a clear consensus emerged as to the factors relevant to the success of an institution. In essence, it appears that success will turn on:

- the quality of the administrators and arbitrators;
- a dynamic and effective team within the centre;
- some control over the speed and quality of awards; and
- value in terms of the cost of the services provided.

To a greater or lesser extent, each of the institutions displayed these characteristics integral to excellence in the provision of arbitration services and, accordingly, for success in the business of dispute resolution services.

Rules for arbitration and support from the place of arbitration

It appears axiomatic that any centre that seeks to provide excellent arbitration services must have an effective and workable set of rules relevant for the process of arbitration.

In this regard, each of the LCIA, ICC, ICDR, and the Swiss Chambers have their own set of rules. Each of them have been proven through use and each of them have as their dominant purpose the delivery of competent dispute resolution services.

While some suggested that the ICC rules, which have been the subject of considerable amendment, are sometimes cumbersome and do not lead to particular swiftness in relation to appointment nor in relation to the delivery of awards, especially with ICC court scrutiny, the general consensus was that each of the institution’s rules achieve their objectives. There emerged some support for the LCIA rules as a model set of workable and effective rules. Similarly, some practitioners thought that the Swiss rules were modern, flexible, and combined the best of the different sets of rules.

The UNCITRAL rules were seen as a prime set of rules capable of adaptation by any new centre. In that regard, some work has been done by the Permanent Court of Arbitration (PCA) to update its rules using the UNCITRAL rules as a base. The PCA rules:
• Reflect the public international law elements that may arise in disputes involving a State, State-controlled entity, or intergovernmental organisation;

• Emphasize flexibility and party autonomy. For example:
  o The rules allows for arbitration of multiparty disputes involving a combination of States, State-controlled entities, intergovernmental organisations, and private parties; and
  o The choice of arbitrators is not limited to persons who are listed as Members of the PCA.

The UNCITRAL rules have been shown to be capable of adaption and ready deployment to suit particular disputes.

While a set of rules is important, the rules of themselves will not attract parties to use a particular centre. In addition to the rules, the centre must be in a jurisdiction that is supportive of arbitration and lends such assistance as is required through its judicial system. The seat of the arbitration is significant.4 In this regard, New York, London, Paris and Switzerland were all seen as favourable jurisdictions with supportive and clear arbitration law provisions and knowledgeable judicial officers able to rule on matters requiring court assistance during the course of an arbitration.

Although some reservations were raised in view of some of the decisions from Australia in the past,5 the general view appeared to be that there was nothing that would disqualify a place in Australia from being suitable for the purposes of providing such support as was required in terms of enabling the operation of an arbitral centre.

Location

A key feature of each of the institutions that I visited was their location either within a financial centre, or in close proximity to many nations and many centres of trade or industry.

New York remains a significant financial centre. It has a great number of professionals working in the area of dispute resolution. As such, the ICDR has gained much from having its main office in New York.

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5 See, for example, Resort Condominiums v Bolwell (1993) 118 ALR 655.
In a similar way, the LCIA, being based in London, is able to build on London's reputation as a centre for commercial law and by this mechanism wins work in many areas.

The ICC is based in Paris and when recently issues arose as to whether it would remain in Paris rather than moving to Switzerland, steps were taken to demonstrate what the ICC brought to Paris. In many ways, ICC, as the dominant player in relation to international arbitration services, gives as much as it gains by its location in Paris. But the proximity of Paris to the major business centres in Europe cannot be underestimated.

In a similar way, both Zurich and Geneva are well located both to European business centres as well as to Eastern European trade centres.

An analysis of the caseload for each of the institutions reveals that while they are able to attract work from across the globe, some advantages accrue by virtue of location. Parties choose arbitration centres in Paris, London, New York, Geneva or Zurich because they are accessible.

Perth may be a good location for some parties

In this regard, when attention turns to Perth as a location, questions arose, during my Fellowship, as to whether parties would travel to Perth to have their natural resource dispute resolved. To some extent, this may not arise as an issue if parties are already, in one way or another, present in Perth.

In view of the interest in investment in the exploitation of resources in Australia, particularly Western Australia, many of the parties likely to require dispute resolution services are already present in Australia, although their presence may take the form of an Australian subsidiary of an international company or a Chinese, Japanese, Korean, or Indian corporation.

From interviews, it became apparent that any centre that was sought to be established in Perth would need to deal with the issue of the tyranny of distance. Some of this could be dealt with by the use of advanced audio-visual technology but initial focus on the domestic market in terms of the services to be made available may prove to be beneficial.

The material available to date suggests that the number of ad hoc arbitrations in Perth is on the increase. This may eventuate because parties negotiating a dispute clause cannot achieve a compromise position in terms of the relevant institution, and the seat or place of the arbitration. This could then lead to inclusion of a mere arbitration clause, such that the default provisions of the Commercial Arbitration Act (Western Australia) apply.
Regardless of the reason for the apparent rise of ad hoc arbitrations, there is evidently an opportunity for a centre in Perth to provide support for arbitration, either by way of hearing room facilities, or other administrative and facilitative services.

**Competence of the Tribunal**

There was universal recognition that the institution had to have competent arbitrators with an established reputation for excellence in dispute resolution. This raises for consideration the process by which arbitrators are selected by an institution if the parties are unable to agree on the selection of the tribunal.

The ICC will appoint tribunal members according to the clause in the contract but where the clause does not specify a person or persons are to be appointed, or the method by which a person is to be appointed, the ICC will generally use its network and call upon a National Committee or group from a country to assist in the selection of the tribunal. It may be the case that the person from the place of business of either of the parties cannot be appointed to the tribunal. This means that often there will be an approach to a third country’s panel. Issues are raised about the effectiveness of this approach, particularly in terms of speed and the wisdom of the selection.

The LCIA, through its Secretariat, is aware of a number of arbitrators and is also able to examine its membership for the purposes of identifying suitable tribunal members. Where the LCIA is called upon to appoint either a chairperson or other tribunal members, it uses its knowledge and contact bases. All appointments must be confirmed by the LCIA Court.

The Swiss Chambers tend to draw on the expertise of the Secretariat and the Arbitration Court when called upon to provide members for an arbitral tribunal.

The ICDR draws from its panel of arbitrators or selects arbitrators through its knowledge base and ensures that arbitrators are appropriately trained in accordance with the approach that the ICDR favours.

**Key Findings**

I encountered some hesitation in relation to maintaining an established and exclusive panel. While there appeared to be some recognition of the advantages of knowing who may be appointed, there appeared to be some reticence in limiting the persons who may be appointed to a tribunal. A better approach may be to have an advisory committee that assists in the selection of tribunal members. The advisory committee could comprise of leading practitioners from around the world.
There was general support for the use of arbitrators from around the globe, including the developing world, both for the purposes of raising the independence and neutrality of any arbitration centre to be established in Perth, and for the purposes of rendering the centre more attractive to the eyes of parties based outside Australia. However, there was some concern about the identification and retention of able and independent persons in many jurisdictions. In this regard, discussions with a director of Maven Search, a search company in London which deals with recruitment in the financial services industry, suggests that through exploitation of existing networks and by concentrated focus on confined industry areas, it may be possible to build up a bank of knowledge about competent persons who may assist in resolution of natural resource disputes. Indeed, search services could be employed.

Costs and Fees

Although not seen as a determinative factor, most of the people that I spoke with recognised that cost could have a bearing upon the selection of a centre as a place for the resolution of disputes.

In this regard, the ICC and the Swiss Chambers provide, in effect, for administrative and arbitrator fees to be set by reference to the amount in dispute. On the other hand, the ICDR and the LCIA set filing fees by reference to the amount in dispute but arbitrators charge their own fees, and the LCIA sets an applicable hourly rate.

Key Findings

Each method of imposing costs used by the various institutions has advantages and disadvantages. An *ad valorem* approach produces a level of certainty while the hourly rate approach appears more sensitive to the actual work carried out. In any event, it seems possible that a combined approach may be most attractive. It could be that an approach where costs, and the time for the award, are fixed in particular (uncomplicated) cases where the amount in dispute is below a set figure in combination with hourly rates. Estimates could be provided together with a sliding administrative fee. This may yield a flexible and attractive tool for the imposition of costs. It should be remembered that costs are not likely to be an overwhelming factor in the decision to select a particular centre for the purposes of dispute resolution services. But costs can be used as a basis for differentiation.

Under the Swiss Rules there are no administrative fees for a dispute concerning amounts less than 2 million Swiss Francs. And the expedited procedure is to be deployed where the
amount in dispute is less than 1 million Swiss Francs. Under the Swiss Rules, in cases which are conducted in accordance with the Expedited Procedure, as a rule the award is to be rendered within six months of the transmission of the file to the tribunal. Recent analysis reveals that the duration of proceedings, under Expedited Procedure, was an average of 184.5 days. The speed of the proceedings is an important advantage and has gained recognition among international users. In this regard, any centre in Perth could use “small claims” procedures with limited costs and a quick timetable.

Approaches to Enhance Efficiency

It was generally agreed that regardless of the rules that are chosen, it would be up to the arbitrator or the tribunal appointed to ensure the efficient conduct of the proceedings and to avoid unnecessary costs and delays. While particular rules, such as article 15(7) of the Swiss Rules of International Arbitration, may create a duty on all participants to make every effort to contribute to the efficient conduct the proceedings, much will be left in the hands of the arbitrators.

Each of the institutions stressed the value of explicit or implicit training of their arbitrators and their abilities. While the flexibility of the arbitral tribunals was a matter that most interviewees were anxious to retain, there appeared to be some consensus that, at times and in some instances, the institution had to play a role to monitor, maintain and advance the integrity and efficiency of the proceedings. Reference was made in this regard to the statistically shorter length of proceedings under the Swiss rules as compared to the ICC or AAA arbitration. The Swiss Chambers employ what is known as light touch administration.

The ICC, the LCIA and the Swiss Chambers all employ, through one mechanism or another, a supervisory institution, often labelled a court that, together with the Secretariat, supervises the proceedings to the extent permitted by law. It is true that, in most instances, it will be the Secretariat that administers the actual arbitrations but power is given to the supervisory institution, labelled strangely a “Court”, to resolve difficulties and assist in matters such as challenges to arbitrators and to resolve any irregularity in the constitution of the tribunal. To the extent that such a body can work quickly and consistently, its existence is an obvious attraction.

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Any new institution ought to cater for such a supervisory body. The capability and reputation of members on that supervisory body would do much to promote the standing of the institution in the eyes of arbitration users.

**Specialist Centres**

Two opposing perspectives emerged from discussions during my Fellowship in relation to the value of having a specialist centre dedicated to a particular type of dispute. Unsurprisingly, one theme from my interviews was that a successful arbitration centre will rely on identifying the target user market and then develop a centre specifically to address that market’s needs. A clearly defined market allows a more ready determination of the extent to which the centre will be utilised and the sophistication of the design, structure, and operations required.

I was informed of the establishment of a centre for arbitration in Cyprus known as CEDRAC; the Cyprus Eurasia Dispute Resolution and Arbitration Centre. This centre is chaired by Professor Loukas Mistelis, of the world-renowned School of Arbitration at Queen Mary College, London. The Secretary of the Court and the Registrar is a former barrister who in effect runs the centre and advances its profile. CEDRAC has a website which announces its aims at providing a high level, low cost, efficient dispute resolution service. It appears to be no secret that the centre is designed to capture work arising from Eastern European investment in Cyprus.

In a similar way, the Trustee (Amendment) Act 2011 in the Bahamas has been drafted so as to enable disputes arising under a trust instrument to be made subject to arbitration. The purpose of the legislation is to advance the position of the Bahamas in relation to its role in long-term wealth planning and as a financial centre with cutting-edge provisions in relation to the law on the administration of trusts. There are also specialist insurance arbitration centres, and a Financial Industry Regulatory Authority in the United States that provides for arbitration for securities industry disputes. So there is a well-trodden path as to specialist tribunals to resolve particular types of dispute.

The question is whether it is appropriate to have a specialist facility for resource disputes. In this context, there have been a few developments of note. The ICDR and the AAA have created the AAA/ICDR North American Energy Advisory Committee. This new committee is an expansion of the former Committee, which focused its efforts domestically in the United States. The new committee adds members with a broad range of energy and dispute resolution experience from Canada and Mexico. The committee is to help the AAA
and ICDR better serve users by understanding developments within the industry and put on worthwhile educational and promotional opportunities.

There is also a special Energy Arbitration List that is used by the ICDR and the AAA.

This all suggests that there is good ground to build a specialist resource arbitration centre.

While there are a number of young arbitration institutions in the Middle East and Asia, there is, generally, positive commentary about these institutions. They seek to service a niche.

In the face of these developments, the second theme to emerge from my discussions in the course of the Fellowship was that there was no intrinsic value in a specialist tribunal with particular expertise in particular industries. Those that provided this view considered that it was more important to have persons knowledgeable about arbitration as opposed to particular matters within particular areas of economic activity.

While it may be accepted that it will be desirable to have persons with knowledge of arbitration and the means by which disputes may be swiftly and fairly resolved, there appears to be good ground to conclude that both users, as well as would-be arbitrators, would be happy to see the rise of a specialist tribunal, particularly in the context of natural resource. This would enable parties with disputes in the area to be given some degree of assurance that the tribunal and the centre would be sensitive to the particular issues affecting the industry to which they belong. Similarly, arbitrators who wish to specialise in the resolution of particular disputes may be attracted to becoming involved with a centre that focuses on such disputes.

On balance, I remained convinced of the value of a specialist centre. Returning to the first theme of the target market, it appears that such a market exists in Australia, particularly in Western Australia.

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7 See the discussion reported in the IBA Arbitration Newsletter of April 2012 at 25 – 27.
Reflections on Encounters with Leading Institutions

Success stories show a way

Significant steps have been taken by the LCIA and the Swiss Chambers to raise their profile and attract work from around the globe. A total of 224 disputes were referred to the LCIA for arbitration in 2011. The LCIA handles a diverse nature of disputes including matters concerning franchises, emissions trading, the sale and purchase of aircraft, construction and engineering, insurance, and the sale and purchase of commodities. Commodity transactions accounted for a significant part of the referrals to arbitration. The international reach and standing of the LCIA is evident in the nationalities of the parties bringing their disputes for resolution to the LCIA. Although the UK accounted for 17.5% of the group, European parties, and parties from Eastern European states were fairly represented as were parties from the Middle East and Asia. The LCIA opened a representative office in India and has established a strategic partnership with the DIFC in Dubai. Working with the Commonwealth Secretariat, the Government of the Republic of Mauritius, the LCIA has worked to establish the Mauritius International Arbitration Centre.

The Swiss Chambers, in a similar way, has been expanding its international reach. In 2012, the Swiss Chambers arbitration institution administered 92 cases with 75% of the parties involved having their registered office or domicile outside Switzerland. Four cases had the seat of arbitration outside Switzerland and many cases were conducted under the expedited procedures. The matters in dispute were mostly related to purchase of goods, service contracts, loan agreements and distribution or agency agreements.

The success of these institutions did not occur overnight and did not occur without the extraordinary efforts of the persons at the helm of the institutions. What their success reveals is that with focus and a clear message to users, it remains possible to attract interest in a new institution.

Perth has selling points

Several factors may lead to the attractiveness of a natural resource arbitration centre in Perth, including:

(a) **Expert International Advisory Committee**: Any centre that has established ought to retain the services reputable arbitration practitioners from around the globe. This will give
credence to the institution and expand the networks of those who could promote and advance the interests of the centre;

(b) *Industry support and fit:* It would be imperative and sensible to involve industry representatives and groups in the formation and design of the centre. Support from players in the natural resource industry will likely be critical for the success of any centre based in Perth. This will call for engagement with the industry groups so as to better understand their requirements and for industry representatives to be involved in the formative stages of the centre. There must, however, be some care exercised to ensure that the centre remains independent and is able to carry out its work (and be seen to carry out its work) without fear or favour from any party;

(c) *Showcase the centre’s sensible efficiency from the get go:* It would be a powerful drawcard to develop a nuanced and streamlined approach to dispute resolution that was shown to be sensible. Questions have arisen as to whether the process of dispute resolution by arbitration has lost its way in that many complain about the delay and costs involved in the arbitration process. Indeed, the matter becomes even more acute in the face of the possibility of the creation of an International Commercial Court in Singapore. Singapore’s new Chief Justice, Sundaresh Menon CJ, has established a working group under Justice of Appeal VK Rajah to investigate the extension of Singapore’s role in international dispute resolution through the creation of an International Commercial Court. In this context, any centre to be established in Perth ought to, from the get go, show itself as concerned with the highly efficient resolution of disputes as a matter of substance, not merely as matter of form. This will require care in the selection of tribunal members and some delicate attention in relation to the monitoring of the work of tribunal members appointed by the parties;

(d) *Grow from within:* There is real opportunity to build a centre to provide assistance in the context of extant arbitrations in Western Australia. There would be considerable merit in nurturing the existing “domestic” natural resource disputes to a stage where, by reputation, the scope of the catchment area for dispute resolution services in Perth is expanded. It will be important to maintain other sources of funding in the initial period and in mid-term. One picture that emerges quite clearly from the history of the leading arbitration centres is that each of them initially operated on a very lean basis and some of them provided educational or hearing room facilities so as to generate income before such time as revenue from filing or administrative fees were sizeable. Such a course appears sensible and is one that
ought to be adopted by any centre that is to be established. The LCIA also maintains a publication and accepts membership.

Facing the Challenges and Garnering Support

It appears obvious that the creation of a new arbitration centre in Perth is an ambitious exercise. It will call for concerted effort, engagement with industry groups, and the development of a network of arbitrators both to sit on panels as well as to serve as members of an advisory committee. The tasks are challenging but do not represent insurmountable obstacles.

The benefits to follow

Of particular note is the importance of support for international arbitration and arbitration centres from the city or the state in which such centres are to be created. There was recently released a report by Charles River Associates entitled Arbitration in Toronto: An Economic Study (6 September 2012) which was commissioned by an arbitration hearing centre, Arbitration Place, located in Toronto. The report noted that around Canadian $250 million was to be brought into the city’s economy in a year as a result of hosting over 400 arbitrations. The report recorded that it was possible that stakeholders in Canadian arbitration would encourage (Singaporean Government style) backing for the industry by the City, Provincial and Federal Governments.

A similar study may be undertaken in Perth and may produce similar results in terms of the benefits that are likely to flow to the City of Perth, and the State of Western Australia by reason of arbitration activity in Perth.

The Charles River report rightly emphasised the importance of attracting arbitration work and in particular international arbitration work because of its capacity to contribute on a tangible level to the economy. The report delved into the costs likely to be incurred in the arbitration process, including costs, such as meals and accommodation, and for work done by lawyers and arbitrators, as well as expert witnesses. The report considered the multiplier effects of visitor spending to be derived from Toronto playing host to international cases.

Relevant factors and Perth

The report identifies factors that may lead to the choice of Toronto as a venue for arbitration. Factors include:
• neutrality;
• a vibrant legal system;
• supportive courts;
• stability from a political perspective;
• native English speakers;
• accessibility; and
• safety.

All of these factors, in one way or another, are relevant to Perth as a venue for international arbitration.

The need for support

This leads to one simple conclusion. Successful arbitration centres in the region, such as Singapore and Hong Kong, have governments which support those centres both through financial support as well as applying a sensible legislative foundation. Further, such governments promote the city as an attractive venue with first-rate facilities. In this regard, one of the key conclusions that I took from my Fellowship was necessity to engage with and motivate the State Government to support the centre to be established in Perth.

The scope for collaboration

One other idea that emerged during the course of my Fellowship was the possibility for the Perth centre to work collaboratively with an existing leading arbitration institution or with a group of arbitration institutions in the region. There may be some difficulties encountered in pursuing common venture relationships with the largest institutions because of their already dominant position, and their worldwide reach. However, the activities of the LCIA in the Middle East, Asia and in Mauritius suggest that joint ventures may be possible. Similarly, the capacity for the Swiss rules to allow for arbitrations to be conducted under them in seats outside Switzerland, and their innovative approach to expanding the reach of their services bodes well for exploring the possibility of joint ventures.

It may also be possible to seek to establish cooperative relationships with a number of the arbitration institutions in Malaysia, South Korea, Japan, Brunei, Indonesia, Thailand, and other parts of Asia. This may lead to the formation of networks relevant to the
development of a speciality in natural resource arbitration or a centre that works as a “clearing home” for resource disputes.

One other idea that presented itself during my discussions with practitioners in Paris was a possibility of working with arbitral institutions in South Africa. Such bodies deal with and are likely to encounter resource related disputes.

In essence, the idea of collaborative working or working by joint-venture merits serious consideration.

Perth’s position amid the many competitors

The call for the establishment of a centre for international arbitration in many places is becoming louder. The New York State Bar Association in 2011 issued a report of its Task Force on New York Law and International Matters. The report identified valuable benefits associated with using New York law and New York State as a seat for dispute resolution. It called for the establishment of a centre for international arbitration in New York. It may be seen that there is a high level of competition in relation to the market for the delivery of dispute resolution services.

Perth has its own advantages in relation to it being a forum for dispute resolution in transactions and projects, particularly those concerned with energy and resource including:

- qualified lawyers with experience in complex resource transactions and resource issues;
- a qualified professional judiciary;
- the accessibility of Australian courts to foreign parties; and
- being in the same time zone as much of Asia.

These matters alone will not be enough and Western Australian law is not necessarily the law first chosen in the context of international transaction documents where New York law and English law are still popular choices. But, in combination with the other factors discussed, there may be sufficient grounds upon which to advance the workings of the centre.
Patience is required

One matter that emerged very clearly from my Fellowship is the length of time required to transform any centre that is established to fully effective fruition. Estimates range from 5 to 10 years. The road is likely to be a long one.
Conclusions

My Churchill Fellowship confirmed that there is merit in advancing the establishment of a centre for the resolution of natural resource disputes in Perth, Western Australia. There are many challenges to be addressed but the scope of the market is still developing. New projects and industry entrants are expanding the range of disputes likely to be encountered in Australia that concern natural resource.

There is a pressing need to obtain support for the establishment of the centre from Government, industry and from academia. It may be of significant persuasive value for there to be formal research undertaken as to the economic value to Perth of a centre in Western Australia that provides both hearing facilities as well as a sharp, effective institution to progress the resolution of disputes in the natural resource area.

The key findings from my Fellowship are:

- The delivery of arbitration services is an area where there are many institutions and where competition is strong.
- The successful institutions have a rich history and are organised so as to build upon their strength either deriving from size, reputation, brand recognition or perception.
- Much turns upon the persons appointed to assist in an advisory capacity and who are appointed by an institution to act as arbitrator or as members of the panel.
- While appropriate marketing is an important step in the development of a centre’s profile, cost and time constraints may restrict the ability of a new centre to engage in much direct marketing.
- Other means of raising the profile of any centre, such as attendances at conferences and the delivery of targeted education seminars, may be more feasible and may even generate revenue.
- The use of new technologies is strongly to be encouraged but there are still some reservations about its use for final hearing. Further consideration to the use of technology is required in the coming years.
- The ability to deal with witnesses or others in languages other than English needs to be considered.
• There may be some benefit in obtaining a formal report on the economic benefits of establishing an arbitration centre in Perth.

• Such support as is made available by the State or Federal Government, both from a financial perspective or from the perspective of the enactment of supportive legislation, will best place any centre for success in the highly competitive market for arbitration services.

• The possibility of collaboration or joint ventures with leading or regional institutions should not be discounted.

• Engagement with the industry and with parties likely to use the services of the centre are vital to the success of the centre.

My Fellowship confirmed the great potential for the City of Perth and the State of Western Australia, as well as Australia more generally, to reap the benefits that would flow from establishing a specialist arbitration centre in Perth. It also made apparent the need for those interested in establishing a Perth centre for energy and resource arbitration to engage in discussion with local and State Government as well as to advance support from academic and industry organisations.

My Fellowship has clearly marked a way forward in relation to the advancement of a centre in Perth.

I plan to disseminate information from my report in the following ways:

• Circulate my paper widely among the legal sector and other interested parties.

• Present the findings of my Fellowship at relevant conferences and workshops and to interest groups.

• Present the findings of my report to the University of Western Australia.

• Enter into a dialogue with key officers of parties likely to use the centre in Western Australia and advance opportunities to engage formally about the development of the centre.

• Continue to develop international networks that promote the creation of a specialty in natural resource arbitration.
Engage with representatives of industry bodies such as AMPLA, AIPN and APPEA in relation to their views as to the establishment of the centre and send them a copy of my report as appropriate.
Recommendations

Based on my research, visits and discussions, my key recommendations are as follows:

- The establishment of a centre for the resolution of natural resource disputes in Western Australia should be advanced. It is proposed that the centre be known as the Perth Centre for Energy and Resource Arbitration – PCERA.

- Research should be undertaken to investigate the benefits of establishment of a centre in Perth and such research should bolster engagement with local and State Government for the purposes of obtaining support for the centre.

- There should be engagement with parties likely to use the services of the centre, as well as academia and the profession so as to ensure a broad base of support for the centre.

- Further research should be undertaken to develop a database of arbitrators as well as to form the advisory committee or “Court” likely to be of enormous value to the operation of the Centre.

- The Centre should work towards delivering seminars and training both for the purposes of raising its profile as well as to raise revenue in the initial years.

- Close consideration should be given to acquiring a physical space for hearing facilities. These facilities could be a headquarters for the new Centre and be made available to accommodate arbitrations that are currently on foot in Perth, Western Australia.