

**REMARKS OF
THE HONOURABLE MARILYN WARREN AC
CHIEF JUSTICE OF VICTORIA
ON THE OCCASION OF THE LAUNCH OF
Commercial Arbitration in Australia
by Adjunct Professor Doug Jones AM RFD
at
CLAYTON UTZ, MELBOURNE**

In 1974, the Commonwealth *International Arbitration Act* entered into force. Two years earlier the United States Supreme Court had observed when upholding a choice of forum clause that:

“we cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts.”

Since then, the expansion in arbitration as a form of dispute resolution has closely tracked the expansion of global commerce.

The core Priestley 11 subjects taught through Australian university law schools include the area 'Dispute Resolution'.

At Monash today, students may study the subject 'International Commercial Arbitration'. The stated aim of that subject is '[t]o make students familiar with a growing area of dispute resolution in international commerce so that they can better advise clients, both domestic and foreign.'

It is intriguing to make the comparison between Singapore and Australia, particularly Victoria.

In Singapore the Courts identified arbitration as the ADR path to follow. While there is mediation, it is arbitration that is a very prominent dispute resolution model. This approach was significantly re-enforced by the establishment of Maxwell Chambers in Singapore. It is a superb facility that functions as a magnet for commercial arbitrations, both domestic and

international. Maxwell Chambers carries two important correlative benefits. First, the attractive centre augments Singapore as a commercial hub and, therefore, contributes to the Singaporean economy. Secondly, litigation volumes and delays in the Supreme Court of Singapore commercial lists are reduced.

Accepting the significance and potential of arbitration as a form of ADR, we now have a specialist book. Even a brief glance through it, suggests that the author has fulfilled, with resounding success, the reference given by Sir Laurence Street. The former Chief Justice described the author as “a powerhouse of imagination, zeal, professional skills and competence”. It is clear that all those talents have been brought to bear on this project.

Arbitration has dramatic advantages:

1. It enables choice of decision-maker, forum and applicable law.
2. It accommodates expert decision-making.
3. It facilitates confidential or private litigation – the world does not know, through the media and other means, the parties' evidence, commercially sensitive information and, for that matter, the outcome.
4. Provided the legislation is properly applied, arbitration provides speed of hearing, decision-making and enforcement.

For a while in Australia, as former Chief Justice Spigelman identified, there was a general disinterest and lack of appreciation by policy-makers and legal advisors of the potential importance of arbitration as a dispute resolution mechanism. After a slow start the new model law is being introduced.

Once again, arbitration is at the fore of developments in Victorian dispute resolution. The new Victorian Attorney-General introduced the model *Commercial Arbitration Bill 2011* on 16 August. Uniform legislation is in force in New South Wales, and bills have been introduced into the South Australian, Western Australian and Tasmanian Parliaments. All of this legislation is based on the Model Law. The judge in charge of the Victorian Supreme Court Arbitration List, the Hon. Justice Clyde Croft, described that law earlier this year 'as the arbitration law against which all other arbitration laws are judged.' It places Victoria, and Australia at the forefront of best practice in this field internationally.

The roll-out of the Bill will heighten interest in arbitration. But if a student, a practitioner, a policy maker or a Minister wants to know about arbitration how do they find out?

To date much of the commentary has started at a high pitch level – knowledge and experience is presumed. What if the individual needs an intelligent and perceptive description of commercial arbitration in Australia?

A void has been filled by the excellent text published by Adjunct Professor Doug Jones AM RFD, *Commercial Arbitration in Australia*. For the uninformed or curious the work commences with an excellent overview of the history of arbitration, particularly in Australia. It is fascinating. Did you realise arbitration can be traced back to the ancient times of the Hittites, the Persians and Greeks and the Romans? They were traders; they were commercial people who wanted their disputes solved expeditiously and expertly. Here in Victoria, our arbitration roots are traced to the settlers in the Port Phillip Association. They had investment and pastoral interests. Their founding agreement provided that any disputes were to be arbitrated by a three-member panel. The

first recorded arbitration in this vicinity was in 1836, 175 years ago.

Doug Jones' text opens with this story and swiftly moves to the modern framework. The text is constructed into chapters covering each of the parts of the model Act. Conveniently the relevant sections are set out in each chapter followed by careful but accessible commentary and thorough footnoting particularly of the leading authorities. The book also appends in their entirety, critical documents, such as the UNCITRAL Model Law on International Commercial Arbitration and the ACICA Arbitration Rules.

For the student, the lawyer, the barrister, the arbitrator and the judge it is an essential text for anyone working in the commercial jurisdictions.

Doug Jones, in his capacity as President of the Australian Centre for International Commercial Arbitration (ACICA) has promoted and supported the expansion of the arbitration grid in Australia. Building on the joint venture between ACICA and the New South Wales and Commonwealth Governments in Sydney, the next centre on the national grid I expect will be Melbourne. It will be part of the Australian International Disputes Centre. ACICA together with the Law Institute of Victoria, the Victorian Bar and the other arbitration centres and institutes have urged, with my strong support, the Victorian government to open a centre in Melbourne.

Meanwhile, I expect pressure to mount as the attractiveness of arbitration as a form of dispute resolution mounts. The enactment of the model national law in Victoria will ensure that occurs.

The commercial case for an arbitration centre in Melbourne is unassailable. As the audience in this room clearly demonstrates the arbitration expertise is already here. With a strong commercial and legal framework, Melbourne and Australia generally are ideally placed to become a grid for commercial arbitration in the Asia Pacific region. I am optimistic that a Melbourne centre will be opened in the near future. In the meantime, I expect more and more arbitration to occur in Victoria supported by the new Act as lawyers utilise arbitration as a means of tailoring dispute resolution more effectively to the commercial interests of their clients. Professor Jones' book is exquisitely timed to support that expansion.

I commend it to all those advising, drafting or litigating in the commercial jurisdictions. I also commend it to those interested in dispute resolution and civil procedure.

I extend my congratulations to the author, Professor Doug Jones. I have much pleasure in launching in Melbourne, *Commercial Arbitration in Australia*.