

# **An Australian International Commercial Court: A Quixotic Concept or a necessity?**

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Presented by

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# Background

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## Concentration of economic activity in the Northern Hemisphere


- Establishment of arbitral seats such as London, Paris, New York

Before 1980s

1980s onwards

## The birth of a global marketplace

- Globalisation enabled the emergence of Asia's booming economies
- Growth of regional dispute resolution in Asia-Pacific
- Growth of Australian financial services



Opportunities for Australia to develop into a leading regional dispute resolution hub

# Challenges facing IA in Australia

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- Australia satisfies all of the London Principles, making it a safe and effective seat for disputing parties.
- Nevertheless, arbitration in Australia is yet to reach its full potential.
- What are the challenges that remain?



**Tyranny of  
distance**



**Regional  
Rivalries**



**Fragmented  
law**

# Australian International Commercial Court

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A full service dispute resolution offering in Australia will assist in attracting commercial parties

Provides international parties with choice of an alternative forum to IA focussing on international commercial law.

Recognises and draws upon the expertise and intellectual competence of the Australian judiciary.

Encourages commercial parties to designate Australia in exclusive choice of court agreements.

# Development of IA in Australia



The Law



The Judiciary



Facilities



Legal Expertise  
& Education

- Ongoing amendments to the IAA have enhanced Australia's attractiveness as a seat e.g. confidentiality and enforceability provisions.
- Australia has adopted the Model Law in both domestic and international arbitration regimes.
- Domestic arbitration can inform and influence the practice of international arbitration.
- Parties are entitled to be represented by counsel of their choice: s 29(2) IAA.

# Development of IA in Australia



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- The courts of an effective arbitral seat possess two qualities:
  1. Experienced and capable judges; and
  2. A non-interventionist approach to the enforcement of arbitral awards: Model Law Art 5.
- Specialist arbitration lists in Federal Court and State Supreme Courts → greater efficiency and certainty.
- Pro-arbitration Australian jurisprudence:
  - E.g. *TCL Air Conditioner*, *Traxys Europe SA*, *Comandate Marine Corp*, *Uganda Telecom Ltd*, *William Hare UAE LLC*, *Rinehart*.

# Development of IA in Australia



The Law



The Judiciary



Facilities



Legal Expertise  
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- Australia has access to a leading arbitral institution, ACICA.
  - Recently introduced ACICA Rules 2016, which supersede the 2011 and 2005 editions.
  - ACICA also offers provisions for emergency arbitrators and expedited arbitrations.
- The Australian Disputes (ADC) is a custom-designed venue that offers world class service and facilities.
- Also associated with ACICA:
  - Perth Centre for Energy & Resources Arbitration (PCERA); and
  - Australian Maritime and Transport Arbitration Commission (AMTAC).

# Development of IA in Australia



The Law



The Judiciary



Facilities



Legal Expertise  
& Education

- Domestic and international law firms have introduced IA practices in Australia.
  - Law in Australia is more open to international practitioners than elsewhere.
  - Cost of operating in Australia is less than other regional centres.
- ABA and State Bars are seeking international opportunities for Australian barristers.
  - Australian barristers associated with overseas chambers (e.g. Maxwell 42).
- High quality of education in Australia:
  - Australian universities offer IA courses and encourage participation in IA moots (e.g. Vis Moot, CIArb/NSWYL IA Moot)
  - Accreditation and training courses offered by CIArb Australia and the Resolution Institute.



# Challenges facing IA in Australia

- It is therefore clear that Australia satisfies all of the London Principles, making it a safe and effective seat for disputing parties.
- Nevertheless, arbitration in Australia is yet to reach its full potential.
- What are the challenges that remain?

# Challenges facing IA in Australia



## Tyranny of Distance

- The relevance of the tyranny of distance is fading.
- Technology has ameliorated the inconvenience caused by Australia's location (e.g. virtual hearings and teleconferences).
- Flight connections are numerous and direct flights have been introduced, cutting down travel time (e.g. Perth to London).



## Regional Rivalries

- The success of IA (and international dispute resolution) in Australia requires a national effort.
- Equivalent federations have grappled with this challenge (e.g. USA).
- Symbiotic relationship between the development of IA and domestic court dispute resolution (e.g. IA and Commercial Court in London).



## Fragmented Laws

- Choice of law currently offered is that of a particular state → deters international parties.
- Applying "Australian common law" unlikely to solve perceptions of fragmentation.
- Even greater inconsistencies exist in state and territory statutes.

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# Conclusion

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- When one puts Australian arbitration to the test of the London principles, it is clear that the current landscape is one in which arbitration can thrive.
- However, Australia is yet to realise its potential as a hub for international dispute resolution. There are challenges which must be addressed.
- In order to compete, Australia needs the complete package:
  1. A robust international arbitration framework (which it has);
  2. An International Commercial Law that parties can choose; and
  3. An International Commercial Court.
- IA will benefit from increased opportunities if Australia is able to promote itself as a desirable forum for international dispute resolution.



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