Australia in the 32nd Willem C Vis International Commercial Arbitration Moot

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The Willem C Vis International Commercial Arbitration Moot was held on 11-17 April 2025 in Vienna (following its sister event, the Vis East Moot, being held in Hong Kong from 30 March-6 April 2025). Now in its 32nd year, the 'Vis Moot' has become a highlight of the international arbitration calendar.

Although the Vis Moot is well known to Australian students and practitioners, its significance has not yet been fully been recognised by arbitration counsel and arbitrators. The Vis Moot is a unique forum for highlighting Australia's important, and growing, contribution to the international arbitral community, including the quality of its arbitrators, lawyers and institutions, and Australia's suitability as a seat or place for international arbitrations.

This article sets out a brief history and summary of the Vis Moot, the special position it now occupies in the arbitration world, and the extraordinary contributions that Australians have made to the Vis Moot this year.

The Moot[3]

The Vis Moot is a massive undertaking.

It was created in 1992-93 by Dr Eric Bergsten, Professor of Law at Pace University School of Law, former Secretary of the United Nations Commission on International Trade Law ('UNCITRAL') in Vienna, together with a small but dedicated group of colleagues. It was designed as a forum for encouraging interest in international commercial arbitration among students, and, in addition, to promote knowledge of and engagement with the *United Nations Convention on Contracts for the International Sale of Goods*[4] ('**CISG**'), a convention concluded in 1980 and coming into force in 1988 on which Professor Bergsten had worked as a senior legal officer at UNCITRAL since 1975.

In 1993-94, there were just 11 teams from nine countries. In 2025, 384 teams from 89 countries competed in Vienna. That amounted to over 2,500 participating

1 Independent arbitrator at Sydney Arbitration Chambers: see Doug Jones, 'International Commercial Arbitrator' (Web Page) <www.dougjones.info>.
2 Independent arbitrator at Sydney Arbitration Chambers: see Janet Walker, 'Janet Walker CM: International Arbitration' (Web Page, 2017) <www.janet-walker.com>.
3 Details about the Vis Moot and its history may be found at the Vis Moot's website: Association for the Organisation and Promotion of the Willem C Vis International Commercial Arbitration Moot, 'Willem C Vis International Commercial Arbitration Moot' (Web Page, 2022) <https://www.vismoot.org/>.
4 *United Nations Convention on Contracts for the International Sale of Goods*, opened for signature 11 April 1980, 1489 UNTS 3 (entered into force 1 January 1988).

students. In addition to those students (the 'mooties') and their coaches, over a thousand practitioners descended on Vienna to act as arbitrators in the Vis Moot, and to participate in the vast number of arbitration conferences (and hearings) that are concentrated there in the margins of the Moot. There is simply no other event in the international arbitration calendar that attracts participation of this magnitude.

Each year, participants work on a casefile written by the competition directors. They develop their skills in written advocacy, through the submission of memoranda for both the Claimant and the Respondent in the casefile's hypothetical arbitration, and oral advocacy, through many practice rounds, 'pre-moots' (independently organised preparation competitions, described below), and, eventually, rounds of pleadings in Hong Kong or Vienna.

The case always deals with 'procedural' issues often relating to matters such as jurisdiction, governing law, and other questions of the conduct of the arbitration. Each year, these issues are shaped in part by the institutional rules of one of the world's leading arbitral institutions that are applied as part of the Vis Moot's hypothetical dispute.[5] The case also deals with 'substantive' issues relating to the merits of dispute, arising from an international sale of goods contract and a consideration of the *CISG*.

The 32nd Vis Moot had four main issues: two procedural issues — (i) jurisdiction and admissibility in light of a multi-tiered dispute resolution clause; and (ii) documents attracting different species of privilege under (arguably) different governing laws; and two 'substantive'[6] issues — (iii) the application of the CISG to a turnkey, construction contract with various domestic (not international) elements; and (iv) an apparent attempt implicitly to exclude the CISG. Speaking from personal experience as arbitrators, the questions of pre-conditions to arbitration and of the admissibility of evidence that were canvassed this year were of real practical significance and the complexity of the analysis required was impressive. The case thus captures a necessarily condensed but highly realistic slice of the law and practice of arbitration. Regarding the merits, Professor Stefan Kröll – the Vis Moot director currently responsible for drafting the Vis

5 For the 32nd Vis Moot, the applicable rules were the 2024 Rules of the Finland Arbitration Institute.

6 Perhaps better described this year as issues of governing law, rather than going to the 'merits' of the case per se.

Moot problem – has noted in multiple interviews that he accepts nearly every CISG-related arbitral appointment that he is offered and takes inspiration from those cases in designing the Vis Moot's substantive issues. For this reason, the Vis Moot's substantive aspects are also intended to reflect real-life dispute resolution.

The Vis Moot is not just a week-long event in Vienna. It is preceded by a host of 'pre-moots': competitions organised independently by many arbitral institutions, universities and law firms globally that are based on the current years' case. More than 60 of these pre-moots were promoted on the Vis Moot website for this past 32nd Vis Moot, but there were many other less formally organised, online and local events. Among those pre-moots was the CIArb Australia Vis Pre-Moot, hosted by the Chartered Institute of Arbitrators Australia Branch, which has been running for the past eight years.

In addition to these pre-moots is the sister competition, the Vis East, which has been hosted in Hong Kong since 2003 and attracts over 120 teams. Its popularity, like the Vis, continues to grow apace.

Australia at the Vis

Every university can register a team in the competition and every team can participate in the rounds in Vienna. Of the 384 teams in the 32nd Vis Moot, there were 10 Australian teams: the Australian Catholic University; the Australian National University; Bond University; Deakin University; Griffith University; the Queensland University of Technology; the University of Queensland; the University of New South Wales; the University of Notre Dame Australia; and the University of Sydney.

Comprising less than 3% of the participating teams, these 10 teams won a disproportionate number of awards and commendations. Six of the Australian teams ranked within the top 64 teams overall,[7] with Deakin University tying for 5th place. In the prizes for written memoranda for the Respondent, Australian universities ranked first and third in the world.[8] Perhaps most impressively, the first, second and third ranked oralists in the entire competition (ie, out of thousands of participating students) were all Australian: the first time in the Vis Moot's history that every speaking prize was won by students from a single country.[9]

This exceptional achievement is not an anomaly. Just last year in the 31st Vis Moot, two Australian students from the University of Sydney were ranked as the first and third best oralists in the world respectively,[10] and an Australian has been on the podium for 13 out of the preceding 30 moots. Australian teams have also won the overall moot on five occasions,[11] and been the runner-up on four occasions.[12]

Each year's case applies a different set of institutional rules and, for the 17th Vis Moot in 2010, the first edition of the ACICA Rules — the 2005 Rules — were used. Professor Christopher Kee of Flinders University, who had been a member of the ACICA sub-committee that had drafted those Rules, is currently one of the three co-directors of the Vis Moot alongside Professor Stefan Kröll of Bucerius Law School, and Patrizia Netal, Vice President of the Vienna International Arbitration Centre (VIAC).

Australia has had a long and proud history of participating in the Vis Moot and supporting it. Still, there is something remarkable about Australia's extraordinary continuing success. Despite the ease of travelling to Vienna for so many European teams, the tyranny of distance has not prevailed!

Beyond the logistical challenges of participating, many of the finer details of arbitral practice are mainstream topics in European universities, are far more familiar to civil law practitioners, and are only recently receiving

7 Being the Australian National University, Deakin University, the University of Queensland, the University of New South Wales, the University of Notre Dame Australia and the University of Sydney.

8 The University of New South Wales placed first, and the University of Sydney placed third.

9 The award-winning oralists were, in order from first to third: Sonia Ram (University of New South Wales); Madelize Breet (University of Queensland); and Aman Mohamed (University of New South Wales).

10 Yijun Cui placed first, and Thomas Martyn placed third.

11 Winning teams came from the University of Queensland (1997 and 2000), Deakin University (1999 and 2014) and Monash University (2001).

12 The runners-up were also from Deakin University (1996), the University of Queensland (1998 and 2002) and Monash University (2013).

attention in the common law: and only generally in the context of arbitration.[13] Similarly, the *CISG*, which is a regular feature of legal education in many civil law countries[14] is often excluded from Australian contracts, leading to a dearth of Australian judicial and scholarly interest that would foster insight into it.[15] Add to this the limited scope for Australian students to learn about the civil law. Roman law is not part of the Priestley 11 and has not been a mandatory university subject since the 1950s, and Australian universities lack the kind of institutional scholarly interest in the civil law found in universities in the United Kingdom.[16]

All this is to say that the success of Australian teams in the Vis Moot in spite of the geographic distance of the competition from Australia, and the unfamiliarity of the Vis Moot's issues to Australian students, is a testament to the increasing interest of the next generation in international arbitration, and the commitment of Australian universities — both teachers and students — to the Vis Moot as a forum for cultivating that interest. The significance of the Vis Moot cannot be overstated.

It has been our privilege to participate in the Moot for many years: Janet, for thirteen years as a coach for her university team and an arbitrator in the competition from 2001; and Doug as an arbitrator since 2004. We encourage all those interested in practicing as counsel and arbitrators to become involved – in giving feedback to teams in practice rounds, in judging written memoranda, and in travelling to Vienna or Hong Kong to judge the oral rounds. We have found it an extraordinarily rewarding experience and we have seen, year upon year, the important role that it plays in the development of international arbitration in Australia.

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13 See, eg, Cour de Cassation — Chambre Mixte, 00-19.423 and 00-19.424, 14 February 2003, reported in (2003) Bull mixte n° 1, 1 (*Poiré v Tripier*). Cf the more recent discussion in common law jurisdictions, such as in *C v D* (2023) 26 HKCFAR 216, in which the dichotomy between jurisdiction and admissibility was accepted by the Court (with the exception of Gummow NPJ) as a helpful framework for analysing preconditions to arbitration. Courts are probably unlikely to extend the same analytical framework to, say, agreements to mediate prior to commencing litigation. In such cases, courts in Australia have demonstrated a willingness to exercise jurisdiction to enforce the agreement to mediate, rather than to deny jurisdiction until the agreement has been complied with: *Hooper Bailie Associated Ltd v Natcon Group Pty Ltd* (1992) 28 NSWLR 194, 208 (Giles J); *Townsend v Coyne* (Supreme Court of New South Wales, Young J, 26 April 1995) 17; Robert Angyal, 'Enforceability of Agreements to Mediate: Seventeen Years after Hooper Bailie' (2009) 83 *Australian Law Journal* 299, 301-2.

14 Franklins Pty Ltd v Metcash Trading Ltd (2009) 76 NSWLR 603, 614 [9] (Allsop P), citing *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101, 1119 [39] (Lord Hoffmann).

15 See Ingeborg Schwenzer, 'Divergent Interpretations: Reasons and Solutions' in Larry A DiMatteo (ed), *International Sales Law: A Global Challenge* (Cambridge University Press, 2014) 102, 105 (especially n 24). Of course, this is not to be misunderstood as underplaying the contributions that Australian academics have made to *CISG* scholarship, which are themselves considerable and worthy of praise.

16 For a discussion, see generally Arthur R Emmett, *Roman Law under the Southern Cross: Sidere Ius Civile Mutato* (The Federation Press, 2025) chs 1 and 5. See also Lisa Spagnolo, 'Inside Out: The Outer Limits of the CISG in Times of Change: Smart Contracts, AI, Digital Assets and Cryptocurrency' in Bruno Zeller and Camilla Baasch Andersen (eds), *Routledge Handbook on Transnational Commercial Law* (Routledge, 2025) 73, 80.