

A QA with Doug Jones

08 April 2020



What was your path into law, international arbitration and sitting as an arbitrator?

Having had no family background in the law, I chose to study it more by chance than careful choice, but as soon as I started my study, I realised that it was a very enticing discipline indeed. The study and practice of the law has remained for me a rewarding and fascinating endeavour.

I began practising litigation in Brisbane in areas including insurance, maritime and civil liberties. By chance one day, a client came knocking with a fairly massive series of construction problems which launched me upon the specialisation of construction and project law that was for many years thereafter to be my main area of practice.

From disputes I moved into transactional work and, blessed with a great and substantial team, led my firms' projects practice throughout Australia and the region.

It was through project dispute work that I was introduced to arbitration both domestic and international. I took an interest in the development of commercial arbitration and joined a number of international organisations, such as the ICC and the Chartered Institute of Arbitrators.

After many years working as counsel, I began receiving arbitrator appointments. That developed over time into a significant portion of my work, leading me to decide to chance my hand as a full-time arbitrator. This of course required me to leave my law firm (Clayton Utz), which I did in 2014 and set up my own practice as a full-time arbitrator.

As the appointments increased, I found myself arbitrating disputes beyond those involving construction projects, including, joint venture, post M&A, commodities, oil and gas, mining, power generation and investor-state, in many parts of the world and governed by various legal systems.

How does one win an award for being the best prepared and most responsive arbitrator? What advice do you have to others in the field in terms of process?

Of course, one never knows how recognition of this sort is awarded. There are many highly capable and dedicated people in the field. My focus has always been on providing good service and ensuring that I have the resources to carry out work efficiently. I like to think that good performance is welcomed by colleagues and parties and that it will lead to recognition of my capacity to contribute.

When I committed to a practise as a full-time arbitrator, I recognised that it was unlikely to be a part-time career or one that could be pursued without administrative support. It has proved thus, and it would be fair to say that the pressure to perform is continuous. I enjoy every minute of it.

My advice to others would be: do your very best and, insofar as you contribute to ideas and debate in the field, be sure to walk the talk.

“The advancing use of technology in arbitration will contribute significantly to its growth and efficiency.”

What's been the best development in arbitration in recent years, and what's another you'd like to see?

The use of technology has always proved a challenge for arbitrators and arbitral institutions. The impact of the pandemic has forced everyone to embrace and effectively use technology which hitherto has not been deployed as effectively in arbitration as it has in other areas of commercial activity. Now, arbitration could be said to be approaching the leading edge of technology, the development of which is

moving rapidly. The advancing use of technology in arbitration will contribute significantly to its growth and efficiency.

What have been the highs and lows of your career as an arbitrator to date?

Receiving this award has been for me one of the highs. It is also exceptionally satisfying to see the efforts that I have made to promote proactive case management now being embraced by parties and their counsel, and other arbitrators.

As for the lows, I have experienced some examples of aggressive attacks by parties which have been the subject of some publicity, and concerning which, I am relieved to say, the work of the tribunals on which I served has been vindicated in the courts. While I would not wish these travails on any arbitrator, I have accepted that they come with the territory and that I must always play the ball as it is bowled.

In contrast, there are occasions in which counsel who have represented unsuccessful parties in arbitrations before me, have appointed me in subsequent matters. Always a great compliment.

What are your dos and don'ts for parties and their counsel during arbitrations?

My preference is to answer these questions in the positive. From these responses the negative can be divined. Two points stand out:

- Very little ultimate value is achieved by overly contentious written or oral submissions. Perhaps because, sadly, restrained and polite submissions are somewhat exceptional, they tend to stand out and have disproportional success.
- Brevity and relevance should be the watchword in advocacy, both written and oral. A concentration on key, rather than peripheral, issues is particularly effective.

What is your most memorable moment from a hearing?

Following from the comment above about watching the take-up in relation to my efforts to promote proactive case management, one of the most memorable moments for me at a hearing was a joint presentation by party-appointed experts on disruption experienced in the construction of a nuclear power plant. This was the culmination of proactive case management between the tribunal, counsel and the experts. It was a clear demonstration of expert evidence best practice.