

## BOOK REVIEWS

### **The Arbitrator's Companion**

by **Geoffrey Gibson**

The Federation Press 2001, 260 Pages, AUD100 ISBN 186287400 X

*Reviewed by Doug Jones*

Domestic arbitration in Australia has been languishing for some time as a preferred method of dispute resolution. Consensual binding expert determination, non-binding ADR in its many forms, statutory dispute resolution schemes, and indeed proceedings in the commercial divisions of some of the State Supreme Courts, particularly that of New South Wales, combine to make arbitration a threatened species of domestic dispute resolution.

In this very readable book the author provides an introduction to the essential elements of the domestic arbitration process and to the elements of law likely to be encountered by arbitrators. He has sought to emphasise the distinctiveness from court proceedings of the arbitration process and that, by entering into an agreement to arbitrate, the parties are using a quite different process from that in the courts. Indeed at pages 30 and 31 the author warns against the "lure of legalism" and the need "to give full consideration to the sorts of things that give litigants a bad name" such as pleadings, discovery, trial directions and the laws of evidence. The apparent inability of arbitrators to employ procedures akin to the innovative ones adopted by some courts to avoid these scourges of litigation has led to arbitration fading as a preferred method of dispute resolution.

The book is divided into three parts. The first is an introduction to the law relating to arbitration, the second deals with the practice of arbitration, the third with elements of law arbitrators are likely to encounter, the fourth part is a very useful glossary of legal terms for arbitrators and the fifth a reproduction of the legislation governing domestic and international arbitration in Australia, together with extracts from the New York Convention and the UNCITRAL Model Law, which are Schedules 1 and 2 to the International Arbitration Act, (Cth).

For those unfamiliar with the arbitral process, and indeed for some all too familiar with its consumer unfriendly aspects, this book provides a readable and humorous exposition of the key issues facing arbitrators concerned with the delivery of a just and cost-effective outcome for the parties. In section 2.8 of Part 2 the author includes a case study involving an arbitration between a manufacturer and a wholesaler of car parts. It illustrates a number of points made in the book and provides useful guidance to arbitrators in the provision of reasons. It would have been helpful for the author to include in the case study, in addition to the reasons for the award, a form of formal award.

Part 3 of the book, an introduction to elements of law likely to be encountered by arbitrators, briefly discusses many of the legal issues and principles likely to be encountered in arbitral proceedings. A feature of commercial disputes in Australia is the cause of action for misleading and deceptive conduct under the Commonwealth Trade Practices Act and the various State Fair Trading Acts. The author deals in section 3.8 with this complex and ubiquitous area of the law with a clarity and simplicity that will be of great assistance to those unfamiliar with it.

It is refreshing to see the publication of a clear and humorous discussion of the fundamentals of arbitration, and one that recognises the potentially valuable characteristics of arbitration in the domestic context. Nevertheless the challenges facing arbitration as a domestic form of dispute resolution are such that those keen to follow the suggestions in this book will need more detailed assistance with the devising and enforcement of simplified procedures, the relevance of domestic arbitral rules to the

development of those procedures, and the relationship between arbitration and other means of dispute resolution including the vexed question of med-arb.

**Building Contract Dictionary**

*by David Chappell, Derek Marshall, Vincent Powell-Smith and Simon Cavender*

Blackwell Science 3rd ed. 2001, 432 pages, £59.50 ISBN 063203964 7

*Reviewed by Peter Greenwood*

This is an indispensable book which provides a succinct but authoritative reference to "words, phrases and terms" encountered in the construction industry. It is, according to the preface, a dictionary and nothing more, yet many of the entries give a substantial commentary on a variety of matters you always wanted to know about (or thought you did) but never got round to finding out. This is the third edition of a book first conceived in 1985 by Vincent Powell-Smith as a handy reference for architects, quantity surveyors and other professionals as well as contractors and their staff. To this list can be added construction lawyers, who have found earlier editions useful and will no doubt find this latest edition of considerable assistance.

In his foreword Judge Bowsher congratulates the authors and observes that he would have bought the first edition on his appointment as Official Referee had he been aware of its existence and that it would have been an enormous help to him. This latest edition would have been of even greater assistance. It has been expanded to include over 800 separate entries. Reference is made to a wide range of contracts including JCT 98, IFC 98, MW 98, WCD 98, PCC 98, MC 98, ACA 3, GC/Works/1 (1998), NEC, NSC/C, DOM/1 and DOM/2. Whilst this is not a legal textbook, the earlier edition published over 10 years ago has nonetheless been reconsidered and updated in the light of more recent case law and regulations, in particular the Housing Grants, Construction and Regeneration Act 1996, Contracts (Rights of Third Parties) Act 1999, Late Payment of Commercial Debts (Interest) Act 1998, Human Rights Act 1998, Construction (Design and Management) Regulations 1994, Scheme for Construction Contracts (England & Wales) Regulations 1998 and Civil Procedure Rules introduced in 1999. Many of the entries are in far more depth than would be expected from a dictionary, indeed many definitions extend to over a page and give useful references to other related areas and to relevant cases. By way of example the second entry deals with "Abatement". It gives three separate definitions and highlights the differences in law between abatement, set-off and counterclaim. Abatement is a sensitive area in adjudication, which itself is dealt with over one and a half pages. There is an equally in-depth review of "adverse weather conditions", which highlights the often forgotten qualifying word "exceptionally", of the utmost importance in the construction industry. In addition to the informative text the book contains sketches on boundary ownership and the various party wall categories, together with a diagram of the organisation of the English court system, civil and criminal.

If the multitude of definitions is not enough, there is also reference to other books "of interest" dealing with contracts. Not surprisingly, these are by David Chappell and Vincent Powell-Smith. There is also a comprehensive table of cases. The book is stated to be correct up to December 31, 2000 but a few later developments have been incorporated.

This book is likely to be referred to regularly by all those involved in the construction industry and will be an asset for the next ten years or so until no doubt the next edition arrives, as arrive it must, if it is to remain relevant and credible. At £59.50 it is good value for money.