



Précis Paper

Arbitration Agreements and the Enforcement of the Award

Introduction

In this edition of BenchTV, Dennis Wilson Barrister at Edmund Barton Chambers, speaks with Alan Conolly, Senior Partner at AR Conolly and Company Lawyers, on the topic of arbitration, with a special focus on international arbitration.

Key areas of presenters' discussion

- 1.** Arbitration's role in dealing with jurisdictions delayed through volume of work
- 2.** Australia's relationship with London
- 3.** Singapore's promotion of arbitration
- 4.** Hong Kong and the 'One Belt One Road' policy
- 5.** Kuala Lumpur's place in relation to international arbitration
- 6.** Enforcement of arbitral awards
- 7.** Perth as a seat of international dispute resolution
- 8.** Sydney's position in respect of arbitration
- 9.** The New York Convention
- 10.** The role of the Model Law in the structure of an arbitral proceeding
- 11.** Possibilities for challenging a decision

Arbitration's role in dealing with jurisdictions delayed through volume of work

The presentation opens with two questions asked: How do we deal with the substantial increase in trials in the District Court of New South Wales? Would it be possible to have legislation allowing trials by arbitration with consent of the DPP and accused? It is explained that issues in relation to a person's status, such as you find in the context of criminal law, are generally considered incapable of arbitration. Rather, a person's status is determined pursuant to legislation. A view in the United States towards a consideration of arbitration in criminal law is referenced. In the context of family law, it is noted that The Family Law Act 1975 (Cth) provides for arbitration in respect of disputes in relation to property and children. Mediation is also discussed. It is noted that the success of mediation is related to the fact that parties who come to mediation must come in good faith. Specific reference is made the Succession Act 2006 (Cth) jurisdiction. In the Succession Act jurisdiction, a hearing date is not usually given unless the parties have attended mediation. A problem faced by insurers is noted: that some insurers feel mediation can double their costs bill in cases where it is evident that the mediation will not be successful. An area of interesting potential study is noted: the extent to which data-gathering is taking place in the system concerning, for example, the success rate of mediations.

Australia's relationship with London

This aspect of the discussion begins with the observation that Chief Justice Allsop of the Federal Court once reminded an Insurance Law Association at an annual general meeting that the centre of commerce in terms of the law was very much a product of what happens in London. The influential role of London as a pivotal centre of business, and the 'home' of arbitration, is acknowledged. However the ability of Australia to hold its own, through its legislation, practitioners and ability to deal with cases is also raised in reply.

Singapore's promotion of arbitration

Singapore's promotion of arbitration is discussed, in particular respect of its good amenity, the favourable sentiment of its legislation towards international

commercial arbitration, its provision of premises at which arbitration may occur, and the fact that it is a place where there is almost a melting pot of commercial interests. It is noted that Singapore had proven itself to be a centre for arbitration.

Hong Kong and the 'One Belt One Road' policy

It is noted that Hong Kong has also been successful and is looking forward to dispute resolution work including arbitration as a result of the 'one belt one road' policy. The policy is explained as one which provides for shipping lanes and over-land trade routes to the West. Reference is made to a book by James Bradley, *The China Mirage, The Hidden History of American Disaster in Asia* 2015.

Kuala Lumpur's place in relation to international arbitration

The position of Malaysia is discussed. Malaysia is a Model Law country. It is a signatory to the New York Convention which endeavours to promote arbitration. It has a magnificent premises for the conduct of arbitration: the Kuala Lumpur Regional Centre for Arbitration (KLRC). It is noted that the President of the KLRC is working tirelessly to promote Kuala Lumpur, and that Kuala Lumpur, Singapore and Hong Kong are all placed reasonably proximate to Australia for the purposes of conducting international arbitration.

Enforcement of arbitral awards.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards is referenced and it is noted that an arbitral award in an international commercial arbitration is enforceable as a judgment in any of the States which have ratified the New York Convention.

Perth as a seat of international dispute resolution

Perth's magnificent potential with reference to its closeness to India, Malaysia and Singapore, and its magnificent amenity. It is noted that there are five sets of English chambers in Singapore who notice the potential of Perth, and that the downturn of

the mining industry in Perth has given rise to the triggering of dispute resolution clauses including arbitration clauses in respect of its mining industry and infrastructure work.

Sydney's position in respect of arbitration

In the context of Sydney's potential, two mantras shared by countries such as Singapore, Malaysia, Hong Kong & United Arab Emirates are raised. One is to ask the question: why travel 8 or 10 hours for an arbitration in Sydney when it can be conducted in established centres like Singapore and Hong Kong? The other is that: "Yes, you have the International Commercial Arbitration Act 1974, which is being interpreted and applied by 6 states and 3 territories. Tell us about consistency in decision making". It is noted that neither the distance argument, nor the consistency in decision making argument, is borne out in proper analysis

The New York Convention

The New York Convention is discussed. It is the 1958 convention for the settlement of trade disputes to which about 160 countries are signatories. It is noted that Australia ratified the New York Convention in March 1975, and that the Convention says two things: 1. An arbitration agreement must be in writing and it is enforceable. 2. An arbitral award is enforceable in any of the countries who are signatories or have adopted it, as if it were a judgment of that country.

The role of the Model Law in the structure of an arbitral proceeding

It is noted that when it comes to the structure of an arbitral proceeding, and necessary procedural matters, that is where the Model Law comes in. The United Nations Commission on International Trade Law brought into existence a model law, which is part of the law of Australia, and which gives a structure to the way an arbitral proceeding is run.

Possibilities for challenging a decision

It is noted that the possibilities for challenging a decision made under the Model Law are found in the International Arbitration Act 1974 (Cth). There are about 6 reasons why you can contest the award and there is jurisdiction in the Federal and Supreme Court to determine challenges.

Bibliography

Family Law Act 1975 (Cth)

Succession Act 2006 (Cth)

James Bradley, The China Mirage, The Hidden History of American Disaster in Asia 2015

KLRC: Kuala Lumpur Regional Centre for Arbitration

Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The United Nations Commission on International Trade Law

International Arbitration Act 1974 (Cth)

Commercial Arbitration Act 2010 (NSW)

Council of Australian Governments (COAG)

Presenters' Biographies:

Dennis Wilson was admitted to practice in 1978. He is also registered to practice foreign law in the Singapore International Commercial Court. Dennis has an outstanding reputation in the practice of Environmental Law, Corporate Social Responsibility, Corporate Governance, Corporate Finance and Compliance, Mediation and Arbitration. Dennis holds a Diploma in Law, a Diploma in Criminology, a Master of Laws from the University of Sydney, a Post Graduate Certificate in Construction Law from Murdoch University and a Post Graduate Certificate in Family Dispute Resolution from Bond University. He has completed the Mediation and Negotiation Program at Harvard University and the Brussels

Diplomatic Academy. Dennis is currently an Independent Mediator and Arbitrator, consultant and party representative.

Alan Conolly founded the legal firm AR Conolly and Company Lawyers in 1968 where he remains a partner in full-time practice. He has chaired companies in diverse industries including oil, IT, dance, agrochemicals and film. Alan is a life member of the Law Society of New South Wales and publisher of Benchmark.