

Recent Developments Concerning the Australian Centre for International Commercial Arbitration

By Michael Pryles¹

1. Introduction

Australia has its own established international arbitral institution, providing a range of services in relation to international commercial arbitration, mediation and other forms of ADR. The Australian Centre for International Commercial Arbitration ('ACICA') is a not-for-profit organisation. It began in 1984 with the aims of promoting Australia as a venue for international arbitration; supporting and facilitating the study of and training in arbitration; disseminating and forming a reference library of informative relevant materials; and providing facilities for the organisation of arbitrations. Until a few years ago, ACICA discharged three main functions. The first was the promotion of international arbitration in Australia and the promotion of Australia as a venue for international arbitrations. The second was to act as an appointing authority for statutory arbitrations, particularly arbitrations under the Retail Tenancies legislation in Victoria. The third was to operate and manage hearing rooms for arbitrations and mediations.

More recently the Retail Tenancies legislation in Victoria was amended to provide for retail tenancy disputes to go to a tribunal. This removed ACICA's role as an appointing authority for arbitrations and mediations in retail tenancy disputes. In turn, this required a re-appraisal of the activities, structure and funding of ACICA and the necessity to maintain hearing rooms. ACICA has now undertaken a comprehensive review and prepared a new business plan. Its thrust is for ACICA to concentrate on its core activities of promoting international arbitration in Australia and promoting Australia as a venue for international arbitrations. A corollary of this is the promotion of the use of Australians as arbitration practitioners.

The Board of ACICA decided that a number of matters needed to be addressed, including working more closely with the main participants in international arbitration in Australia, in particular, the major law firms, dealing with the multiplicity of ADR organisations in Australia and finding new sources of funding. These matters are dealt with in the business plan which proposes a significant restructure of ACICA including the introduction of corporate members. Amendments to the Constitution of ACICA have been drafted and will be put to a general meeting early in September.

Work on restructuring has proceeded quickly and the business plan is already being implemented. In particular leading law firms have readily accepted invitations to participate in the renaissance of ACICA and I am delighted to advise that the Attorney General of Australia has generously made a one-off grant to the organisation.

2. Establishment

2.1 Cooperation

ACICA has cooperation agreements with approximately 40 arbitration centres and organisations around the world. These provide for the general exchange of information and assistance. However, the Board of ACICA recognised that something more than a general cooperation agreement was desirable to link ACICA to other ADR organisations in Australia. The multiplicity of organisations involved in ADR in Australia has been seen by foreigners as

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confusing and something of a disadvantage in promoting the benefits of Australia as a venue for arbitrations as well as the services of Australian organisations such as ACICA. It was essential to try and stem this perception.

I am pleased to report that ACICA has entered into a memorandum of understanding with the Australian Commercial Disputes Centre ('ACDC') to cooperate in a meaningful sense. ACICA has shifted its principal office to Sydney and is now sharing premises and personnel with ACDC. This cooperation is unprecedented between the two organisations and marks an important step in the maturity of ADR providers in Australia and the provision of ADR services. The chief executive officer of ACDC, Mr Bernhard Ripperger, has been appointed Secretary-General of ACICA. Both organisations have agreed to effect cross-representation on their respective Boards. Mr Laurie Glanfield, Director-General of the Attorney-General's Department of New South Wales, and a director of ACDC has joined the Board of ACICA. I have been appointed to the Board of ACDC. Thus the association between the two organisations is not merely one of cooperation, but of sharing resources and personnel and mutual assistance in a meaningful way. ACICA will continue to concentrate on international arbitration and mediation while ACDC will have as its primary focus, domestic ADR.

2.2 Officers and personnel

The Sydney office of ACICA is now located at Level 6, 50 Park Street, Sydney, New South Wales, 2000, Australia. The telephone number is (02) 9286 3591. The Secretary-General can be contacted either by telephone or email at ceo@acdcltd.com.au

In Melbourne, ACICA has a Deputy Secretary-General - Mr Simon Greenberg. His telephone number is (03) 9286 6384 and his email address is sgreenberg@claytonutz.com

2.3 Website

ACICA intends to maintain a comprehensive website which will provide basic information on international arbitration and mediation, contact details and information on Board members and our corporate members. In addition, it is intended to include updates on current developments in international arbitration and mediation in Australia and elsewhere. ACICA's website can be found at www.acica.org.au

3. Corporate Members

The practice of international arbitration is developing in Australia. All of the leading law firms have experience of international arbitration and recently there have been some major international arbitrations held in Australia. The leading practitioners, in the major law firms, have the interest, knowledge and resources to assist ACICA and help it promote Australia as a venue for international arbitration. The work of ACICA will in turn promote international arbitration to the benefit of the law firms and ADR practitioners. It will also increase expertise to the benefit of parties involved in international disputes. For this reason, ACICA decided to establish a category of corporate members which will principally comprise the major law firms. Each corporate member will assist ACICA by contributing a substantial membership fee and will nominate a person who will be appointed to the Board of ACICA.

I am delighted to say that the following firms have accepted our invitation to become corporate members:

- Allens Arthur Robinson
- Blake Dawson Waldron
- Clayton Utz
- Freehills

- Mallesons Stephen Jaques
- Minter Ellison

These firms have nominated the present directors or proposed directors:

- Doug Jones (Clayton Utz)
- Keith Steele (Freehills)
- David Fairlie (Mallesons Stephen Jaques)
- Patrick George (Minter Ellison)

Tim L'Estrange, formerly a partner with Allens Arthur Robinson and now Group General Counsel of the ANZ Bank, is also a recent Board appointee.

4. Activities

4.1 Promotion

ACICA will undertake a range of activities focussing on the promotion of Sydney specifically and Australia generally as a venue for international arbitration and the use of Australians as arbitrators and legal advisors in arbitrations in Australia and the Asia/Pacific region.

Promotion would be achieved through a variety of means, initially including:

- establishing and maintaining high level contacts with overseas centres, organisations and key individuals;
- ensuring ACICA representation at important overseas conferences and meetings;
- establishing an informative and comprehensive web site;
- hosting conferences and seminars (alone and with other bodies);
- acting as the Asia/Pacific representative of significant overseas arbitral institutions; and
- producing and distributing appropriate publications and literature.

4.2 Arbitration Support Services

ACICA will develop a system of accreditation for international arbitrators and mediators. A panel of international arbitrators will be created and maintained.

Further, ACICA will accredit and maintain a list of experienced arbitration lawyers and firms.

Through cooperation with other organisations such as the Institute of Arbitrators and Mediators of Australia (**IAMA**) ACICA will provide hearing rooms and/or maintain a register of available rooms and facilitate their use. ACICA will also provide information on other arbitration support services such as transcription, translation, accommodation etc.

4.3 Education

Education initiatives will be significant. ACICA will develop an active presence in arbitration conferences and other events organised by arbitral institutions in the Asia-Pacific and elsewhere. In addition ACICA will develop a programme of its own seminars and conferences. It is also intended to participate in training courses with other institutions such as the Chartered

5. Regional Conference

5.1 Background

At the third Symposium of International Commercial Arbitration in the Asia-Oceania region held in Tokyo earlier this year, I put forward a proposal for the formation of an Asia-Pacific Regional Conference on arbitration. The idea was to bring together regional arbitration centres and organisations which could pursue common objectives and undertake joint initiatives. The formation of such an association is not inconsistent with the recognition that the regional centres are to some extent in competition with each other in some of the activities they undertake including the administration and supervision of arbitrations. However it is predicated on the perception that regional centres and organisations do have common interests in promoting arbitration in the region itself and in enhancing knowledge and improving skills and expertise. In this way it is hoped that the level of services offered in the region for arbitration, in terms of the service of arbitration centres, the expertise of arbitrators and the skill of practitioners will rise and expand. This will not only enhance the services available in the region but will lessen dependence on traditional centres of arbitration in Europe and, to a lesser extent, in the United States.

The proposal I put forward in the third Symposium was little more than a suggestion. I had undertaken no research and conducted no surveys. However the immediate response of a number of participants at the Symposium was very positive and they encouraged me and my organisation, the Australian Centre for International Commercial Arbitration ('ACICA'), to pursue this initiative.

The Board of ACICA took up this suggestion and instructed me to contact arbitration centres and organisations in the region, inviting them to participate. To date the following organisations have sent positive responses:

- Chartered Institute of Arbitrators (Australia)
- CIETAC
- Hong Kong International Arbitration Centre
- Japan Commercial Arbitration Association
- Arbitration Association of The Philippines
- Singapore International Arbitration Centre
- Korean Commercial Arbitration Board
- Indonesian National Arbitration Board
- Mongolian Chamber of Commerce & Industry

5.2 Objects

It is proposed that the Regional Conference should have the following objects:

- The promotion of arbitration in the region
- The enhancement of knowledge and improvement of skills and expertise in the region

- The general advancement of arbitration and dispute resolution

5.3 Promoting Arbitration in the region

Our aim should be to increase the number of international arbitrations held in Asia-Australasia, both in absolute terms and as a percentage of all arbitrations. This will of course be dependent on the bargaining power of the parties to the various contracts which contain the arbitration clauses, but it will also be dependent on other factors which lead parties to choose the seat of an arbitration such as geographic location, ease of air travel, availability of appropriate hotels and other infrastructure, quality of local law, hospitality of local courts and membership of the New York Convention. In addition the services, expertise and costs of administering bodies, primarily arbitration centres, is relevant. It will be a major object of the Regional Conference not only to promote arbitration in the region, but to promote the use of arbitration centres in the region as administering bodies.

5.4 Enhancing knowledge, skills and expertise

The greater the knowledge, skills and expertise of Asian-Australasian arbitration centres, the more they will be used. The same holds true of arbitrators and legal counsel from the Asia/Pacific region. This will not only improve the services offered but will improve the quality of the arbitration. This will be to the distinct benefit of disputant parties and will enhance the utilisation of services in the region be they services of administering bodies, arbitrators or legal counsel. One of the reasons that European and North American arbitrators and law firms are so heavily engaged in arbitrations, even in the Asia/Pacific region, is the considerable skill and expertise which they possess. Such skills are available in the region, but can be further improved. In particular, the number of people with expertise needs to be expanded.

5.5 Generally advancing arbitration and dispute resolution

A Regional Conference would not only have a parochial object, of promoting arbitration and improving skills in the region, it would also have a wider object. The Regional Conference could participate, together with bodies in other parts of the world in joining in proposals to improve arbitration and dispute resolution. Not only could a Regional Conference assist in advising and commenting on new conventions, laws, rules and practices, but it could, where appropriate, present a view from the Asia/Pacific region. It would aim to work in cooperation with bodies in other parts of the world and with international organisations, both governmental and non governmental in enhancing arbitration and international dispute resolution. Too often developments have occurred in these fields without an adequate contribution from the Asia/Pacific region.

5.6 Functions

In order to discharge its objects the Regional Conference could undertake a number of functions including:

- training for international arbitrators and practitioners
- periodic conferences
- exchange of information
- mutual recognition of accreditations
- website links
- joint submissions

- mooting competitions

This list does not purport to be exhaustive but simply represents some of the functions and initiatives which the Regional Conference could carry out.

6. Conclusion

ACICA has undergone a rebirth. Working closely with ACDC and the leading law firms it faces a confident future and hopes to play a significant role in promoting Australia as a venue for international arbitrations and promoting the engagement of Australian professionals, both arbitrators and lawyers, in arbitrations held in the region.