

Remarks of the Hon. Marilyn Warren AC  
Chief Justice of Victoria

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The American intellectual, Benjamin Franklin, once queried: 'When will mankind be convinced to settle their differences by arbitration?' At the very least, the globalization of world economies is proving to be a persuasive argument for the increasing use of arbitration in modern international commerce. Indeed, the increase in the number of arbitrations initiated in the Asia-Pacific region can be attributed to developing and rapidly expanding economies, particularly those in Asia, which in turn has given rise to increased business opportunities, increased transactions and an associated increase in disputes that ensue. Inevitably, there is a degree of competition between jurisdictions to attract international arbitration. Less developed arbitral jurisdictions may seek to promote their jurisdiction as an attractive seat while more developed jurisdictions see to ensure they remain attractive. Many jurisdictions seeking to attract international arbitration have taken measures to promote their approach to arbitration.

The success of international arbitration within a jurisdiction is highly dependent on the level of support provided by courts. Legislatures commonly seek to facilitate laws that provide a favourable arbitral environment by ensuring that the legal framework for international arbitration is in line with international development.

Australia is a federation. Thus, we have state courts with both domestic and international arbitration capacities. We now have an arbitration grid in Australia. It consists of the arbitration

centre in Sydney, a new arbitration centre in Melbourne and hopefully in the future an arbitration centre in Perth.

Arbitral institutions also support the arbitral process by providing sets of rules and frameworks to which parties may have recourse to govern the structure of their arbitration. However, it is the courts, in their supervisory and enforcement role, which must support the process of international arbitration in an impartial and efficient manner.

The Honourable Justice Croft has expressed the view that the development of international arbitration and arbitration generally requires 'minimum court intervention, maximum court support'. It is a balance that is not always easy to maintain. There is no doubt that courts play an essential role in supporting and promoting arbitration. The majority of courts in developed arbitral jurisdictions are vested with at least some degree of supervisory, supportive and enforcement jurisdiction over all forms of arbitration. This is reflected by the significant increase in the number of specialist arbitration lists or arbitration courts within countries within the Asian-Pacific Region.

There have been recent developments indicative of increasing judicial support in the Asia-Pacific region. In India, the High Court of Bombay has established a court dedicated to arbitration related applications. In China, a practice is applied where a lower court decision not to enforce an award is automatically referred to a higher court for review; and if the award is not enforced by the higher court, the decision is in turn reviewed by the Supreme People's Court. developments are aimed at ensuring specialisation

Both the Court of First Instance of the High Court of Hong Kong and the High Court of Singapore have been achieving consistency and predictability for a considerable

period. The Dubai International Financial Centre Court has similar goals.

From an Australian perspective the Supreme Court of Victoria is vested with broad jurisdiction to assist and guide parties with respect to most aspects of domestic and international commercial arbitration. The Federal Court of Australia has jurisdiction with respect to international arbitration. The Victorian arbitration list in the Commercial Court of the Supreme Court provides a 24/7/365 service to parties. The Commercial Arbitration List of the New South Wales Supreme Court is another specialist arbitration list in Australia. The benefits flowing from having a specialist arbitration list in a state Supreme Court are many.

The comment has been made that in order to minimise judicial intervention in international commercial arbitration, every occasion where intervention is permitted has to be scrutinised closely. It is unsurprising that the extent to which an arbitral award may be set aside was one of the most difficult issues to be settled with respect to the drafting of the Model Law. The difficulties are associated with the court being asked to balance the principle of preserving the finality of arbitration with the need to safeguard the integrity of arbitration.

Courts have embarked on a pro-arbitration approach. I have commented on another occasion:

In arbitration, the directive role of the court needs to be minimised. The focus instead turns to ways in which the court can support the arbitration process and enforce arbitral awards in a timely and cost effective manner.

Following the widespread changes made by Australian legislatures to both international arbitration legislation and

domestic arbitration legislation, Australian courts are moving to a significantly more positive, pro-arbitration position.

Chief Justice Allsop has commented:

The clear trend in judicial decision making about arbitration in Australia [has transformed] from suspicion, to respect and support ...

The prevailing view is that courts worldwide have, or are beginning to embrace, a pro-arbitration outlook. The outlook is encouraging as even courts in nation states which have been considered as 'difficult' with respect to arbitration generally are beginning to show encouraging signs of embracing arbitration.

The judicial approach taken by courts to challenges to, and enforcement of, international arbitral awards are important in many ways.

I welcome the participants to Melbourne for the conference.

I take the opportunity to highlight the recently established Melbourne Commercial Arbitration and Mediation Centre. It is located at the centre of the Melbourne legal precinct. It forms part of a very significant Melbourne commercial arbitration and mediation hub. As I said it is the next important link in the Australian grid for arbitration. It provides services and facilities that are of world class standard. It has an online booking service to enhance accessibility both internationally and domestically. The online booking service also provides a choice of other hearing and dispute resolution facilities available in Melbourne.

The Melbourne centre will work closely with other similar centres in Australia, particularly the Australian International Dispute Centre in Sydney. Close co-operation of this kind is a

hallmark of good service for disputing parties, their advisors and the arbitrators.

As a judge who has sat for many years in commercial litigation both at trial and appellate level I strongly appreciate the essential provision of alternative dispute resolution measures to the community. Arbitration is a key part of this.