



International Commercial Arbitration and COVID-19

By GREGORY NELL SC,
Chair, Australian Maritime and Transport Arbitration Commission

2020 will be remembered as the year of COVID-19. From February this year, commercial activities in Australia and elsewhere in the world were severely disrupted by both this novel coronavirus and the measures that governments, including the State and Federal Governments of Australia, took to prevent its spread. International commercial arbitration, including in the shipping sphere, was not immune from that impact.

However, one potentially beneficial consequence of this crisis has been the almost meteoric rise in the use of online platforms such as ZOOM and Microsoft Teams for the conduct of international commercial arbitrations, including final hearings. This has been to a degree that even 12 months ago most experienced practitioners would have thought ambitious and beyond all expectations.

Many of the leading arbitral institutions, including the Australian Centre for International Commercial Arbitration (ACICA), have very quickly adopted new rules and procedures for the use of such technology and conduct of virtual arbitrations. As a result of its flexibility and the use of this technology in cross border disputes, commercial arbitration has been especially well placed to ensure that disputes subject to arbitration have continued to be heard and determined almost as usual, despite the pandemic. This is especially where more traditional means of dispute resolution, such as court hearings, have been deferred or delayed. Whilst “*justice delayed is justice denied*”, the commercial arbitration community’s response to the pandemic and its impact has largely resulted in any delay, and thereby possible denial of justice in cross border disputes that are subject to arbitration being reduced, if not minimised.

This use of technology offers significant advantages and cost savings to the parties in the resolution of cross border disputes by commercial arbitration. This is especially where international travel has been severely restricted and is unlikely to resume for some time. The use of technology has also reduced both the perceived tyranny of distance so far as Australia as an arbitral seat is concerned, as well as the claimed advantages of centrality of Hong Kong and Singapore, potentially allowing a more level playing field in the provision of arbitration services to develop. But even as the effects of the pandemic diminish and some normalcy returns, one can expect that these new procedures and a greater use of technology and the advantages and costs savings that they offer, will continue to be a feature of international commercial arbitration, both in Australia and in the shipping sphere.

The pandemic and its impact have also seen changes in the way in which AMTAC has sought to fulfill its objective of promoting Australia and the Asia Pacific region as a recognised leader in maritime and transport scholarship.

For example, in October 2020, Australian Arbitration Week (AAW) was conducted (notionally) in Sydney as an almost completely virtual conference. This allowed the conference to benefit from the participation of experienced practitioners from Australia and the rest of the world, who may not have otherwise been able to travel to Sydney. During AAW, AMTAC hosted a seminar in the form of a lunchtime webinar. It was entitled “*The show goes on... recent developments in arbitration despite COVID-19*” and included presentations by three experienced shipping practitioners, on recent judgments of interest in the

area of arbitration law. A copy of their presentations, as well as a video of the webinar, can be found on the AMTAC website at Publications, Presentations & Papers – AMTAC.

AMTAC’s signature event, the AMTAC Annual Address, was also unable to be delivered this year in person and videocast Australia wide by the Federal Court, as it has been in the past, because of COVID. Rather, this year’s Address, the 14th AMTAC Annual Address, was delivered as a virtual event by Microsoft Teams. Appropriately, the subject of the Address was COVID related, namely “*Charting the Unknown - how COVID-19 has impacted international shipping*”. It was delivered by the outgoing CEO of Shipping Australia, Rod Nairn AM, who provided an interesting and, at times, controversial, analysis of the impact of COVID-19 and the measures that have been taken against it upon shipping, both in Australia and overseas. For those who missed this Address, it is well worth viewing, and is also available on the Resources webpage of the AMTAC website.

I would take this opportunity to thank Rod for this year’s Annual Address, as well as his (and Shipping Australia’s) support of AMTAC in recent years. On behalf of the members of AMTAC, I wish Rod well in his forthcoming endeavours “*messing about in boats*”. AMTAC also looks forward to working with his successor, Melwyn Noronha, in continuing to promote the benefits of international commercial arbitration in Australia as an efficient, economical and effective means of resolving disputes involving members of the Australian shipping industry. ▲

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