

*Book review*

***The International Arbitration Act 1974: A Commentary*<sup>1</sup>  
by Malcolm Holmes QC and Chester Brown**

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When I practised in international arbitration in Hong Kong in the early 2000s a book by Robert Morgan entitled the *Annotated Hong Kong Arbitration Ordinance* was my 'go to' text.

In 2002, after I returned to Australia and was called to the New South Wales Bar I noticed the absence of a practical text on the *International Arbitration Act 1974* (Cth) (IAA).

In 2011, Malcolm Holmes QC and Dr Chester Brown filled that gap admirably with *The International Arbitration Act 1974: A Commentary*, which they recently updated in 2015 with the publication of the second edition of the text.

As a busy practitioner it is no exaggeration for me to say that *The International Arbitration Act 1974: A Commentary* is the first book that I reach for when working on an Australian international arbitration or an UNCITRAL Model Law arbitration in the Asian region, or if I have a case involving the enforcement of an arbitral award in Australia or in the Asian region. It is also useful if your practice relates to Australian domestic arbitration given that the relevant uniform statutes are now Model Law based.

The text is indispensable if you are practising in the arbitration area and provides an immediate resource to which reference can be made to answer a question, or as a first step for working out a legal issue. Its format is very user-friendly, with commentary on each provision of the IAA. It includes the history of the section, the legislation, references to Australian and international case law and other important material from international jurisdictions. It is a handy size to take to an arbitration hearing or to Court.

The summary of international cases in the text is a useful start for comparative research that is essential if one is practising in this area, and is an acknowledgement of the increasing internationalisation of Australian law.

The second edition picks up important cases from several Australian state and federal courts which have considered the IAA, in particular post-2010 amendments to the IAA, as well as decisions of national courts in other key Model Law jurisdictions since the first edition was published. It also contains reference to amendments proposed by parliament in the *Civil Law and Justice (Omnibus Amendments) Bill 2015* (Cth) which have since been enacted.

Unlike some texts that are in the form of annotated legislation, the authors do not just produce a lengthy list of case references and unfocused summaries. Rather, they provide a useful commentary on the relevant topics by reference to the legislation with cross-references to the relevant cases.

The resulting text is a readable, intelligent contribution to legal scholarship in the arbitration area.

One indicator of the authority, usefulness and reliability of a text is whether it is being referred to in judgments of courts in the international arbitration area. *The International Arbitration Act 1974: A Commentary* passes this test.

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<sup>1</sup> LexisNexis Butterworths Australia, 2<sup>nd</sup> edition, 2015

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For example, the summary of the relevant authorities in the text on whether indemnity costs are payable where there has been an unsuccessful attempt to oppose enforcement of an award (the prevailing view in Australia to date being that indemnity costs would not be automatically ordered, compared to that taken in Hong Kong where they are automatically ordered),<sup>3</sup> was recently referred to by Beach J in *Sino Dragon Trading Ltd v Noble Resources International Pte Ltd (No 2)*,<sup>4</sup> even though Beach J ultimately continued to follow the current Australian position. While the authors of the text have not expressed a view on whether the law should change on this point, they are assisting in the potential development of the law in this regard by providing the references to the comparative authorities. If the prevailing view in Australia changes soon on this point, which is the current prediction, the authors of *The International Arbitration Act 1974: A Commentary* will have had a hand in the development of the law.

Additionally, Allsop CJ of the Federal Court has recently referred to the cases summarised in the text on the topic of the appropriate security for a judgment to be entered upon enforcement of an award in *Ye v Zeng*.<sup>5</sup> Edelman J of the Federal Court also recently referred with apparent approval to the explanation given by the authors in the text on the purpose of Article 17J of the Model Law in the context of interim measures.<sup>6</sup>

One potential downside of textual commentaries such as this text is that they do not always delve into the bigger themes or provide opinions on areas of potential reform.

While this may be so, the authors of the text are not afraid to express a view where it is appropriate to do so.

For example, the second edition of the text describes as 'wrongly decided'<sup>7</sup> the decision of Refshauge J in *Lightsource Technologies Australia Pty Ltd v Pointsec Mobile Technologies AB*,<sup>8</sup> where his Honour held that waiver or abandonment renders an arbitration clause inoperative or incapable of performance, as does a time bar, which was relevantly equivalent to waiver or abandonment. Similar comments in the first edition of the text were picked up by Le Miere J in *Siam Steel International PLC v Compass Group (Australia) Pty Ltd*,<sup>9</sup> although the Court ultimately held that the decision in *Lightsource* did not assist the plaintiff in any event.

If you are working in international arbitration, or hope to be, or are interested in arbitration generally, this book is an essential first purchase for your library. In relation to the second edition, the authors should continue to be applauded for their most useful and helpful contribution to the development of the law of international arbitration in Australia.

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<sup>3</sup> Malcolm Holmes QC and Chester Brown, *The International Arbitration Act 1974: A Commentary*, (LexisNexis Butterworths Australia, 2<sup>nd</sup> Edition, 2015) 96-97 [58.34].

<sup>4</sup> [2016] FCA 1169.

<sup>5</sup> [2015] FCA 1192, [16].

<sup>6</sup> *Sino Dragon Trading Ltd v Noble Resources International Pte Ltd* [2015] FCA 1028, [103], albeit his Honour was referring to the 1<sup>st</sup> Edition of the text.

<sup>7</sup> Holmes and Brown, above n 3, 42 [s 7-5].

<sup>8</sup> [2011] ACTSC 59, [168].

<sup>9</sup> [2014] WASC 415, [46].