

## The arbitrators' companion

by Geoffrey Gibson  
Federation Press, 2001

This book, as its title suggests, has been written principally to provide an introduction and guide to law for arbitrators. It is divided into five parts.

Part 1, headed 'The law relating to arbitration' provides a useful conspectus, both for lay arbitrators and also for lawyers seeking an introduction to the topics covered, of the various stages and particular principles relating to arbitration. As the author acknowledges, matters dealt with in this Part are themselves the subject of specialist texts which necessarily contain a far fuller discussion of the principles. As such, the book does not claim, and rightly so, to provide an authoritative or exhaustive discussion of topics such as international arbitration, applicable law, jurisdiction or stays of court proceedings in favour of arbitration, domestic or international.

Although the text does make reference to some recent Australian and English decisions on topics relating to arbitration, there are at least three recent important intermediate appellate Australian decisions, the failure to refer to which is somewhat surprising. *Francis Travel Marketing v Virgin Atlantic Airways* (1996) 39 NSWLR 160 deals, inter alia, with questions of the scope of arbitration clauses and whether, for example, a Trade Practices Act claim may be referred to international arbitration. *Hi-Fert Shipping Pty Limited v Kuikiang Maritime Carriers Inc* (No. 5) (1998) 90 FCR 1 was a decision of the Full Court of the Federal Court dealing also with questions of scope of arbitration clauses, in a manner which went somewhat against the 'one-stop shopping' trend referred to on page 25 of the text. It also considered the constitutional validity of the *International Arbitration Act 1974* (Cth) and raised doubt, obiter dictum, in arguable tension with the decision of the Court of Appeal in *Francis Travel*, as to the validity of an arbitration clause referring a Trade Practices Act claim to an international arbitration. Nor did the text refer to *Raguz v Sullivan* (2000) 50 NSWLR 236, an Olympics case concerned with the Court of Arbitration for Sport, which contains an extensive and learned discussion by Spigelman CJ and Mason P of both the

*Commercial Arbitration Act 1984*, the notion and significance of the seat of the arbitration (*locus arbitri*) and appeals from awards.

Part 2 of the text headed 'The practice of arbitration' provides a brief overview of the main procedural steps of an arbitration, together with a worked example or case study designed to illustrate in a practical way the time line of an arbitration from the inception of the dispute to the completion of the award. The text, however, provides very little discussion indeed, even by way of overview, of principles relating to the enforcement of awards.

Part 3 of the text is entitled 'Elements of law for arbitrators'. Again, as its title suggests, this aspect of the book is particularly directed to lay arbitrators. It provides a necessarily brief overview of the following topics: the Australian legal system, contract, discovery, equity, estoppel, evidence, interpretation, misleading and deceptive conduct, natural justice, negligence, pleadings, privilege and restitution. This, in 60 pages, may provide useful introduction to lay arbitrators. It would be alarming, however, if it was of value to practitioners. In fairness to the author, it is not directed to them. In similar vein to Part 3 is Part 4 of the book, headed 'Glossary of legal terms for arbitrators'. Again, this is likely to be a principal value to lay arbitrators rather than legal practitioners.

Part 5 of the book, headed 'Sources of law for arbitrators' contains reprints of the *Commercial Arbitration Act 1984* (NSW), the *International Arbitration Act 1974* (Cth).

Whilst the text of the book runs to 248 pages, what appeal it may have to a practitioner wishing to inform him or herself in a general and introductory way of the framework of arbitration lies in the first quarter of the text.

**Reviewed by Andrew S. Bell**

## Lumb & Men's The Constitution of the Commonwealth of Australia (Annotated 6th ed)

By Gabriel A Moens and John Trone  
Butterworths, 2001

Firstly, it must be acknowledged that this edition marks the death of one of the original authors of this text, namely, Professor Darrell Lumb. One of the seminal legal writers on Australian constitutional law and indeed whose text *The Constitutions of the Australian States* (first published in 1963) has no rival, his passing will greatly lamented amongst academic and practicing public lawyers alike.

Secondly, to be frank, it is difficult to say anything very original about this celebrated annotation. Since its initial publication in 1974, this text has unfalteringly provided practitioners and academics alike with the essential commentary and case law required to navigate one's way through the Constitution. There are, of course, weightier tomes on the market but none that have consistently presented themselves in such a concise and yet relatively comprehensive fashion.

It is of course no mere coincidence that (judging by the book's cover, aphorisms aside) the 6th edition has been published during the centenary of federation. In this regard it was somewhat disappointing to see less, rather than more, material in the 'Introduction' on subjects such as 'Relations With the United Kingdom' and the complete excising of all commentary on the *Australia Acts 1986* (UK and Cth).

However, the sixth edition is a fully revised edition referencing most of the recent developments in constitutional law since 1995. For example, there is now a discussion of proportionality in light of decision in *Leask v Commonwealth* (1996) 187 CLR 579. Chapter I has undergone significant revision, incorporating many of the cases concerning representative democracy and responsible government, including implied freedoms. For example, *McGinty v Western Australia* (1996) 186 CLR 140, *Kruger v Commonwealth* (1997) 190 CLR 1 and *Lange v Australian*