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Book Review: A Guide to Arbitration Practice in Australia

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Book Review

Book Review: *A Guide to Arbitration Practice in Australia*

Vicki Way (ed)
*A Guide to Arbitration
 Practice in Australia*

2nd edition, 2006

(University of Adelaide and Institute of Arbitrators and Mediators Australia)

This user-friendly guide to commercial arbitration in Australia, published in 2006, covers both the practice of arbitration and an overview of the main legal principles relevant to writing an award.

The book's coverage is comprehensive, providing clear and concise guidance on:

- commercial arbitration legislation and rules
- jurisdiction and misconduct
- preliminary and section 27 conferences
- pre-hearing processes (notices of dispute, pleadings, discovery and interlocutory applications)
- arbitration hearings
- awards, costs and judicial review of awards
- contract, tort and trade practices law
- evidence.

Although aimed at students undertaking the Professional Certificate in Arbitration in Australia, the guide is of wide relevance to users of arbitration. The text does not purport to cover interpersonal dispute resolution.

Among the features of the book are extensive footnotes and coverage of case law and legislation. Further reading lists are also provided for each chapter. Examples appear in text boxes throughout the guide. References are made to the international context and developments. The relationship between arbitration and other ADR processes (including mediation) and conflict management (including complaints-handling and other dispute systems design) is explored and expert determination is included. Documents only and final offer arbitration are also examined.

The guide promotes innovation in the field by including discussion of online arbitration, expert determination, expert appraisal and conclaves of experts.

In relation to the latter, it provides extensive coverage on organisation and preparation, and conducting and concluding the conclave. Expert conclave directions are included.

This publication also provides a wealth of practical tips, for example: how to challenge an arbitrator's jurisdiction; how to plan a successful arbitration; how to simplify the arbitration proceedings and save costs; how to abbreviate the discovery process; departures from the general rule as to costs; and alternative procedures to formal hearings.

The guide provides a step-by-step outline of the steps involved when conducting a hearing; a reminder on evidence rules and the treatment of expert evidence; and extensive assistance in preparing and writing an award.

In addition the book has extensive appendices and sample documents, including: draft letters giving notice of preliminary conference; preliminary conference agendas; procedural directions; and sample notices of dispute, pleadings and awards. The guide also contains comparative tables, outlining salient provisions in the *Trade Practices Act 1974* (Cth) and State Fair Trading Acts.

Judicial review of awards, setting aside awards and remission are examined by reference to the case law, statutory provisions and practice. Judicial supervision in cases of misconduct, undue influence, incompetence and delay is considered separately.

The guide is edited by Vicki Way, a Senior Lecturer at the University of Adelaide, with contributions from leaders in the field, including:

- Ian Nosworthy, Immediate Past President, Institute of Arbitrators and

Mediators Australia

- Philip J Fargher, Chartered Professional Engineer and Arbitrator
- Robert Hunt, Barrister and Chartered Arbitrator/Mediator
- George H Golvan QC
- Patrick O'Sullivan
- Maurice Phipps QC
- Adrian Bradbrook, Professor of Law, University of Adelaide
- Richard Bullen, Lecturer, University of Adelaide
- Justice Bruce DeBelle, South Australia Supreme Court Judge
- Laurence Boulle, Professor of Law, Bond University
- Ian Freckleton, Adjunct Professor of Law and Legal Studies, La Trobe University
- Andrew Ligertwood, Reader in Law, University of Adelaide
- Bernadette Richards
- David Wright, Senior Lecturer, University of Adelaide

Despite the breadth of contributions, each chapter consistently provides an overview of the statutory scheme and case law, the relevant arbitration rules and practice, and essential tips. Many chapters have been substantially rewritten since the guide's first edition was published in 2001.

The guide is published in conjunction with the Institute of Arbitrators & Mediators Australia and the University of Adelaide. ●

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contributions

Contributions to the **ADR Bulletin** for 2007 are welcome. Submissions should be presented as a Word file, attached to an email. Please submit articles or notes for publication to:

carolyn@richmondventures.com.au



ADR diary

- **CEDR** are holding a 5-day **Mediation Skills Training** in London from 21–23 and 26–27 March 2007. The course will address how to settle disputes effectively, add value to commercial disputes, manage the mediation process and facilitate advanced negotiation, advise others on the features and uses of other effective dispute resolution techniques, and transform the way you communicate. For more information, or to book a place, please contact <training@cedr.co.uk>.
- The **Centre for Information Technology and Dispute Resolution** will be holding the **Fifth UN Forum on Online Dispute Resolution** on 19–21 April 2007 in Liverpool, United Kingdom. For more information or to register please visit <www.odr.info>.
- The **Australian Commercial Dispute Centre** is holding a **Conflict Resolution/Dispute Avoidance Certificate** workshop in Sydney, New South Wales on 23 January 2007 and 22 February 2007. This is a one-day workshop that includes the foundation skills and information to handle conflict and disputes. It also prepares participants for the mediation workshop. For more information or to register, please refer to <www.acdcltd.com.au>.
- In recognition of the growing importance of mediation, the **National Institute of Trial Advocacy (NITA)** is launching a training program for lawyers who represent clients in mediation. The program plans to cover how to choose a mediator and gain the mediator's support, identifying interests and developing options, when to disclose information, and how to deal with combative opponents and 'aberrant' mediators. The program will be held in New York City, New York on 2–4 February 2007. For more information visit <www.nita.org>.
- The **Australian Commercial Dispute Centre** will also be holding the **Mediation: Skills, Techniques and Practice Course** in Sydney from 6–9 February and 13–16 March, and in Coffs Harbour on 2–5 April. An additional course will be held in Melbourne from 27 February–2 March 2007. **Optional Accreditation Days** are being held 6 March 2007 in Melbourne, 13 or 14 April in Coffs Harbour, and 13 February and 24 March 2007 in Sydney. This mediation workshop includes activities, practice and coaching. For more information or to register, please refer to <www.acdcltd.com.au>.
- **Mediation and Training Alternatives** is holding **Mediation Masters Classes** in London, United Kingdom on 1 February, 1 March, 29 March and 3 May 2007. These courses are open to both practising mediators and non-mediator guests, and involve a prominent mediator being interviewed and some techniques of this mediator being identified and put into practice in interactive workshops. For more information or to register, please visit <www.mata.org.uk> or contact David Richbell at <david@mata.org.uk>.
- **Bond University Dispute Resolution Centre** in conjunction with **Leo Cussens Institute** are holding an **Advanced Mediation Course** in Melbourne on 22–25 March 2007. This will be instructed by Laurence Boulle and John Wade. For more information or to book a place, please contact phone (03) 9602 3111 or alternatively email: <lpd@leocussen.vic.edu.au>.
- **Bond University Dispute Resolution Centre** is also holding a **Basic Mediation Course** on the Gold Coast on 29 March–1 April 2007. This course also has a Foundation Family Mediation stream, run in conjunction with AIFLAM (Australian Institute of Family Law Arbitrators and Mediators). Instruction will be by Laurence Boulle and John Wade. For more information or to book a place, please contact (07) 55952039 or alternatively email: <drc@bond.edu.au>.

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