

**AUSTRALIAN AND NEW ZEALAND DISPUTE
RESOLUTION**

REPORT TO MEMBERS

- Aust Wheat Board clauses only about 50% vol / yr on CIF
another 350 vols landed on FOB basis - basis.
only 1 arbitration in last several years (12 yrs)
- Banks' FOB vols generally specify that buyers
clauses not on Approved form.
- South West Clauseing - only if transactions result
in arbitration.

Enforcement law in London :- wheat buyers have
arrested much as bank etc in London
- but Aust J/ments are enforceable in U.K.

Sydney Maritime Arbitration Rules + Terms

- (- John Livingston
published in Aust Commercial Disputes Resolution
Journal Vol 2.



The Maritime Law Association of Australia and New Zealand Ltd

Maritime Arbitration

Report to Members

Following the highly successful discussions on maritime arbitration which took place at the 1989 Adelaide conference, and the Association's equally successful participation with the Institute of Arbitrators Australia in the organisation of training courses for maritime arbitrators in 1990, the Association appointed a Standing Committee on maritime arbitration in 1990. That Committee has made various recommendations to the Executive Committee of the Association, and this report is designed to inform members of the Association's conclusions and policies, and to form a foundation for debate at the 1993 conference. References in this report to the committee are references to the Standing Committee on maritime arbitration.

OBJECTIVES

The Association's primary objective is to develop a credible and cost effective system of maritime arbitration in Australia. The Association appreciates that arbitration of maritime disputes in Australia has been effective as a dispute resolution procedure throughout Australian history. However, the Association is concerned that this fact itself is not widely known, and that many disputes which involve at least one Australian party and which ought to be resolved in Australia are in fact resolved by

arbitration in other places such as London and New York. Just as significantly, the Association believes that there is no reason why Australia should not become an important international centre for the resolution of maritime disputes, particularly those either involving parties who operate in the Asia/Pacific area or which involve events which have occurred in that area.

In order to achieve the primary objective, the Association believes that it is fundamental that there be available a pool of people ready, willing and able to accept appointment as arbitrators in various types of maritime dispute. These arbitrators need to be sufficiently respected and to have available a sufficiently respected and cost-effective regime pursuant to which arbitrations are conducted. It is desirable that this Association be recognised as the national administering body of maritime arbitration.

PANEL OF ARBITRATORS

The Association has adopted the recommendations of the committee that a panel of arbitrators should be established by the Association. It is proposed that the panel might be used in two ways. Firstly, it would be used in cases where the President of the Association is asked to nominate an arbitrator in a particular dispute and secondly, it might be used in cases where the Association does not play a part in the nomination, but where the prospective parties seek to examine the list with a view to making their own selection. The Association will not be conducting an examination of candidates or warranting their suitability.

Admission to the list of arbitrators will be at the discretion of the President, and management of the list will also be in the hands of the President. However, the President will delegate these tasks to the committee and will act upon the recommendations of the committee, subject of course to overriding control of the committee by the Executive Committee of the Association.

Entry to the list of arbitrators is to be by application to the President and will involve payment of a fee to the Association both to assist with management costs and to discourage non-serious applications. Entry to the panel will also be on terms that the President has complete discretion with regard to membership of the panel, so that a person can be removed from the panel at any time by the President. In any event, the Association will review each panel member's position every three years.

The Association's view is that in order to gain admission to the panel, an applicant will have to demonstrate that he or she is a person of standing in the maritime community with an interest in maritime affairs and:-

- (1) have been accredited as an arbitrator by the Institute of Arbitrators Australia or a similar body elsewhere; or
- (2) has had not less than 10 years admission to practise law with relevant maritime experience.

Additionally, the President shall have a general discretion to admit someone to the panel subject to the recommendation of the committee if that person does not strictly comply with the above criteria, but is otherwise obviously a person who should be admitted

Applicants for admission to the list will be asked to specify an interest in one or more of the categories listed below, and will be admitted to the list by reference to the categories as accepted by the President on the recommendation of the committee. The various categories in which the person is appropriate to undertake arbitrations will be included in any list published by the Association. The categories suggested are as follows:-

- (1) Charterparty disputes.
- (2) Bill of lading disputes.
- (3) Import/Export contracts.
- (4) Ship building contract disputes.
- (5) Ship building quality disputes.
- (6) Towage, salvage and collision.
- (7) Fishing industry disputes.
- (8) Marine insurance and reinsurance disputes.
- (9) Financing disputes.
- (10) Ship operating contract disputes.
- (11) Disputes concerning small boats and pleasure craft.

ARBITRATION CLAUSES

The Association believes that pro forma arbitration clauses should be developed for insertion into various forms of contract at the

time when the contract is being negotiated. The simpler the reference clauses the better.

The following clauses are therefore proposed:-

(1) DOMESTIC ARBITRATIONS (i.e. FOR CONTRACTS INVOLVING EXCLUSIVELY AUSTRALIAN PARTIES)

Any dispute or difference whatsoever arising in connection with this agreement shall be submitted to arbitration in (proposed venue for arbitration) in accordance with the provisions of the Commercial Arbitration Act of (the State or Territory in which the proposed venue is situated) by a single arbitrator to be appointed by agreement between the parties or failing agreement between them, by the President for the time being of the Maritime Law Association of Australia and New Zealand Limited.

(2) INTERNATIONAL ARBITRATIONS

Any dispute or difference whatsoever arising in connection with this agreement shall be submitted to arbitration in (proposed venue for arbitration) in accordance with the provisions of the International Arbitration Act 1974 of the Commonwealth of Australia and the UNCITRAL Arbitration Rules in effect at the date of the reference to arbitration by a single arbitrator to be appointed by agreement between the parties or failing agreement between them, by the President for the time being of the Maritime Law Association of Australia and New Zealand Limited.

Either of the above clauses is capable of amendment to suit a particular situation, such as a determination by the parties to follow some other set of rules.

RULES

It will be observed that in the proposed arbitration clause to cover international arbitrations, a reference has been made to the UNCITRAL rules on the basis that such rules (being international and well-known) will provide comfort to any non-Australian party. It is of course possible in a particular situation to substitute the reference to those rules by a reference to any other set of rules such as those of the Institute of Arbitrators Australia, the London Court of International Arbitration, SMART, etc. Indeed, while there is a belief that parties to contracts prefer to understand in advance what the rules of engagement might be should a dispute arise, there is an overall belief that in many instances, the rules of the particular arbitration are best left to the parties and the arbitrator to resolve following the reference to arbitration.

In the circumstances, the Association does not recommend the establishment of a fresh set of arbitration rules.

CO-OPERATION WITH OTHER ORGANISATIONS INTERESTED IN ARBITRATION

The Association shall continue and extend its co-operation with the Institute of Arbitrators Australia, both in respect of the promotion of arbitration and in respect of the training of

potential maritime arbitrators. The Association shall maintain a permanent and ongoing liaison with the Institute, so that at every training course conducted by the Institute, there is at least one presentation involving issues peculiar to maritime arbitration.

The Association shall also maintain liaison with such organisations as the Australian Commercial Disputes Centre and the Australian Centre for International Commercial Arbitration. Both of these organisations provide facilities for the conduct of arbitrations. The development of maritime arbitration will be of benefit to both organisations.

EDUCATION AND TRAINING OF ARBITRATORS

The Association conducted a joint exercise with the Institute of Arbitrators Australia in 1990, the exercise comprising a general arbitration course specifically aimed at those interested in maritime arbitration. The course itself proved attractive with something over 40 registrants, and those persons who attended found it interesting and useful. Indeed, a number of those persons went on to complete the Institute's advanced course and subsequently to pass the Institute's written examination.

The training offered by the Institute is of an excellent standard, and it would be counter-productive for the Association to seek to develop its own training and education facilities. Accordingly, it is appropriate that the Association co-operate on an ongoing basis with the Institute for the purpose of providing education and training to prospective maritime arbitrators.

MARKETING

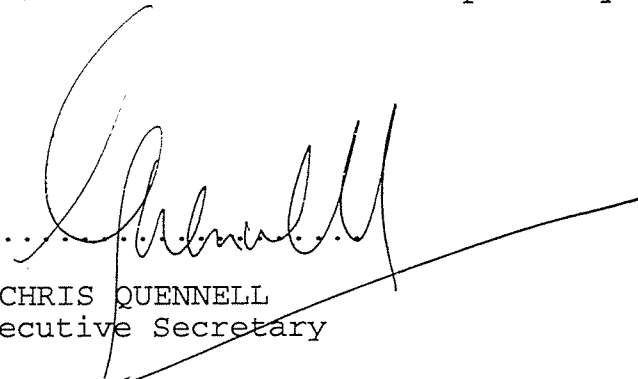
Once a panel is established, various types of marketing will be undertaken. For instance, there will need to be marketing to prospective arbitrators to encourage them to undertake the necessary training etc., there will need to be marketing to prospective users of arbitration services, i.e. ship owners, charterers, brokers, marine insurers and the like, and there will need to be marketing to professionals such as solicitors etc. The marketing will have to take various forms, comprising such things as explanatory brochures, selected advertising, and an ongoing campaign of speaking engagements and the like. Preliminary enquiries have ascertained that the development of an international marketing plan could attract a government rebate through the National Industry Extension Service, the rebate being of 50% of appropriate expenditure up to a limit of \$10,000.00.

SUMMARY

1. The Association will establish its own panel of maritime arbitrators.
2. Admission of a person to the panel will be at the discretion of the President, whose discretion is to be exercised within particular guidelines.
3. The continuing status of an arbitrator as a member of the panel will be subject to review each three years.

4. Each panel arbitrator will be listed according to one or more of the eleven categories of disputes identified as appropriate.
5. The panel list shall be used by the President when he is requested to nominate an arbitrator.
6. The panel list will be made available to any party who enquires in order that parties to an arbitration may make their own selection of arbitrator.
7. Two forms of arbitration clause, one for domestic contracts and one for international contracts, will be adopted as clauses recommended by the Association and publicised accordingly.
8. The Association will co-operate to the fullest extent with all organisations in Australia and New Zealand involved in the promotion and development of arbitration as a means of dispute resolution with particular reference to maritime arbitrations.
9. The Association will work on a continuing basis with the Institute of Arbitrators Australia in the training of arbitrators.

10. The Association will take all appropriate steps to promote arbitration of maritime disputes by members of the panel, and to raise the awareness level of all members of the maritime community of the quality and cost effectiveness of arbitration of such disputes by members of the panel.

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CHRIS QUENNELL
Executive Secretary

For and on behalf of:

The President and Executive Committee

13 September, 1993