

## **MALCOLM HOLMES QC, BA, LLB (Sydney), BCL (Oxon), FCI Arb**

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Malcolm Holmes QC is a Chartered Arbitrator at Eleven Wentworth Chambers in Sydney and an arbitrator member of chambers at 20 Essex Street, London and at Maxwell Chambers in Singapore.

After initially commencing an engineering degree at the University of NSW, he transferred to law at Sydney University, and obtained degrees in Arts and Law and then a Bachelor of Civil Law from Oxford University, UK. He was admitted as a barrister in 1977, appointed Queen's Counsel in 1991 and has had a broad based commercial and general practice as counsel.

He is an experienced commercial arbitrator and academic exclusively involved in international and domestic arbitration and mediation. He has acted as an arbitrator in a wide range of disputes including commercial, maritime, construction and sporting disputes. He is an Adjunct Professor of Law at the University of Queensland in International Commercial Arbitration.

### **Sports Arbitration**

In 1991 he organised and convened a Conference on Sports Law and the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland. He was appointed as the athletes advocate to the Australian Olympic Team at

Atlanta in 1996. He has acted as arbitrator in a broad variety of disputes both commercial and sport related, in Japan, North America, England, Europe and Australia conducted under the rules of the CAS (e.g., *Raguz v Sullivan* (2000) 50 NSWLR 236). He has been an arbitrator member of the CAS since 1995 and assisted in the establishment of the Oceania Registry of CAS in Sydney in 1996. In 2000 he was one of a team engaged by the Australian Institute of Sport to conduct a Probity Audit of the EPO administration trial then being conducted by the Australian Sports Drug Testing Laboratory to establish a reliable and legally acceptable method for the detection of EPO abuse by athletes. He was the organizer of the first panel of pro bono legal representatives for athletes at the Olympic Games in Sydney. He was appointed as a member of the Ad Hoc Division of CAS at the Summer Olympic Games in Athens in 2004 and the Winter Olympic Games in Turin in 2006. In 2003 he acted as the Chairman of the Disputes Committee for the International Rugby Board for the Rugby World Cup in Sydney. In 2006 he was invited to give a presentation on the CAS in Wuhan, PRC. Since 2012 he has also acted as the chair and a member of the Football Federation of Australia Appeals Committee. In November 2012 he was appointed to the Independent Commission established by the UCI to investigate allegations arising out of the USADA Reasoned Decision relating to Lance Armstrong. In August 2016 he was a presenter at the KLRCA Diploma Course on CAS and Sports Arbitration in Malaysia. In 2017 he was appointed to the IAAF Disciplinary Tribunal.

### **Maritime Arbitration**

He has acted as counsel and as arbitrator in the area of maritime law and maritime arbitration since the 1980s. His first involvement was as counsel on behalf of the Master of a sailing vessel in a Court of Marine Inquiry

concerning a fatality arising out of a collision between a sailing vessel and the Manly Ferry on Sydney Harbour. He has been a member of the Maritime Law Association of Australia and New Zealand (MLAANZ) since 1982.

In the 1980s he visited the offices of COSCO in Beijing with a delegation from MLAANZ where he gave presentations on collisions at sea and the Collision Regulations. Subsequently he appeared in a range of maritime cases as junior and later senior counsel, instructed by the maritime law firms such as Ebsworths & Ebsworths in Sydney and Sparke Helmore in Newcastle. Recent cases include the litigation arising out of the collision between a ferry and a motor cruiser on Sydney Harbor in which six passengers died.

Additionally, he has acted as sole arbitrator, party appointed arbitrator and chair in several maritime arbitrations mainly involving charter party disputes and ship construction in Australia and Hong Kong. He is also a supporting member of the LMAA, a member of the panel of arbitrators maintained by Singapore Chamber of Maritime Arbitration (SCMA) and was a presenter at the International Congress of Maritime Arbitrators (ICMA), XIX, in Hong Kong in 2015 and ICMA, XX, in Copenhagen in 2017.

### **International Arbitration Panels**

He is a member of the panel of international arbitrators maintained by the International Centre for Dispute Resolution of the American Arbitration Association (AAA/ICDR), Singapore Chamber of Maritime Arbitration (SCMA), the Australian Maritime and Transport Arbitration Commission (AMTAC), Singapore International Arbitration Centre (SIAC), China International Economic and Trade Arbitration Commission (CIETAC), the

Australian Centre for International Arbitration (ACICA), the Hong Kong International Arbitration Centre (HKIAC), the Kuala Lumpur Regional Centre for Arbitration (KLRC), the Mauritius Chamber of Commerce and Industry (MCCI), the Japanese Commercial Arbitration Association (JCAA), the Korean Commercial Arbitration Board (KCAB), the Badan Arbitrase Nasional Indonesia (BANI), the X'ian Arbitration Commission, the Malaysian Institute of Arbitrators (MIArb), Court of Arbitration for Sport (CAS) and the Shanghai Arbitration Commission (SHAC). He is an Associate Member of the Perth Centre for Energy and Resources Arbitration (PCERA).

### **Expert Witness**

He has provided expert evidence on international commercial arbitration matters in judicial proceedings (see e.g., *Cape Lambert Resources Ltd -v- MCC Australia Sanjin Mining Pty Ltd* [2012] WASC 228 (S) at [20] and also on appeal [2013] WASCA 66 at [31] and [45], 12 March 2013).

### **International Arbitration Institution memberships and offices**

He was a member of the Board of Trustees of the Chartered Institute of Arbitrators (UK) from 2009 to 2016 and the Treasurer of the Institute from 2015 to 2016. He was the President of the Australian Branch of the Chartered Institute of Arbitrators from 2007 to 2009. He is a Supporting Member of the London Maritime Arbitrators Association (LMAA). He has been a member of the London Court of International Arbitration (LCIA) since 1999 and was appointed one of the Asian Pacific Regional Arbitration Group representatives at UNCITRAL in New York in January 2006. He has been a director and a Fellow of Australian Centre of International

Commercial Arbitration (ACICA) since 2007 and is the Chair of the Rules Committee of ACICA.

He has been recognised in *The International Who's Who of Commercial Arbitration*, from 2013 to date, in Euromoney's *The World's Leading Experts in Commercial Arbitration*, from 2008 to date, in *the Roster of International Arbitrators* published by Juris Publishing Inc, and in the *Best Lawyers®* list for arbitrators in Australia from 2008 to date.

### **International Arbitration Teaching**

He established, and has been a lecturer in, the course for the Diploma of International Commercial Arbitration; a course jointly conducted by the University of NSW, the Australian Branch of the Chartered Institute of Arbitrators, ACICA and the KLRCA, which has been held annually since 2006 in Sydney, Malaysia and Singapore. He was a lecturer in the Diploma of International Commercial Arbitration course conducted at Keble College, Oxford University, England, by the Chartered Institute of Arbitrators (UK). He has taught International Commercial Arbitration at the University of Aix-en-Provence (2013), Sydney University, the UTS and the University of Queensland. He is the current examiner for the International Arbitration Award Writing Course for Queen Mary University of London. He presented a two week course on International Commercial Arbitration and Sports Arbitration at the China Foreign Affairs University in Beijing in May 2017.

### **Recent publications, include**

*"The International Arbitration Act: A Commentary"*, by Malcolm Holmes and Chester Brown, LexisNexis, 2<sup>nd</sup> Edition, 2015

*“The Multi-Door Courthouse; an international perspective”* a chapter in  
The Future of Dispute Resolution, Ed. Michael Legg, LexisNexis,  
November 2012

*“Recent developments in relation to the use of mediation during an  
arbitration to facilitate a resolution of the dispute”*, The ACICA Review,  
June 2017, Vol. 5, No 1, p24

*“The 2016 Rules of the Australian Centre for International Commercial  
Arbitration: Towards Further Cultural Reform”* by Malcolm Holmes, Luke  
Nottage and Robert Tang, [2016] 12 Asian International Arbitration Journal  
211

*“Taking an uncomfortable seat – International template unsuited to  
domestic arbitration law,”* The Proctor, April 2013, published by the  
Queensland Law Society

*“Litigate or arbitrate; what are the procedural differences?”* (2012) IAMA  
Journal, November, at 43

*“Philip Morris Asia Ltd v Australia”*, The ACICA News – June 2012, at  
27-34

*“The Juridical Seat of an International Arbitration”* The ADR Reporter,  
(July 2011), at 41

*“Drafting an Effective International Arbitration Clause”* (2009) 83  
Australian Law Journal 305-318

*“The CAS: A case study of an international arbitration institution”*, (2005)  
27 Australian Bar Review 57

### **Recent presentations and lectures include**

*“What to do when a party fails to appear in a maritime arbitration?”* a  
paper presented at the International Congress of Maritime Arbitrators, XX,  
in Copenhagen on 25 September 2017

*“Recent developments on Costs and Third Party Funding”*, a lecture at the Beijing Arbitration Commission, on 18 May 2017

*“The use of mediation in international arbitration proceedings”*, a lecture at the China International Economic and Trade Arbitration Commission in Beijing on 10 May 2017

*“Maritime Arbitration, Old and New”*, the 10<sup>th</sup> Annual AMTAC Address 2016, presented at the Federal Court of Australia, Sydney on 7 September 2016

*“Maritime Arbitration”*, a presentation to the 1<sup>st</sup> Regional Conference of the Young Members Group of the Malaysian Branch of the Chartered Institute of Arbitrators in Kuala Lumpur, Malaysia on 19 August 2016

*“The arbitration of doping disputes”*, a presentation to the Institute of Judicial and Legal Studies in Port Louis, Mauritius in 11 May 2016

*“Enforcing and Challenging Awards”*, a paper presented to the NSW Bar Association Arbitration Workshop on 19 August 2015.

*“Enforcing the unenforceable. The procedural and legal issues involved in seeking to enforce an award which has been refused enforcement by, set aside by, or is subject to a pending appeal before, the supervisory court,”* a paper presented to International Congress of Maritime Arbitrators, XIX, in Hong Kong in May 2015

*Update on International Commercial Dispute Resolution in the Pacific Rim”*, a paper presented at the Eighth Dublin Forum on International Commercial Dispute Resolution in Ireland on 11 July 2014

*“The International Arbitration Act 1974; an overview”*, a CPD presentation to the NSW Bar Association on 29 July 2013

*The significance of the seat of an arbitration”*, a paper presented to the conference held by the University of Queensland and UNCITRAL Regional Centre for Asia and the Pacific in Brisbane on 5 February 2013

*“Evidence in Arbitration”*, a presentation in the Arbitration Refresher Course 2012 conducted by the Law Society of NSW on 19 October 2012

*“Philip Morris Asia Ltd v Australia, The Tobacco Arbitration”*, a CPD presentation to the NSW Bar Association, Sydney, 18 June 2012

*“National Courts and interaction with Arbitral Tribunals; a complex and ever changing surface,”* a presentation to the 6<sup>th</sup> RAIF conference in Bali, Indonesia on 5 May 2012

*“International Arbitration in a Nutshell”*, a presentation to the College of Law, Sydney held on 29 March 2012

*“Recent trends in International Arbitration”*, a presentation at a seminar organized by the Indonesian Corporate Counsel Association in Jakarta, Indonesia on 1 March 2012

*“The Hong Kong Australia BIT- The Big Tobacco Arbitration”*, a paper presented at a conference at Maxwell Chambers, Singapore on 29 February 2012

*“Drafting an effective arbitration clause under the new Uniform Commercial Arbitration Legislation 2010”*, a paper presented to the Law Society of NSW on 13 December 2011

*“The Multi-Door Court House – an international perspective”*, a paper presented at the University of NSW Conference “Dispute Resolution in the next 40 years: Repertoire or Revolution?” on 1 December 2011

*“Recent Developments in International Arbitration in Australia; Gordian v Westport”*, a presentation to “ICC Arbitration; Focus on New Zealand”, an ICC Conference in Auckland, New Zealand held on 14 October 2011.

*“The importance of the Juridical Seat when drafting an international arbitration agreement”*, a paper presented to the CIArb Asia Pacific Conference 2011; Investment and Innovation: International Dispute Resolution in the Asia Pacific held in Sydney on 28 May 2011

*“The New Uniform Domestic Arbitration Legislation”* A paper presented by the UNSW Contract Law Update, held on 15 March 2011

*“Linking Domestic and International Arbitration”* A paper presented at a conference held by the College of Law on *“Arbitration: A New Regime”* on 8 March 2011

*“The Third Standard of Proof in International Arbitration; Comfortable Satisfaction”*, a paper presented to the School of International Arbitration, Queen Mary College, University of London on 18 May 2010 and to the Law Society of NSW on 9 November 2010.

**1 January 2018**

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