



Russell Thirgood

Nationality: Australian

Languages: English

Russell Thirgood is an independent international commercial arbitrator who specialises in construction & infrastructure, energy, natural resources and commercial disputes. He is a member of Arbitra International and has an office in Brisbane, London, Washington DC and Abu Dhabi

Prior to becoming a full-time and independent arbitrator in 2020, Russell spent 23 years at an Australian law firm, where he was a partner and head of international arbitration.

He is experienced in resolving complex and high-value commercial disputes. He has conducted cases throughout Australia, the Pacific, Asia, US, UK, Middle-East and Europe, under some of the key international and domestic arbitral institutional rules. He has been appointed in over 30 cases by parties and arbitral institutions, including the ICC, SIAC, HKIAC, AAA-ICDR and ACICA.

For many years, Russell has contributed to the advancement of international and domestic arbitration in Australia and internationally in a range of ways including as chair of Resolution Institute (2019-2023), editor of the Arbitrator & Mediator journal (for over 20 years), board member of ACICA (2015-2023), board member the Institute of Arbitrators & Mediators Australia (2012-2014) and member of Nominations Committee for ICC Australia. He has published and presented on arbitration extensively throughout Australia, the Asia-Pacific and internationally.

Russell is regularly recognised by directories including Who's Who Legal, Best Lawyers, Doyle's Guide and Legal 500 Asia Pacific.

"Russell Thirgood is one of Australia's pre-eminent arbitrators with extensive experience in high-value and complex construction-related arbitrations".

In 2022, Russell was awarded Australian Arbitrator of the Year at the Australian Law Awards.

Sector Expertise

- Construction, Engineering & Infrastructure

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- Mediation & Dispute Boards
- Commercial Contracts
- Energy, Oil & Gas and Renewables
- Shareholder & Joint Venture Disputes

Construction, Engineering & Infrastructure

Russell has over 25 years of experience in construction disputes typically arising from delay, disruption, prolongation, acceleration, global or total cost claims. He has also been involved in various disputes involving liquidated damages, the doctrine of penalties, extension of time, scope changes, force majeure, frustration, repudiation, termination, waiver, estoppel, quantum meruit, limitation and exclusion of liability, payment claims, security clauses, health and safety clauses, payment milestones, practical completion, substantial completion, final completion, bank guarantees, retention clauses, bonds, rail, roads, bridges, shipping ports and defects.

Commercial Contracts

Russell has over 25 years' experience across a wide variety of commercial industries including online trading platforms, finance, fashion, defence, aviation, shipping, rail and road, agricultural, sugar, cotton, dairy, travel and tourism, medical centres, private and public health and, international business obligations. Russell's expertise extends to a wide range of matters including business and human rights, contaminated land, operation, maintenance and catering contracts, finance, loan and security agreements, shipping and maritime, private and public property, consultancy and royalty agreements, body corporate matters, fraud, bribery and corruption, anti-trust, supply, distribution, website design, hosting and commercial contracts, intellectual property, information technology, health and safety, franchise, joint venture and shareholder agreements, lease and licencing disputes, restraint of trade clauses, guarantees, indemnities, abandonment of contract, waiver and estoppel.

Energy, Oil & Gas and Renewables

Experience consists of off-take, JV, royalty, sale and supply agreements, EPC, solar, windfarm and hydro contracts, renewables, coal mine development and infrastructure, oil and gas projects, iron ore mines, copper and gold mines, drilling and blast, oil refinery and pipeline contracts, put option deeds, climate change and environmental matters, valuation disputes, deeds of guarantee and indemnities. Russell's expertise is broad and extends to matters involving limitation and exclusion of liability, letters of credit, security clauses, intellectual property clauses, health and safety clauses, force majeure, frustration, commercial impracticability, termination, repudiation, breach of warranty, forfeiture, design, defects, prolongation, delay, disruption, pricing disputes, variations, practical and mechanical completion, liquidated damages and payment milestone disputes.

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Experience

As Arbitrator

- Appointed by ICDR-AAA in an arbitration seated in Washington State between Chinese and American parties arising out of an agreement to use an online platform for the sale of goods.
- HKIAC arbitration involving parties in Hong Kong and Mainland China, concerning an air cargo flight and concerns of the re-payment of a security deposit. Hong Kong seat, and governing law of Hong Kong SAR.
- Appointed as co-arbitrator in a SIAC arbitration involving parties from China and Vietnam in a dispute arising out of alleged breaches of a long-term coal supply agreement.
- Appointed by SIAC in a dispute between German, Korean and Malaysian parties arising out of contracts for the supply of motor vehicles.
- ICC expedited proceedings seated in Singapore between Malaysian and Indonesian parties. The matter involved the purchase of commodities from the UAE and the potential application of the principle of force majeure arising out of the global coronavirus pandemic.
- ACICA expedited proceedings involving extension or time, delay and disruption, variation and liquidated damages claims arising out of a zinc-copper project.
- Ad hoc international arbitration involving \$50 million in defects claims to a shipping port in a Pacific Island nation.
- ACICA proceedings involving a USD\$10 million repudiation claim arising out of a dispute concerning an iron ore mine and Chinese steel mill concerning an off-take agreement.
- \$10 million defects case arising out of the design and construction of a zinc refinery. Appointed by Resolution Institute.
- Ad hoc arbitration in relation to a dispute pertaining to rectification of construction defects and liability arising out of a lease agreement. Appointed by the parties jointly.
- Appointed by the President of the Queensland Law Society to resolve a royalty deed dispute between an Indian commodity trading entity and a mining company. The matter also includes the interpretation of various priority deeds arising out of a potential finance arrangement involving a state-owned bank and the dispute was valued at over AUD \$100 million.
- Ad hoc international arbitration involving various claims of a combined value of \$80 million arising out of a rubber tyre gantry shipping port. Matter involved structural and geotechnical engineering analysis of the structural integrity of various pavements and the interpretation of a design and construct contract. The governing law was that of Papua New Guinea. Appointed jointly by the parties.
- Appointed by the President of the Queensland Law Society to resolve various disputes arising out of the Building Management Statement for a 37-story building comprising residential apartments and various retail lots.
- Appointed by Commonwealth Treasurer of Australia to resolve dispute involving the terms of a sugar contract between approximately 250 growers and the relevant sugar mill. The value of the contract (and arbitration award) is estimated to be \$300 million.
- \$10 million claim against the defence force of a Pacific Island nation in relation to a catering services contract. Three awards delivered.

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- Dispute between government entity in its capacity as lessor and a private corporation as lessee regarding valuation of lease assets.
- Construction dispute relating to variations, extension of time and liquidated damages claims.
- Construction dispute between contractor and subcontractor relating to variations, extensions of time, delay, liquidated damages and defects claims.
- Dispute between seller and purchaser of shopping centre regarding warranties and various defective works including the drainage system.
- Restraint of trade dispute involving the sale of a cleaning and facilities management business.
- Shareholders' dispute relating to the dissolution of a global professional services business.

As Expert Determiner

- Contaminated land dispute between a State Government regulator and international corporation.
- Easement dispute pertaining to commercial and residential tower.
- Dispute in respect to the construction of a commercial lease and whether there were breaches of contract by landlord and tenant.
- Dispute between retail lots and residential lot of 37-storey building located in CBD.
- Dispute between owner of shopping centre and contractor pertaining to construction defects.
- Dispute arising out of dissolving a shareholders' agreement and related trust deeds.
- Dispute concerning extensions of time, variations, latent conditions and the dates for practical completion for various separable portions pertaining to the design and construction of a service centre.

As Mediator

- Commercial dispute between buyer and seller of medical centre.
- Workplace dispute between senior officers of a regional based local council.
- Commercial dispute regarding the termination of a maintenance contract.
- Commercial dispute between Chinese property developer and contractor regarding misleading and deceptive conduct allegations.
- Construction dispute between the owner of a shopping centre and fitout contractor.
- Commercial dispute between ASX listed financier and owner of a shopping centre in relation to the supply and financing of equipment.

As Counsel, Arbitration

For 23 years, Russell Thirgood acted for clients as counsel in complex and high value commercial matters before international and domestic arbitral tribunals, in superior courts in Australia and internationally, including to enforce international arbitral awards. His experience includes:

- Strategic advice in relation to Bilateral Investment Treaty arbitration in relation to \$6 billion coal project.
- Advising US oil and gas company in relation to enforcement of arbitration awards arising out of proceedings seated in Houston, Texas in the Supreme Court.

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- ICC arbitration acting for drilling company against Dutch dredging company in relation to dredging project.
- Series of 7 arbitration hearings and related Supreme Court proceedings over a 9-year period relating to \$1.8 billion coal terminal.
- Enforcing London Court of International Arbitration award for a Singapore based shipping company in Federal Court of Australia (including obtaining freezing orders and an anti-suit injunction).
- ICC arbitration in Mexico concerning construction of oil refinery and pipeline.
- Resisting enforcement of ICC award against a Kolkata based Indian coking coal company.
- ICC arbitration seated in Malaysia regarding provision of services to an oil refinery project.
- JCAA arbitration concerning oil refinery project in the Middle East.
- Setting aside arbitral award of the International Cotton Association regarding cotton supply contracts between US and Chinese companies.
- Domestic arbitration in relation to design defects for a government owned water treatment plant.
- Domestic arbitration concerning defective work claim relating to a 5-star prestigious resort complex.

As Counsel, Construction & Commercial litigation

- Supreme Court litigation in \$60 million claim against PRC and Hong Kong based fashion clothing retail group for unpaid consultancy and development fees.
- Supreme Court litigation regarding strategic control in respect to the operation of a coal terminal.
- Acting in relation to a suite of disputes from a range of contractors in respect to the expansion of a coal terminal. The combined value of these claims was circa \$500 million.
- Acting for a public hospital in relation to \$80 million operation and maintenance contract and various disputes with a Canadian based facilities management contractor which were resolved through adjudication.
- Acting for a Government in relation to its design and construction of a cultural centre and multimillion dollar claims arising out of the precinct bridge.
- Acting for a balance of plant contractor in relation to the construction of two wind farms with a combined contract value of circa \$150 million.
- Various disputes between Chinese and Australian joint venture partners in relation to variations that were resolved confidentially through expert determination.
- Acting for a builder in a dispute with a Chinese developer regarding a high rise development.
- Acting for a national construction company and its senior officers in respect of Supreme Court proceedings arising out of the development of 480 Queen Street.
- Acting in multi-party Supreme Court litigation concerning the design and construction of a rail levee bank.
- Acting in relation to a series of cases regarding the operation of the Ashton coal mine.
- Acting for US coal mining company in relation to \$500 million claim concerning a Bowen Basin coal mine.
- Acting in \$100 million case in Supreme Court (including Court of Appeal) regarding wrongful termination of contract at Cobar Mine.
- Acting for a large home builder in relation to regulatory and licensing issues arising out of construction activities.

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- Acting for a property development group in relation to regulatory issues pertaining to their business activities.
- Acting for a health fund in Administrative Appeals Tribunal hearing arising out of decision of national regulator in respect to corporate governance issues.
- Acting for a prominent building contractor in Royal Commission proceedings into trade union corruption.
- Acting for an international time share holiday group in relation to investigation brought by Securities and Investment Commission.
- Acting in Federal Court proceedings for Asia Pacific construction group in relation to appealing decisions made by Tax Office.
- Acting for government in construction dispute concerning delay and variation claims for a water treatment plant.
- Acting in a joint venture dispute between State Owned Chinese and Australian construction companies.
- Acting for a capital city airport corporation in expert determination with multi-national oil company concerning the imposition of a fuel levy.
- Defending adjudication and litigation proceedings in relation to mining infrastructure including the largest private rail loop in New South Wales.
- Acting for an ASX listed mining company in relation to claims arising out of the \$500 million construction of a coal mine and coal handling preparation plant.
- Acting for contractor in relation to Supreme Court review of Security for Payment legislation claims.
- Acting for a global travel agency in multi-party action brought by former employees in the Supreme Court.
- Acting for a global supplier of mining equipment in relation to the protection of its intellectual property in respect of major mining equipment.
- Acting for the Body Corporate of a Resort in Supreme Court proceedings against a prominent developer and glass supplier regarding defects to residential tower.
- Acting for crane company in proceedings arising out of an incident involving multiple fatalities at Twin Towns Resort.
- Acting for a Japanese company, in relation to various construction claims in Supreme Court against electrical contractor.
- Acting in Supreme Court litigation in relation to defective drilling rigs.

Human Rights

Russell acted, on a pro bono basis, in important international human rights cases in the Indonesian Supreme Court, United States Supreme Court and United Nations. He has undertaken human rights missions for Amnesty International in Australia and internationally.

Academic & Professional Qualifications

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Admissions

- High Court of Australia
- Supreme Court of New South Wales
- Supreme Court of Queensland

Professional Career

- Independent International Commercial Arbitrator (since 2020)
- Lawyer, McCullough Robertson Lawyers (1998-2020)
- Partner and Head of Arbitration at a national Australian law firm (McCullough Robertson Lawyers) 2006-2020
- Partner in Charge, McCullough Robertson Lawyers Sydney Office 2011-2012

Professional and Academic Qualifications

- Chartered Arbitrator (UK)
- Graduate Diploma in Construction Law (University of Melbourne) 2013
- Master of Laws (First Class Hons) (University of Sydney) 2003
- Bachelor of Laws (Hons) (University of Queensland) 1993-1998
- Executive Program on Negotiation (Harvard Law School) 2016
- Bachelor of Arts (University of Queensland) 1993-1998
- Diploma in International Commercial Arbitration (Chartered Institute of Arbitrators)
- Grade 1 Arbitrator, Australia
- NMAS (National Mediator Accredited Standards) Accredited Mediator
- Advanced Training, Dispute Resolution Board Foundation

Professional Associations & Recognitions

- Member, International Chamber of Commerce (Australia and UK)
- Fellow Australian Centre for International Commercial Arbitration (ACICA)
- Member, Australian Disputes Centre (ADC)
- Panel Member, Asian International Arbitration Centre (AIAC)
- Panel Member, Dubai International Arbitration Centre (DIAC)
- Panel Member, Hong Kong International Arbitration Centre (HKIAC)
- Panel Member, Singapore International Arbitration Centre (SIAC)
- ICDR Panel of International Arbitrators (ICDR-AAA)
- New Zealand Dispute Resolution Centre (NZDRC)
- New Zealand International Arbitration Centre (NZIAC)
- Building Disputes Tribunal, New Zealand
- Queensland Law Society, Australia

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- Roster of International Arbitrators, Juris
- Thai Arbitration Institute List of Arbitrators
- Panel Member, Australian Communications & Media Authority (ACMA)
- Fellow of Chartered Institute of Arbitrators (UK)
- Fellow of Resolution Institute (previously named Institute of Arbitrators and Mediators Australia)
- Member, Panel of Editorial Consultants, Australasian Dispute Resolution Journal
- General Editor, The Arbitrator and Mediator
- Member, International Bar Association (International Construction Projects Committee, Arbitration Committee)
- Member, American Bar Association
- Member, Society of Construction Law
- Member, International Trust of Amnesty International (UK)
- Member, Dispute Review Board Federation

Previous Appointments

- Member of Nominations Committee for ICC (International Chamber of Commerce) Australia (2018-2020)
- Chair Resolution Institute (2019-2023)
- Company Secretary, Resolution Institute
- Director of Australian Centre for International Commercial Arbitration (ACICA) (2015-2023)
- National Councillor, Institute of Arbitrators and Mediators Australia
- Chair of Arbitration Committee, Institute of Arbitrators and Mediators Australia
- Co-Chair of Arbitration Rules Committee, Institute of Arbitrators and Mediators Australia
- Board of Management, Adelaide University Arbitration Course
- Chair, Regional Arbitration Institute Forum
- Chair, International Law Section of Queensland Law Society
- Chair, Amnesty International Australia
- Adjunct Lecturer, University of Queensland (Alternative Dispute Resolution and Arbitration)
- Adjunct Lecturer, University of Melbourne (Advanced Construction Law and Arbitration)

Publications, Articles & Thought Leadership

- "Remote Hearings: storm clouds and silver linings", (2022) 17(3) CLInt 38
- "Legal Reasoning Across Commercial Disputes - Book Review", (2021) 31 ADRJ 178
- "Appeals in Arbitration – To be or not to be", Paper presented to CIArb YMG ADR World Tour on 25 March 2021
- 'Foreign Investors' Increasing Awareness of Investor-State Arbitration – view from Australia' (2020) 39 (1) Australian Resources and Energy Law Journal
- 'From Mediation to Arbitration' (2020) 40(6) Proctor

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- 'The Non-Responsive Respondent: Taking an Arbitration Forward and How' (2019) 85(1) The International Journal of Arbitration, Mediation and Dispute Management, 65
- 'Arbitrating Down Under: Highlights and lessons learned from 2018 to 2019' (2019) 15(2) Asian International Arbitration Journal, 133
- 'The Use and Misuse of Expert Evidence: Rules on Experts – A Critical Assessment' (2019) 13(4) Construction Law International
- 'Quantum merit will not save a bad bargain: Mann v Paterson Constructions Pty Ltd' [2019] HCA 32 (2019) 188 Australian Construction Law Newsletter, 56
- 'International Arbitration Australia: 2019 Year in Review' McCullough Robertson Publication
- 'The "Bones" Arbitration: An American Cautionary-Tale for Australian Practitioners' (2019) 1 The ACICA Review 37
- 'Apply to Set Aside, or Appeal Against an Award?' (2018) 38(8) Proctor 14
- 'Director's fury over road block to litigation: Mad Max arbitration to be heard in Hollywood' (2018) 1 The ACICA Review 25
- '"Fast Track" Arbitration Rules – Room for Development' (2018) 182 Australian Construction Law Newsletter, 15
- 'International Arbitration Australia: 2018 Year in Review' McCullough Robertson Publication
- 'International Commercial Arbitration 101' (2017) 37(11) Proctor 16
- 'Australian Courts' Approach to Multi-Party and Multi-Contract Arbitration' (2016) 2 The ACICA Review 29
- 'ADR Forms and Precedents' (Lexis Nexis) (2009 to present)
- 'International Arbitration: The Justice Business' (2004) 21(4) Journal of International Arbitration 341
- 'A Critique of Foreign Arbitration in Japan' (2001) 18(2) Journal of International Arbitration 177
- 'Judicial Independence: Attorney-General (Cth) v Tse Chu-Fai' (2000) 74(10) Australian Law Journal 707
- 'A Review of Foreign Arbitration in China' (2000) 17(3) Journal of International Arbitration 89
- 'Dispute Resolution Chinese Style – The Influences' (1999) 10(4) Australasian Dispute Resolution Journal 266
- 'Mediator Intervention to Ensure Fair and Just Outcomes' (1999) 10(2) Australasian Dispute Resolution Journal 142

Testimonials

- *"Russell has demonstrated exceptional analytical skills in addition to acute judgement" – Who's Who Legal: Arbitration 2024*
- *"He is highly efficient, well organised and makes sound procedural and substantive decisions"- Who's Who Legal: Arbitration 2024*
- *"He communicates very effectively"- Who's Who Legal: Arbitration 2024*
- *"Russell Thirgood Highly experienced and very measured in his approach" – Who's Who Legal*
- *"I was extremely impressed by the diligent, courteous and efficient way you conducted the arbitration in which I appeared"*

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- *Russell Thirgood is lauded by peers for his “impressive understanding of construction law” –Who’s Who Legal 2020*
- *“Russell Thirgood is one of Australia’s pre-eminent Grade 1 arbitrators with extensive experience in high-value and complex construction related arbitrations.”*
- *“Russell’s outstanding contribution to Resolution Institute and previously the Institute of Arbitrators and Mediators Australia (IAMA) as a board member, editor of The Arbitrator and Mediator journal and author of the Resolution Institute’s Arbitration Rules has seen him become a highly respected thought leader within the Australian arbitral community”*
- *‘Russell Thirgood is an esteemed construction lawyer and a go-to-adviser to major industry players’ – Who’s Who Legal: Construction 2020*
- *‘Russell Thirgood is an experienced and highly regarded Australian commercial arbitrator, known for fair and efficient arbitral proceedings and the production of high-quality awards in complex matters, drawing upon his more than two decades experience in large-scale construction disputes.’*
- *‘Russell Thirgood is an authority on major construction disputes both in Australia and internationally’ – Who’s Who Legal: Construction 2018*
- *‘Outstanding communicator and practical strategist valued for his effective organisation of complex construction litigation’ – Legal 500 Asia Pacific 2018*
- *‘Russell is uncompromising in his approach to work and in the pursuit of successful outcomes for clients’ – Best Lawyers 2018*
- *‘In his field Russell Thirgood is much sought after by experienced litigants because of his intelligence, diligence, toughness, commercial nous and above all experience in large scale construction disputes.’ - President of the Australian Bar Association, 2017*

Legal Directories

Russell’s recent directory listings include:

- 2024 – Who’s Who Legal – Arbitration, Construction Thought Leaders
- 2023 Best Lawyers – International Arbitration; Construction and Infrastructure Law and Alternative Dispute Resolution
- 2023 Who’s Who Legal – Construction: Australia and New Zealand and, Construction Thought Leaders
- 2023 Doyles Guide – Leading Arbitration Lawyers, Australia
- 2022 Best Lawyers – International Arbitration; Construction and Infrastructure Law and Alternative Dispute Resolution
- 2022 Who’s Who Legal – Construction: Australia and New Zealand and, Construction
- 2022 Doyles Guide – Leading Arbitration Lawyers, Australia
- 2022 Australian Law Awards – Best Australian Arbitrator
- 2021 Best Lawyers – International Arbitration Lawyer of the Year: Brisbane, recommended for Construction and Infrastructure Law and recommended for Alternative Dispute Resolution
- 2021 Who’s Who Legal – Construction: Australia and New Zealand and, Construction Thought Leaders
- 2020 Doyles Guide – Leading Arbitration Lawyers, Australia
- 2020 Client Choice Award – Construction Law (Australia)

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- 2020 Who's Who Legal – Construction, Construction Thought Leaders and Australia
- 2020 Legal 500 Asia Pacific – Recommended for Dispute Resolution and recommended for Project Development
- 2020 Best Lawyers – Recommended for Alternative Dispute Resolution and recommended for Alternative Dispute Resolution and for Litigation
- 2019 Best Lawyers – Recommended for Litigation, International Arbitration and Construction and Infrastructure Law
- 2019 Who's Who Legal – Construction, Thought Leaders Construction and Australia

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