



# RUSSELL THIRGOOD

## INDEPENDENT INTERNATIONAL ARBITRATOR

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Russell Thirgood is an independent international arbitrator based in Brisbane and London. Russell is a member of Int Arb Arbitrators & Mediators, after spending over 20 years at McCullough Robertson Lawyers, Brisbane where he was partner and head of arbitration.

As arbitrator, he takes a modern, robust and dynamic approach throughout the arbitration process. He is responsive to the needs of parties and their counsel to ensure the proceedings are conducted swiftly, effectively and efficiently.

He is considered, collaborative and concise. Russell is experienced in resolving complex and high value construction and infrastructure, energy and natural resources, and commercial disputes. He has conducted cases throughout Australia, Asia, US, UK, Middle-East and Europe under some of the key international and domestic arbitral institutional rules.

Specialist areas of expertise include Construction & Infrastructure, Energy & Natural Resources and Commercial disputes.

Russell is the current Chair of The Resolution Institute (the pre-eminent dispute resolution organisation in Australia and New Zealand) and is a director of the Australian Centre for International Commercial Arbitration.

He is a Fellow of the Chartered Institute of Arbitrators.

### CONSTRUCTION AND INFRASTRUCTURE

Experience of cases typically arise from delay, disruption, prolongation, acceleration, global or total cost claims, liquidated damages, the doctrine of penalties, extension of time, scope changes, force majeure, frustration, repudiation, termination, waiver, estoppel, quantum merit, 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.

## RECENT APPOINTMENTS

### Project administration, Dispute Avoidance and Early Claims Resolution

- North Queensland Bulk Ports Corporation – design and construct contracts for the \$1 billion expansion of the Abbot Point Coal Terminal including resolution of claims.
- Ports Corporation of Queensland – strategic advice in relation to the asset sale of the Abbot Point Coal Terminal.
- North Shore Hospital – strategic advice in relation to resolution of consortium claims.
- Gold Coast Hospital – informal resolution of disputes and claims regarding long term maintenance contract.
- Gold Coast Cultural Precinct – formal and informal resolution of construction contract claims
- Brisbane Airport Corporation – strategic and informal resolution of claims regarding construction contracts, leases and throughput levies.
- Whitehaven Coal – design and construction of \$500 million Narrabri Coal Mine including resolution of claims.
- Excel Coal – design and construction of Wambo coal mine including the largest private rail loop in New South Wales.
- Ausgrid (Energy Australia) – construction training and contract administration in respect to New South Wales asset portfolio.
- Adani Australia – multi billion dollar suite of construction contracts in relation to Carmichael mine, rail and port infrastructure. Resolution of disputes through a range of formal and informal techniques

### As Arbitrator

- Sole arbitrator in USD\$10 million repudiation claim involving iron ore mine and Chinese steel mill concerning an offtake agreement (appointed by ACICA). Award dated April 2020.
- Sole arbitrator appointed in a 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. Award delivered in February 2020 (within 60 days of appointment).
- Sole arbitrator in \$10 million claim against the defence force of a Pacific Island nation in relation to a catering services contract. Three awards delivered.
- Sole arbitrator in \$2 million dispute between government entity in its capacity as lessor and lessee regarding valuation of lease assets.
- Sole arbitrator in \$5 million construction dispute relating to variations, extension of time and liquidated damages claims.
- Sole arbitrator in \$3 million construction dispute between contractor and subcontractor relating to various variations, extension of time, delay, liquidated damages and defects claims.
- Sole arbitrator in \$1 million dispute between seller and purchaser of shopping centre regarding warranties and various defective works including the drainage system.
- Sole arbitrator in restraint of trade dispute involving the sale of a cleaning and facilities management business.
- Sole arbitrator in shareholders' dispute relating to the dissolution of a global professional services business.

### As Mediator

- 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 shop fitting 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 over 20 years, Russell Thirgood has 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.

- Series of 7 arbitration hearings and related Supreme Court proceedings over a 9 year period for the Adani Group against John Holland relating to \$1.8 billion coal terminal.
- ICC arbitration acting for drilling company against Dutch dredging company in relation to dredging project
- Enforcing London Court of International Arbitration award for Armada, a Singapore based shipping company (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 Balaji Coke, 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.
- Strategic advice in relation to Bilateral Investment Treaty arbitration in relation to \$6 billion coal project.
- Setting aside arbitral award of the International Cotton Association regarding cotton supply contracts between US and PRC companies.
- 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.
- 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 and 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 on behalf of the Adani Group against Glencore Group regarding strategic control in respect to the operation of a coal terminal.
- Acting for Ports Corporation and later the Adani Group 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 Council in relation to its design and construction of a cultural centre and multi-million 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 with a Chinese counterpart in relation to variations were resolved through expert determination.
- Acting for a builder in a dispute with a Chinese developer regarding a high rise development.
- Acting for Grocon Constructions and its senior officers in respect of Supreme Court proceedings arising out of the development of 480 Queen Street.
- Acting for Aurizon in multi-party Supreme Court litigation concerning the design and construction of a rail levee bank.
- Acting for Yancoal 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 for MacMahon Holdings 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.
- Acting for 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 prominent building contractor in Royal Commission proceedings into trade union corruption.
- Acting for 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 local government in construction dispute concerning delay and variation claims for a water treatment plant.
- Acting in 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.
- Acting for Excel Coal defending adjudication and litigation proceedings in relation to mining infrastructure including the largest private rail loop.
- 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 Abigroup Contractors in relation to Supreme Court review of Security for Payment legislation claims.
- Acting for Flight Centre 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 Lindores Cranes in proceedings arising out of a multiple fatality at Twin Towns Resort.
- Acting for Kumagai Gumi Co, a Japanese company, in relation to various construction claims in Supreme Court against electrical contractor.
- Acting for Dempsey Group in Supreme Court against Sandvik in relation to defective drilling rigs.

#### TESTIMONIALS

- 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’ – Gary Ulman, Chair Resolution Institute, Australia 2019.
- ‘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.’ – Dr Dominic Katter, Barrister, Brisbane 2019.
- ‘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.
- ‘Russell is a talented lawyer who I found to be very good in across the table negotiations and in arbitration proceedings where his strategic overview is backed up by meticulous attention to detail and a deep understanding of the commercial and practical issues facing the client. His track record was excellent with us and he would be my go-to counsel for any dispute resolution.’ – Harsh V Mishra, Group President – International Business, Adani Group, 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.’ – Michael Stewart QC, past President of the Australian Bar Association, 2017.

#### LEGAL DIRECTORIES

- 2020 Client Choice Award – Construction Law (Australia)
- 2020 Who’s Who Legal – Construction
- 2020 Who’s Who Legal – Construction Thought Leaders
- 2020 Who’s Who Legal - Australia
- 2020 Legal 500 Asia Pacific – Recommended for Dispute Resolution
- 2020 Legal 500 Asia Pacific – Recommended for Project Development
- 2020 Doyles Guide – Leading Construction & Infrastructure Litigation Lawyers, Queensland
- 2020 Best Lawyers – Recommended for Alternative Dispute Resolution
- 2020 Best Lawyers – Recommended for Litigation
- 2020 Best Lawyers – Recommended for International Arbitration
- 2020 Best Lawyers – Recommended for Construction and Infrastructure Law
- 2019 Doyles Guide – Leading Arbitration Lawyers, Australia
- 2019 Doyles Guide – Leading Construction & Infrastructure Litigation Lawyers, Queensland
- 2019 Best Lawyers – Recommended for Litigation
- 2019 Best Lawyers – Recommended for International Arbitration
- 2019 Best Lawyers – Recommended for Construction and Infrastructure Law
- 2019 Who’s Who Legal – Construction
- 2019 Who’s Who Legal – Thought Leaders Construction
- 2019 Who’s Who Legal - Australia
- 2019 Legal 500 Asia Pacific – Recommended for Dispute Resolution
- 2018 Legal 500 Asia Pacific – Recommended for Dispute Resolution
- 2018 Best Lawyers – Recommended for Alternative Dispute Resolution
- 2018 Best Lawyers – Recommended for International Arbitration
- 2018 Best Lawyers – Recommended for Construction Law
- 2018 Experts Guide – Commercial Arbitration
- 2018 Who’s Who Legal – Construction
- 2017 Doyles Guide – Leading Construction and Infrastructure Lawyer, Queensland

- 2017 Best Lawyers – Recommended for Alternative Dispute Resolution
- 2017 Best Lawyers – Recommended for Construction Law
- 2017 Best Lawyers – Recommended for International Arbitration
- 2016 Lawyers Monthly – Alternative Dispute Resolution Lawyer of the Year
- 2016 Best Lawyers – Recommended for Alternative Dispute Resolution
- 2016 Best Lawyers – Recommended for Construction Law
- 2013 Australian Arbitration Law Firm of the Year – Lawyers Weekly

#### ADMISSIONS

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

#### PROFESSIONAL AND ACADEMIC QUALIFICATIONS

##### Professional

- 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
- Lawyer, McCullough Robertson Lawyers (1998-2020)

##### Academic

- Graduate Diploma in Construction Law (University of Melbourne)
- Master of Laws (First Class Hons) (University of Sydney)
- Bachelor of Laws (Hons) (University of Queensland)
- Executive Program on Negotiation (Harvard Law School)
- Bachelor of Arts (University of Queensland)
- 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 MEMBERSHIPS

- Fellow of Australian Centre for International Commercial Arbitration (ACICA)
- Member of Nominations Committee for ICC (International Chamber of Commerce) Australia (2018-2020)
- Australian Disputes Centre (ADC)
- Dubai International Arbitration Centre (DIAC)
- Hong Kong International Arbitration Centre (HKIAC) List of Arbitrators
- New Zealand Dispute Resolution Centre (NZDRC)
- New Zealand International Arbitration Centre (NZIAC)
- Building Disputes Tribunal, New Zealand
- Queensland Law Society, Australia
- Resolution Institute, Australia
- Roster of International Arbitrators, Juris
- Thai Arbitration Institute List of Arbitrators
- 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, Queensland Law Society since 1998
- Member, International Bar Association (International Construction Projects Committee)
- Member, American Bar Association
- Member, Society of Construction Law
- Member, International Trust of Amnesty International (UK)

#### PROFESSIONAL APPOINTMENTS

- Company Secretary, Resolution Institute
- 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)
- Chair of The Resolution Institute (Australia and New Zealand) since 2019
- Director, Australian Centre for International Commercial Arbitration since 2014
- General Editor, The Arbitrator and Mediator (Resolution Institute) (2002 to present)

##### Russell Thirgood (Brisbane)

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