



## Russell Thirgood

**Nationality:** Australian

**Languages:** English

Russell Thirgood is a Chartered Arbitrator who specialises in Construction & Infrastructure, Energy, Natural Resources and Commercial disputes, with an office in Brisbane and Chambers in London.

Prior to becoming a fulltime arbitrator, Russell spent over 20 years at McCullough Robertson, where he was partner and head of arbitration.

Russell 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 by parties jointly and arbitral institutions, including the ICC, SIAC and ACICA.

As arbitrator, he applies a modern, robust and dynamic approach to all proceedings. He is responsive to the needs of parties and their counsel to ensure all cases are conducted swiftly, effectively and efficiently. Counsel appearing before him often comment that he is well prepared, considered, collaborative and concise.

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 regularly recognised by the 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 Grade 1 arbitrators with extensive experience in high-value and complex construction related arbitrations".*

Russel was recently awarded 'International Arbitration Lawyer of the Year' by Best Lawyers Australia.

## Sector Expertise

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- Construction, Engineering & Infrastructure
- Energy, Oil & Gas and Renewables
- Commercial Contracts
- Shareholder & Joint Venture Disputes

## Construction, Engineering & Infrastructure

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Russell has over two decades 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 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.

## Energy, Oil & Gas and Renewables

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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 also has expertise in matters including 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.

## Commercial Contracts

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Russell has over 20 years' experience across a wide variety of commercial industries including fashion, defence, aviation, shipping, rail and road, agricultural, sugar, cotton, dairy, private and public health and, international business obligations. Russell's expertise extends to a wide range of matters including business and human rights, operation, maintenance and catering contracts, finance, loan and security agreements, shipping and maritime, travel and tourism, private and public property, consultancy and royalty agreements, 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.

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## Experience

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### As Arbitrator

- Sole Arbitrator appointed by SIAC in a dispute between German, Korean and Malaysian parties arising out of contracts for the supply of motor vehicles. The quantum of the claim is SGD\$5 million and the appointment was made in 2022.
- Sole Arbitrator in a \$10million defects case arising out of the design and construction of a zinc refinery. Appointed by Resolution Institute in 2022.
- Sole Arbitrator in an 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 in 2022.
- Appointed by the President of the Queensland Law Society in April 2022 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 is in value of over AUD \$100 million.
- Sole arbitrator in 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. Awards delivered in 2021 and 2022.
- 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. The determination was made in 2021.
- Sole arbitrator in ICC expedited proceedings seated in Singapore between Malaysian and Indonesian parties. The matter involves the purchase of commodities from the UAE and the potential application of the principle of force majeure arising out of the global coronavirus pandemic. Appointed in January 2021. Award delivered in June 2021.
- Sole arbitrator in ACICA expedited proceedings involving extension or time, delay and disruption, variation and liquidated damages claims arising out of a zinc-copper project. Appointed in October 2020. Award delivered in April 2021.
- Sole arbitrator in ad hoc international arbitration involving \$50 million in defects claims to a shipping port in a Pacific Island nation. Appointed jointly by the parties in September 2020.
- Arbitrator in USD\$10 million repudiation claim involving iron ore mine and Chinese steel mill concerning an off-take agreement. Award dated April 2020.
- 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).
- Arbitrator in \$10 million claim against the defence force of a Pacific Island nation in relation to a catering services contract. Three awards delivered.
- Arbitrator in \$2 million dispute between government entity in its capacity as lessor and lessee regarding valuation of lease assets.

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- Arbitrator in \$5 million construction dispute relating to variations, extension of time and liquidated damages claims.
- Arbitrator in \$3 million construction dispute between contractor and subcontractor relating to various variations, extension of time, delay, liquidated damages and defects claims.
- 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 Expert Determiner

- Expert determiner of dispute between retail lots and residential lot of 37-storey building located in CBD.
- Expert determiner of dispute between owner of shopping centre and contractor pertaining to construction defects.
- Expert determiner of dispute arising out of dissolving a shareholders agreement and related trust deeds.

### 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 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 over 20 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.

- 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.
- 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 for the Adani Group against John Holland relating to \$1.8 billion coal terminal.

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- 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.
- Setting aside arbitral award of the International Cotton Association regarding cotton supply contracts between US and PRC 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 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 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 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.

## Human Rights

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Russell has a particular passion for human rights. He has served as Chair of Amnesty International Australia and member of the International Trust for Amnesty International (UK). 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.

For over 10 years Russell acted on a pro bono basis for an African man and was successful in having his death penalty sentence overturned at the final appeal stage. Russell led the defence team including lawyers from Indonesia, United States of America, Pakistan, Nigeria, Thailand and Australia.

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## Academic & Professional Qualifications

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### Admissions

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

### Professional & Academic Qualifications

- 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

- 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

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- Fellow and Director 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)
- 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
- Roster of International Arbitrators, Juris

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- Thai Arbitration Institute List of Arbitrators
- Fellow of Chartered Institute of Arbitrators (UK)
- Chair and 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)
- Member, American Bar Association
- Member, Society of Construction Law
- Member, International Trust of Amnesty International (UK)
- Member, Dispute Review Board Federation

## Previous Appointments

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- 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)

## Publications, Articles & Thought Leadership

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- “‘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
- ‘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

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- '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

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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.'*

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- *'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

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