The Honourable Justice Stynes

Judge of the Supreme Court of Victoria

Closing Address for the Melbourne Arbitration Symposium 2025[1]

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1 I am mindful it is the end of an intensive symposium and that many of you will need to return to your desks as I do before your day is done – so I will be brief.

2 I was invited to attend as the judge in charge of the Arbitration List of the Supreme Court.

3 In my view there should be minimal intervention by the Court in the arbitral process. However, when called upon to do so, it is part of my role to ensure that the Court supports the arbitration process efficiently, economically and consistently. To that end it is vital that the Court understands the process that it is supporting. I am here today to build on that understanding.

4 The Court's supervisory and enforcement role is obviously an important topic but not one to be addressed today.

5 The focus of this symposium has been the management of mega disputes. I have a keen interest in that topic as the Judge in charge of the Technology, Engineering and Construction List (the '**TEC List**'). In that role I am responsible for managing a number of complex construction disputes, some which I believe properly qualify as large, maybe even mega disputes. I am always keen to participate in and learn from discussions about case management and I want to say a few words about how the Court can assist and also learn from arbitration on this issue.

6 The competition between arbitral jurisdictions for complex and mega disputes is tough. Australia is competing with long established jurisdictions – New York,

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[1] A speech delivered at the Australian Centre for International Commercial Arbitration's Melbourne Arbitration Symposium 2025 on the theme of "Managing Mega Disputes", hosted by Allens on 24 July 2025.

London, Paris. More recently we have seen a rapid rise in the number of arbitrations seated in Asia. Australia's success in that competition is dependent on a range of factors – the most obvious being the quality of our arbitrators, and arbitration practitioners. I have faith that on that score we fair very well.

7 Another factor and one of particular relevance today is how well such disputes are managed. It must be plain to all of us that case management has a significant impact on the efficiency of an arbitration. And of course that is the best measure of a successful arbitration – did it achieve a just, efficient, timely and cost-effective resolution of the real issues in dispute. Surely, that must be the goal.

8 Assuming that is correct, that is a goal arbitration shares with Court proceedings. But that does not mean that we are in competition.

9 There are excellent reasons why arbitration is the better option for some disputes. Obvious reasons include, the parties' nationality, privacy and choice of panel based on experience, expertise and availability. Maybe you just want to dodge a particular judicial officer – that's ok, I have thick skin.

10 Far from being in competition, I would argue it is important to the mutual success of arbitration and Court proceedings that we work closely together to develop and consistently employ the same or similar practices in case management.

11 Let me explain why. If there is a best way to manage complex and mega disputes – that is, a set of rules, practices or procedures that are most likely to result in the just and efficient resolution of the real issues in dispute then, in service to our litigants – and we are all service providers – shouldn't those practices be employed in both arbitration and Court proceedings?

12 Wouldn't that consistency of service, across arbitration and Court proceedings build confidence in our jurisdiction? Don't we want it said:

(a) When you litigate in Australia, whether in court or arbitration, you will find a uniform and high level of service.

(b) When you arbitrate in Australia, you will be supported by a court that fully understands and values the arbitral process.

13 That is what I am aiming for.

14 We are not in competition.

15 It is not a failing of the Court or Tribunal when parties choose the other forum. Instead, it is proof that having the choice of forum is valuable to parties.

16 Of course, it is important to understand why parties may choose one forum over the other. If the reason is because one is inefficient then we need to put our pride to one side and work on that efficiency.

17 To that end I have looked to arbitration for methods of management that serve the litigation process better than the more traditional court processes.

18 I was moved to make some dramatic changes because I observed, as a barrister and then as a judge, that adopting a traditional approach to preparing a complex dispute for trial with limited case management resulted in the parties spending:

(a) around 12-18 months in pleadings and pleading fights;

(b) followed by 6-12 months in discovery and discovery fights;

(c) followed by 6-12 months in lay evidence; and

(d) followed by 6 months in expert evidence and expert conclaves as a final step ahead of trial.

19 I also observed that it was the exchange of expert evidence and the expert conclaves – the final steps in that process of preparation – that largely facilitated productive settlement discussions.

20 My vision for complex disputes in the TEC List is simple and I have spent the last five years making changes to case management to move the TEC List towards this

vision. I still have a long way to go – it's this:

(a) The parties will commence proceedings by a generally endorsed writ.

(b) They will then exchange concise statements of case and defence. The purpose of these concise statements is not to once and for all time define the issues in dispute. Instead they are designed to facilitate the commencement, at the earliest possible time, of the interlocutory steps that do in fact enable us to fully identify the issues in dispute, namely the exchange of lay and expert evidence.

(c) In relation to expert evidence, the parties will engage in a series of expert conclaves immediately following the statements of case and defence. I don't have time today to describe this process but it is designed to ensure that the expert briefing process is transparent and results in the experts providing opinions much earlier in the proceedings – opinions:

    (i) on the same questions;

    (ii) based on the same materials;

    (iii) employing the same methodology; and

    (iv) limited to issues actually in dispute between them following conferral.

21 Once lay and expert evidence has been exchanged, subject to the willingness of the parties and my capacity, I conduct what are referred to as case management conferences ('**CMCs**') or issues hearings. These CMCs are fixed for one or two days depending on the complexity of a matter. The purpose is to provide each party with an opportunity to address the, say three key issues in dispute that represent the killing ground between them – to facilitate a better understanding of how each party puts its case and the key evidence in support of it.

22 Proceedings frequently, although not always, settle following the CMC. If they don't we then move to trial.

23 I share this vision with you to demonstrate how far the Court has moved from traditional case management techniques. The proposed move from pleadings to statements of case is a nod to the memorial process employed in arbitrations. It is a half-step. It has not been popular but I'm working on it. Court users have a long history with pleadings and are finding it hard to let them go.

24 Similarly, the CMC process is a nod to the soft openings in arbitration. It is a bit more detailed and focussed on specific issues than a soft opening, but that is where the idea stemmed from.

25 The short point is that I am looking to, and learning from, arbitration.

26 As it turns out, I have quite a good laboratory to trial case management techniques – I have a large number of cases coming regularly before me with, as a general rule, very experienced and cooperative legal representatives who are keen to make suggestions about what might work and to give me clear feedback when it doesn't. As I have said – I have a thick skin.

27 The early expert conclave process is something that has developed in the TEC List in that way. I think it is a process that could also work well in arbitrations. You should feel free to contact my chambers if you would like more information about it.

28 I also reach out to other courts nationally and internationally to find out what works for them and what doesn't.

29 My point is this – if Australia is to compete on the world stage in arbitration, it has to pursue world's best practice. If there is such a practice, surely it should be employed across all disputes regardless of whether they are to be determined by a panel of arbitrators or a judge. Not with a view to putting us in competition, but with a view to elevating the quality of the service litigants can expect if they step into our jurisdiction.

30 All that is to say, we serve our industry best when we learn from each other.