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# Why did Arbitration Lose its Relevance in Residential Dispute Resolution in Australia?

An IBQC Conference

# Background

- Arbitration was effectively made illegal in the Australian State of Victoria following the enactment of Domestic Builders Contracts Act 1995
- Prior to this, nearly all residential building contracts had arbitration clauses, which dictated that any dispute had to go to arbitration
- section 14, of the said Domestic Builders Contract Act:

## ***Arbitration clauses prohibited***

*Any term in a [domestic building contract](#) or other agreement that requires a dispute under the contract to be referred to arbitration is void.*



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# The concerns that led to the demise of arbitration

- The cost of arbitration
- Lack of joinder power
- Perception on the part of some certain consumer lobby groups of a lack of neutrality with some of the decisions



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# The promulgation of the Domestic Building Contracts Act 1995

- Establishment of the dedicated building list for the resolution of building disputes in the Victorian Civil and Administrative Tribunal (VCAT)
- Similar legislation in New South Wales by virtue of the promulgation of the Home Building Act 1989, and the similar administration of the New South Wales Civil and Administrative Tribunal (NCAT)



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# Conclusion

- Commercial and civil disputes are dealt with primarily in a tribunal/court, although arbitration still maintains a role in some commercial and civil construction disputes.
- Mediation is mandatory in VCAT, and typically occurs within 6 months of the initiation of legal proceedings. This system is likely to remain in perpetuity.



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*The views expressed in this paper are of the writer only and are not the views of any other body.*



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