



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ADR/LLP:RHnh1986191

17 November 2020

Mr Michael Tidball
Chief Executive Officer
Law Council of Australia
GPO Box 1989
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By email: Charlotte.Stubbs@lawcouncil.asn.au

Dear Mr Tidball,

Singapore Convention on Mediation

Thank you for the opportunity to contribute to the Law Council's submission to the Commonwealth Attorney-General's Department on its Consultation Paper on the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention).

The Law Society's Alternative Dispute Resolution and Litigation Law and Practice Committees have contributed to this submission, which addresses the questions in the Consultation Paper as set out below.

The reasons why Australia should be a party are set out in Part 4 of the Consultation Paper. With the advent of globalisation and cross-border commercial transactions, allowing the expeditious and non-adversarial enforcement of mediated agreements where commercial disputes have arisen is likely to reduce dispute resolution costs and increase the efficiency of courts. The Convention provides the means and a level of certainty to achieve that.

Also, as noted in the Consultation Paper, the safeguards that the Convention has in place 'largely align with those contained in the New York Convention' and are in our view, adequate.

a) Should Australia become a Party to the Singapore Convention?

Yes, for the reasons given in the Consultation Paper at Part 4 'Drivers for Change'. International commercial transaction disputes need a mechanism for enforcing mediated agreements other than through court and arbitral proceedings which are invariably costly and time-consuming.

b) Do you have any concerns about Australia becoming a Party to the Singapore Convention?

No, provided that in the same way courts are now supportive of arbitral processes, they should also adopt the same approach when it comes to enforcing international commercial settlement agreements that come within the scope of the Convention. It is important therefore, that there are uniform Federal and State Court Rules which facilitate the just, quick and cheap enforcement of such agreements.

c) What, if any, reservations should Australia make if it were to become a Party to the Singapore Convention?

We are of the view that the Convention has adequate safeguards and no reservations are required if Australia was to become a Party.

d) What are your views on the Singapore Convention's broad definition of mediation?

We support the broad definition of mediation.

e) What are your views on the grounds for refusing to enforce a mediated settlement agreement?

We believe the grounds for refusing to enforce a mediated settlement agreement are both appropriate and adequate.

We conclude by stating that it is a concern that we have not become a party to date in circumstances where Australian companies operate in a global market and Australia is striving to compete on the international dispute resolution stage. There are currently 53 signatories to the Convention including the United States of America, China and India. In our view, there are no compelling reasons for Australia not signing and ratifying the Convention without further delay.

Should you have any questions or require further information, please contact Ms Nerida Harvey, Director, Access to Justice via telephone on (02) 9926 0379 or via email at nerida.harvey@lawsociety.com.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'R Harvey', with a stylized flourish at the end.

Richard Harvey
President