

LegalUpdate

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New Commercial Arbitration Act

A new arbitration regime is imminent in New South Wales. It is likely to radically alter the conduct of arbitration in this state. The *Commercial Arbitration Act 2010* (the **Act**) received assent on 28 June 2010 and will commence on a day to be appointed by proclamation. New South Wales is the first state of the Commonwealth to enact the proposed new uniform legislation. All states and territories of the Commonwealth have agreed to enact similar legislation to replace the *Commercial Arbitration Act 1984*.

The Act seeks to align domestic arbitration processes with international arbitration processes by replicating the UNCITRAL model law, with some adjustments. The paramount object of the Act is expressed to be the facilitation of the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense.

The Act represents a significant departure from the existing domestic commercial arbitration regime. There has been substantial enhancement to arbitrators' powers and there will be reduced opportunities for Court intervention. Consistent with the UNCITRAL approach, the Act elevates finality and speed and seeks to limit the role of the Courts. By way of example, a right of appeal is only available if both parties agree or opt-in, a reverse of the pre-existing situation. There are very limited express bases for the removal of arbitrators or nominees. Arbitrators have been given powers to order interim relief and specific performance.

The new Act will apply, once proclaimed, to arbitration of disputes which have arisen since the commencement of the operation of the Act. Thus contracts executed prior to the operation of the Act may be governed by its provisions.

CBP will be providing further detailed analysis of the Act, together with seminars in the coming months.

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