# NEW ALTERNATIVE DISPUTE RESOLUTION FRAMEWORK PROPOSED FOR NEW SOUTH WALES

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## IN BRIEF

• The New South Wales Attorney–General has proposed a new alternative dispute resolution framework. The framework includes proposals for reform of arbitration in New South Wales which are likely to be reciprocated in all Australian States and Territories.

• The framework includes proposals for improving the domestic arbitration regime of New South Wales by incorporating the UNCITRAL Model Law; supporting the creation of a single Sydney International Arbitration Centre; placing a greater emphasis on alternative dispute resolution mechanisms in legal education; and introducing penalties for withholding information in court–annexed arbitrations.

## THE NEW FRAMEWORK

The 'Framework for the Delivery of Alternative Dispute Resolution Services in NSW' released by the New South Wales Attorney–General outlines a number of proposals to improve alternative dispute resolution services including a number of proposals to improve the provision of arbitration services in New South Wales. The Framework is part of a broader reform agenda in relation to the laws governing arbitration in Australia which also includes a review of Australia's *International Arbitration Act 1974* (Cth).

## IMPROVING THE DOMESTIC ARBITRATION REGIME

The Framework calls for the current domestic arbitration regime to be improved by incorporating the UNCITRAL Model Law on International Commercial Arbitration supplemented by any additional provisions as are necessary or appropriate for domestic application.

The framework includes proposals for improving the domestic arbitration regime of New South Wales by incorporating the UNCITRAL Model Law; supporting the creation of a single Sydney International Arbitration Centre; placing a greater emphasis on alternative dispute resolution mechanisms in legal education; and introducing penalties for withholding information in court–annexed arbitrations.

Currently, the *Commercial Arbitration Act 1984* (NSW) is intended to govern domestic arbitrations occurring within New South Wales. However, it is also common for international contracts to provide for any international arbitration to be governed by the Act.

The Act provides procedural rules on conducting the arbitration, allows for significant court intervention during the arbitral process and includes provision for a party to appeal an award on a 'manifest error of law'. Improving the domestic arbitration regime by incorporating the Model Law will mean:

- more flexibility for the parties to agree on the process of arbitration to minimise cost and delay;
- less court intervention during the arbitral proceedings; and
- fewer grounds for reviewing an arbitral award once made.

Incorporating the Model Law into New South Wales' domestic arbitration regime will also make the regime consistent with Australia's international arbitration regime. The *International Arbitration Act 1974* (Cth) already applies the Model Law to international arbitrations conducted in Australia.

Further to the New South Wales Attorney–General's proposals in this regard, the Standing Committee of Attorneys General has also recently announced an intention to draft uniform legislation which will incorporate the Model Law into the domestic arbitration regimes of all States of Australia.

## ESTABLISHING A SYDNEY INTERNATIONAL ARBITRATION CENTRE

The Framework calls for the establishment of a single Sydney International Arbitration Centre that has physical space, organisational facilities, secretarial, computer and research support in one location, to position Sydney better as a centre for international commercial arbitration. It is intended that the new Arbitration Centre would become the headquarters for all disparate organisations currently involved in international commercial mediation and arbitration in New South Wales.

## PLACING A GREATER EMPHASIS ON ALTERNATIVE DISPUTE RESOLUTION IN LEGAL EDUCATION

The Framework also calls for a greater emphasis on the field of alternative dispute resolution in the training of lawyers and judges. In particular, the Framework proposes that dispute resolution be a compulsory and separate component of the undergraduate law program, that lawyers who provide dispute resolution services undertake annual training and that judicial officers receive training in the range of dispute resolution options available.

It is hoped that these measures will ensure an even higher level of expertise amongst Australian legal practitioners in the field of arbitration, as well as greater judicial acceptance of arbitration as a dispute resolution mechanism.

To complement the educational reforms, the Framework also proposes that it be a statutory requirement that lawyers advise their clients of alternative dispute resolution mechanisms.

## PENALTIES FOR WITHHOLDING INFORMATION IN COURT–ANNEXED ARBITRATION

As a final measure to improve arbitration as a dispute resolution mechanism, the Framework also calls for the imposition of penalties against a party who fails to disclose a matter in a domestic court–annexed arbitration that is later relied upon at trial. Court–annexed arbitration is not an arbitration in the traditional sense as either party has a right to demand a trial if they are not satisfied with the arbitral award. Concern has been expressed that some parties use court–annexed arbitration as a 'dry run' and keep their 'smoking guns' until the matter is litigated. This proposal addresses this concern and will force parties to participate actively in the court–annexed arbitration process.

## COMMENT

The Framework proposes much needed reform, in particular, in the area of domestic arbitration. The current momentum in relation to international and domestic arbitral law in Australia is a welcome development. If the proposed reforms are enacted it is hoped that Australia will become a leading arbitral centre to rival the likes of Singapore and Hong Kong.

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