New arbitration rules for the Victorian Supreme Court – another step in the State's commitment to international commercial arbitration

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In 2010 Australia amended its *International Arbitration Act* (Cth) 1974 (IAA) to bring it into line with the Model Law (as amended in 2006) and to reflect best practice around the world. This was a significant step taken to re-fresh the legislative framework for international arbitration in Australia and its States and Territories.

The amendments to the IAA included the insertion of an objects clause. The objects of the IAA include facilitation of:

a. international trade and commerce by encouraging the use of arbitration as a method of resolving disputes; and

b. the use of arbitration agreements and the recognition and enforcement of arbitral awards made in relation to international trade and commerce.

As a result of the amendments to the IAA and parallel legislative reform in many of the States and Territories, Australia now has clear and distinct legislative regimes in most jurisdictions for both international commercial arbitration and domestic arbitration.

The State of Victoria established itself as a leader in this field as early as 2010 with the creation of an arbitration list in its Supreme Court which commenced operation on 1 January 2010. The creation of the specialist list was important to ensure consistency of jurisprudence and in communicating the commitment of the Court to the promotion of international commercial arbitration in Victoria and Australia.

In March 2014, the Melbourne Commercial Arbitration and Mediation Centre opened its doors. This Centre is located in the legal precinct of Melbourne and was a joint initiative of the Victorian Bar, the

Law Institute of Victoria and Court Services Victoria. The Centre complements the Australian International Disputes Centre in Sydney, which has been operating for a number of years and houses the Australian Centre for International Commercial Arbitration.

The most recent initiative in Victoria is the introduction of new arbitration rules in the Supreme Court of Victoria, formally known as the Supreme Court (Chapter II Arbitration Amendment) Rules 2014. These Arbitration Rules came into operation on 1 December 2014. The Arbitration Rules set out the procedure for both domestic and international arbitration (although the focus of this note is on international commercial arbitration). The Arbitration Rules operate in conjunction with Practice Note No 8 of 2014 published by the Court on 28 November 2014.

The Arbitration Rules offer clarity as to the process,containing sample forms for all relevant applications. The commencement of these rules is itself significant. Prior to 1 December 2014 applications brought by parties in aid of international commercial arbitration proceedings were made pursuant to the general rules of civil procedure. It was not always clear to applicants how to make an application and which form to use to initiate the proceeding, particularly for foreign-based applicants. The position was complicated because there were different civil procedure rules in most Australian jurisdictions so that even practitioners coming from other States and Territories may have had doubts about how to commence an application. The new rules resolve this confusion.

Applications covered by the Arbitration Rules, in relation to international commercial arbitration, are:

a. applications for stay of and referral to arbitration (pursuant to foreign arbitration agreements and pursuant to Article 8 of the Model Law);

b. applications for the setting aside or enforcement of foreign arbitral awards (including pursuant to the Model Law);

c. subpoenas and applications relating to evidence for arbitration;

d. applications relating to disclosure of confidential information;

e. applications for relief under miscellaneous provisions of the Model Law; and

f. applications for enforcement of an Investment Convention award.

The Practice Note confirms the Court’s commitment to supporting arbitration, noting that *[t]he Court is supportive of the wishes of disputants to resolve all or part of their dispute by arbitration*. The Practice Note provides guidance for practitioners seeking the aid of the Court and mandates that all applications under the IAA must be commenced in accordance with the Arbitration Rules and in the prescribed form. The note also advises practitioners of the need to consult with the Associate to the Judge in charge of the Arbitration List prior to filing any application, and sets out the procedural timetable for the filing of the application, the affidavits relied on in relation to the application (including exhibits to those affidavits) and outlines of arguments in support of the application. This timeline may of course be varied where the circumstances so require.

Parties making application to the Court through the Arbitration List may request that their application be determined within 24 hours of the completion of argument provided that they accept that reasons will not be provided at the time of determination. If a party requires reasons, they reasons will be provided in short form (described within the Practice Note as *being simply statements without elaboration, of the findings of fact and principles of law which lead to the determination*).

The introduction of the Arbitration Rules and publication of the Practice Note in the Supreme Court of

Victoria are important steps in ensuring that practitioners (and their clients) both in Australia and overseas have confidence in the Victorian courts' commitment to international commercial arbitration. They also make it easier for foreign lawyers to understand exactly how the Court can assist parties and provide clear information about what documents are required for each application and how to access the Arbitration List.