



**Australian Government**



Chairman  
The Hon Sir Laurence Street AC KCMG QC

20 January 2009

Mr Stephen Bouwhuis  
Office of International Law  
Attorney-General's Department  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600

Dear Mr Bouwhuis

Please find attached a submission by the International Legal Services Advisory Council in response to the request for comments on the Discussion Paper *Review of the International Arbitration Act 1974* released by the Department in November 2008.

This submission was prepared by the International Commercial Dispute Resolution (ICDR) Committee of the Council.

Yours sincerely

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# Submission on Discussion Paper concerning Review of the International Arbitration Act 1974 dated November 2008

This submission has been prepared on behalf of the International Legal Services Advisory Council (**ILSAC**) at the invitation of the Office of International Law of the Attorney General's Department of the Australian Government. It responds to the Discussion Paper issued by the Attorney-General's Department in November 2008 concerning a review of the International Arbitration Act (the **Review**).

ILSAC is a high level consultative forum established, *inter alia*, to advise the Attorney-General and the Australian Government on enhancing the international presence and improving the international performance of Australia's legal and related services. ILSAC is chaired by The Hon Sir Laurence Street AC KCMG QC with The Hon Andrew Rogers QC as deputy chair.

ILSAC's activities are progressed through four committees. This paper has been prepared by C4 – International Commercial Dispute Resolution, chaired by Mrs Bronwyn Lincoln and comprising Sir Laurence, Mr Rogers, Mr Brian Wilson, Ms Cheryl Scott (Austrade) Mr Ian Govey (Attorney-'s Generals Department) and Mr Edward Sulikowski (Department of Foreign Affairs and Trade).

## A Introduction

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### **Review of the International Arbitration Act 1974**

ILSAC welcomes the proposed review of the International Arbitration Act 1974 and supports the wide consultation process adopted by the Attorney-General's Department. This submission contains the views of the members of ILSAC to the proposed legislative amendments.

ILSAC suggests that there should be a similar review as and when UNCITRAL publishes any recommendations for amendment to the Model Law. This would encourage the maintenance of uniformity which in turn would promote Australia as a place for international arbitration. As a general principle Australia should adhere to and promote actively the concept of uniformity both in legislation and interpretation.

## Promoting Australia as a place for international arbitration

ILSAC strongly endorses the promotion of Australia as a place for international arbitration. The efficiency of the Australian court system, the combined expertise of Australia's international arbitrators and arbitration practitioners and the well developed infrastructure all contribute to Australia's suitability.

There are, however, challenges to Australia's ambitions. These stem in the main from its geographical location. The existence of States and Territories and corresponding State and Federal legislative regimes also bring complexities which may be disconcerting to a foreign investor or to its legal counsel. It is important, therefore, that Australia answer these challenges by ensuring that its legislative framework in the area of international commercial arbitration is simple and effective and, where justified, consistent with the legislation of the competing regional arbitration centres.

## Questions and discussion

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### A Meaning of the 'writing' requirement in Part II of the Act

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| (1) | <i>Should the meaning of the writing requirement for an arbitration agreement, in Part II of the International Arbitration Act (subsection 3(1)), be amended?</i>          |
| (2) | <i>If so, should elements of the amended writing requirement in article 7 (option 1) of the UNCITRAL Model Law, as revised in 2006, be used in the amended definition?</i> |

Australian authorities have consistently recognised the need for a wide (and more recently, commercial) interpretation of the meaning of the writing requirement in the International Arbitration Act. *Comandate Marine Corp v Pan Australia Shipping Pty Ltd* [2006] FCAFC 192, as referenced in Question A of the Review, is demonstrative of this approach. This recognition is consistent both with international practice and with the 2006 UNCITRAL Recommendation (as defined in the Review).

In the interests of uniformity and consistency amongst New York Convention and Model Law countries, ILSAC supports the amendment of the meaning of the

writing requirement for an arbitration agreement as contained in Option 1 of the 2006 UNCITRAL Recommendation.

ILSAC does not support the amendment of the meaning of the writing requirement for an arbitration agreement as contained in Option 2 of the 2006 UNCITRAL Recommendation.

**B Grounds on which a court may refuse to enforce a foreign arbitral award**

*Should the International Arbitration Act be amended to provide expressly that a court may refuse to recognise and enforce an arbitral award only if one of the grounds listed in subsections 8(5), 8(7) or 8(8) is made out?*

Sections 8(5), 8(7) and 8(8) of the International Arbitration Act set out clearly the grounds upon which an Australian court may refuse to recognise and enforce a foreign arbitral award. These grounds are consistent with and implement the provisions of Articles V and VI of the New York Convention.

ILSAC accepts that the decision of the Queensland Supreme Court in *Resort Condominiums International Inc v Bolwell & Anor* [1995] 1 Qd R 406 suggests the existence of a general discretion retained by the court as to whether to recognise and enforce a foreign arbitral award. However, ILSAC is not aware that the decision in *Resort Condominiums* has created any recent disadvantage for Australia in its promotion as an arbitral venue. Whilst ILSAC supports the proposal to amend the International Arbitration Act so as to provide expressly that no such discretion is available to the Australian courts, ILSAC cautions that the wide promotion of such amendment may in fact reflect adversely upon Australia, particularly where more than a decade has passed since the decision.

**C Application of the UNCITRAL Model Law to international commercial arbitrations taking place in Australia**

*Should the International Arbitration Act be amended to provide expressly that the Act governs exclusively an international arbitration in Australia to which the UNCITRAL Model Law applies?*

ILSAC supports the proposed amendment. There has been for some time uncertainty, particularly amongst international practitioners, as to the application

of the State and Territory Commercial Arbitration Acts to international commercial arbitrations where the place of arbitration is Australia. The removal of this uncertainty so that all international commercial arbitrations having a place of arbitration in any State or Territory of Australia and to which the UNCITRAL Model Law applies would provide welcome clarification.

In the event that the amendment proceeds as contemplated, ILSAC recommends a review of the State Commercial Arbitration Acts to ensure that the requisite procedural powers (such as the issue of subpoenas in support of international commercial arbitrations or the making of necessary interim orders) are contained in the International Arbitration Act. Express provisions may be required and ILSAC recommends that guidance be drawn from the Singapore International Arbitration Act (specifically, sections 12, 13 and 14). The text of these sections is set out in schedule 1 to this paper.

**D Clarify that adoption of arbitral rules by the parties does not constitute ‘opting out’ of the UNCITRAL Model Law**

*Should the International Arbitration Act be amended to reverse the Eisenwerk decision, by adopting a provision similar to subsection 15(2) of the Singaporean International Arbitration Act?*

ILSAC strongly endorses the proposed amendment to the International Arbitration Act so as to reverse the *Eisenwerk* decision. Legislative amendment of the kind proposed was enacted in Singapore to reverse the decision of *John Holland Pty Ltd v Toyo Engineering Corp (Japan)* [2001] 2 SLR 262 where the High Court of Singapore, relying in part on the earlier Australian decision of *Eisenwerk*, found that in selecting ICC Rules to govern their arbitration, the parties had *elected to apply the ICC Rules in place of the Model Law, thereby excluding the Model Law only*. The amendments to the Singapore International Arbitration Act were welcomed by the international arbitration community, both for the clarification they provided and on a wider scale as indicative of the encouragement and support offered by the Singapore Government to international commercial arbitration in that country. There are similar benefits to be derived in Australia from the proposed amendment.

It is the recommendation of ILSAC that the proposed amendment consist simply of a provision in similar terms to that contained in section 15(2) of the Singapore International Arbitration Act, namely, that:

*For the avoidance of doubt, a provision in an arbitration agreement referring to or adopting any rules of arbitration shall not of itself be sufficient to exclude the application of the Model Law.*

**E Drafting inconsistencies in Part III, Division 3 (sections 22-27)**

*(i) Should these drafting inconsistencies in Part III, Division 3 of the International Arbitration Act be remedied?*

*(ii) If so, should it be clarified that sections 25 – 27 (relating to interest up to the making of the award, interest on the debt under the award, and costs) apply on an ‘opt out’ basis (that is, applying unless the parties agree otherwise)?*

ILSAC is of the view that:

the drafting inconsistencies in Part III, Division 3 of the International Arbitration Act ought be remedied; and  
amendments should be implemented to provide that sections 25 – 27 (inclusive) apply on an “opt-out” basis.

**F 2006 amendments to the UNCITRAL Model Law**

*(i) Should the International Arbitration Act be amended to adopt recent amendments to the UNCITRAL Model Law?*

ILSAC supports the amendment of the International Arbitration Act so as to adopt the 2006 amendments to the UNCITRAL Model Law, noting the intentions of the Government with respect to ex parte preliminary orders.

*(ii) If article 7 of the revised Model Law (amending the definition of an ‘arbitration agreement’ is adopted, should option I (providing a broad interpretation of the writing requirement) or option II (removing the writing requirement) be adopted?*

ILSAC refers to its submission in section A of this paper. ILSAC supports Option 1 of the 2006 UNCITRAL Recommendation. ILSAC does not support the removal of the writing requirement.

**G Court or other authority to perform functions under the UNCITRAL Model Law**

*(i) Should the International Arbitration Act be amended to allow regulations to be made designating an arbitral institution to perform the functions set out in articles 11(3) and 11(4) of the UNCITRAL Model Law?*

ILSAC supports the proposal that a designated authority (other than a court) assume responsibility for performing functions set out in Articles 11(3) and 11(4) of the UNCITRAL Model Law. It is ILSAC's view that this amendment would promote greater efficiency in the arbitration process and would prove a more attractive option to overseas parties than the commencement of litigation for the appointment or replacement of an arbitrator. The performance of tasks such as these by a designated authority in, for example, Singapore, has contributed to the reputation of that country as a venue for international commercial arbitration.

ILSAC recommends that the Australian Centre for International Commercial Arbitration be designated as the authority under this proposal.

*(ii) Would it be appropriate for other functions referred to in article 6 of the UNCITRAL Model Law, such as hearing challenges to arbitrators under articles 13(3) and 14, to be performed by an arbitral institution similarly designated under the International Arbitration Act?*

Whilst it may be appropriate at a later date for the designation of an authority other than the court to rule on challenges and the inability or otherwise of an arbitrator to act, ILSAC does not support this proposal at this stage.

**H Jurisdiction for matters arising under the Act**

*Should the Federal Court of Australia be given exclusive jurisdiction for all matters arising under the International Arbitration Act?*

The Review notes that the Government is presently proposing to amend the International Arbitration Act to give the Federal Court concurrent jurisdiction with the State and Territory Supreme Courts under Parts III and IV and to clarify the Federal Court's jurisdiction under Part II. The Review also identifies as an alternative approach, the removal of jurisdiction from the State and Territory Supreme Courts under the International Arbitration Act. The Review suggests that this might result in *more consistent jurisprudence in applying the Act*.

There has been much debate over the proposals contained in the Review. At the outset, it is important to highlight the key point that excellent judicial support is critical to the effectiveness of international arbitration in Australia. This requires that there be uniform and consistent interpretation of the Act and that judges hearing matters under the Act are highly regarded and have the correct expertise and experience in the field. It must be acknowledged, however, that some Supreme Court decisions have been seen to undermine Australia's reputation as a supportive place for international arbitration.

There are three broad functions that a court may perform under the International Arbitration Act. These are:

- (a) enforcement of arbitration agreements under section 7 of the Act, Article 8 of the Model Law and Article II of the New York Convention;
- (b) recognition and enforcement of (or the setting aside of) a foreign arbitral award under section 8 of the Act, Articles 34 – 36 of the Model Law and Articles III to VI of the New York Convention; and
- (c) supervision of an international commercial arbitration to which the Model Law applies.

ILSAC submits that there is merit in separate consideration of each of the functions set out in paragraphs (a) to (c) above.

### **Enforcement of arbitration agreements**

ILSAC does not support the granting of exclusive jurisdiction to the Federal Court for the enforcement of arbitration agreements. Enforcement proceedings generally take the form of an application to stay litigation on grounds that a valid arbitration agreement exists with respect to the dispute before the court. Many of the decisions of Australian courts over the past two decades which call for interpretation or implementation of the International Arbitration Act relate to

applications to enforce arbitration agreements through the stay of litigation. A smaller number of cases have arisen on application of a litigant to the court for an anti-suit injunction where the application is founded on the existence of a valid arbitration agreement responding to the dispute.

It is ILSAC's view that problems may arise were the Federal Court to have exclusive jurisdiction to exercise this function.

A party commencing litigation will be limited in its selection of court venue. It is likely that a State or Territory Supreme Court will be the appropriate forum given the nature of the dispute. Under the current regime, an application to stay those proceedings in aid of foreign arbitration (relying on the provisions of the International Arbitration Act and its schedules) can be made in the same forum. If the Federal Court were to take exclusive jurisdiction in respect of arbitration agreements to which the International Arbitration Act applies, a party seeking to restrain another party from litigating where there is a valid arbitration agreement would be required to commence its application in the Federal Court. The result may be concurrent litigation in two forums in the same jurisdiction. This is an undesirable outcome and one which ILSAC believes would actively discourage parties from conducting international arbitration in Australia.

#### **Supervision of international commercial arbitration and the recognition and enforcement of foreign arbitral awards**

The court functions identified in paragraphs (b) and (c) above warrant further consideration. In ILSAC's view, there is a more compelling argument for giving the Federal Court exclusive jurisdiction with respect to these functions.

Conferring exclusive jurisdiction on the Federal Court for these matters could help ensure that international arbitration matters in Australia are heard by highly regarded judges with the necessary specialist expertise in international arbitration. There are limited cases occurring in the Australian courts concerning international arbitration. This would suggest that it is desirable to have those matters concentrated in one Court. It would also reduce the risk that a court inexperienced in international arbitration matters may give a decision under the International Arbitration Act which is seen, both within Australia and in the broader international arbitration community, as undermining judicial support for international arbitration in Australia.

From a public relations perspective, this approach would be simple to promote to commercial parties and their lawyers outside of Australia and may encourage the selection of Australia as a place for international commercial arbitration.

For the reasons set out above, ILSAC would support an amendment of the International Arbitration Act so as to give the Federal Court exclusive jurisdiction for all matters arising under the Act with the exception of those matters concerning the enforcement of arbitration agreements.

### **Importance of specialist lists**

In ILSAC's experience, the international commercial arbitration community has been more impressed with the establishment of specialist arbitration lists within a relevant court system in foreign jurisdictions (notably, in Singapore) than been concerned with the specific court within a country's court hierarchy which has jurisdiction to determine matters concerning international arbitration.

ILSAC would therefore encourage each of the relevant courts with jurisdiction in respect of the International Arbitration Act to establish a specialist list to hear all matters arising under the International Arbitration Act and would do so irrespective of the outcome of the current proposals.

In addition, many of the State Supreme Courts and the Federal Court have established protocols to seek out the views of practitioners practising in the courts in order to ensure that the court processes remain current and efficient and meet the needs of litigants and their lawyers. ILSAC recommends that appropriate user liaison groups be established to assist the judges charged with the conduct of any specialist arbitration lists.

### **Other matters**

*Do you have any other comments or recommendations for improving the International Arbitration Act?*

### Confidentiality

Australia received adverse publicity following the decision of *Esso Australian Resources Ltd v Plowman* (1995) 183 CLR 10 where the High Court held that arbitration in Australia is private, but not confidential. The decision is often raised by international practitioners at conferences around the world and remains a

concern of commercial organisations who might otherwise select Australia as a venue for international commercial arbitration.

The response of Australian practitioners to concerned clients is generally to ensure that the arbitration agreement or arbitration clause to which they are a party contains a confidentiality clause (either expressly or through the selection of institutional rules which also provide for confidentiality). Although this is effective, ILSAC suggests that the current review of the International Arbitration Act provides an opportunity to incorporate into the Act a requirement of confidentiality in terms similar to that contained in sections 14A to 14I of the New Zealand Arbitration Act 1996 (as amended by the Arbitration Amendment Act 2007). Sections 14A to 14I are reproduced in schedule 2 to this paper. Amendments of this kind are simple to publicise and would address an issue which has caused concern to the international legal community (and its clients) for some time.

#### Conduct of proceedings

ILSAC refers to section 12 of the Singapore International Arbitration Act (the text of which is reproduced in schedule 1 of this paper).

Section 12 (3) provides that an arbitral tribunal shall (unless the parties agree otherwise in writing) have the power to adopt (if it thinks fit) inquisitorial processes. ILSAC is of the view that a similar provision in the International Arbitration Act would be both desirable and consistent with other proposals for amendment where the object of those amendments is to facilitate efficient arbitration processes in international arbitration in Australia.

20 January 2009

## Schedule 1 – Sections 12, 13 and 14 of the Singapore International Arbitration Act (Cap 143A)

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### **Powers of arbitral tribunal**

**12.** —(1) Without prejudice to the powers set out in any other provision of this Act and in the Model Law, an arbitral tribunal shall have powers to make orders or give directions to any party for —

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) giving of evidence by affidavit;
- (d) the preservation, interim custody or sale of any property which is or forms part of the subject-matter of the dispute;
- (e) samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;
- (f) the preservation and interim custody of any evidence for the purposes of the proceedings;
- (g) securing the amount in dispute;
- (h) ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and
- (i) an interim injunction or any other interim measure.

(2) An arbitral tribunal shall, unless the parties to an arbitration agreement have (whether in the arbitration agreement or in any other document in writing) agreed to the contrary, have power to administer oaths to or take affirmations of the parties and witnesses.

(3) An arbitral tribunal shall, unless the parties to an arbitration agreement have (whether in the arbitration agreement or in any other document in writing) agreed to the contrary, have power to adopt if it thinks fit inquisitorial processes.

### **Witnesses may be summoned by subpoena**

**13.** —(1) Any party to an arbitration agreement may take out a subpoena to testify or a subpoena to produce documents.

(2) The court may order that a subpoena to testify or a subpoena to produce documents shall be issued to compel the attendance before an arbitral tribunal of a witness wherever he may be within Singapore.

(3) The court may also issue an order under section 38 of the Prisons Act (Cap. 247) to bring up a prisoner for examination before an arbitral tribunal.

(4) No person shall be compelled under any such subpoena to produce any document which he could not be compelled to produce on the trial of an action.

**Power to compel attendance of witness**

**14.** —(1) The High Court or a Judge thereof may order that a subpoena to testify or a subpoena to produce documents shall be issued to compel the attendance before an arbitral tribunal of a witness wherever he may be within Singapore.

(2) The High Court or a Judge thereof may also issue an order under section 38 of the Prisons Act to bring up a prisoner for examination before an arbitral tribunal.

Schedule 2: Extracts from Arbitration Amendment Act 2007  
(New Zealand) amending, relevantly, sections 2 and 14 of the  
Arbitration Act 1996 (New Zealand)

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**4. Interpretation**

(1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

confidential information, in relation to arbitral proceedings, -

- (a) means information that relates to the arbitral proceedings or to an award made in those proceedings; and
- (b) includes –
  - (i) the statement of claim, statement of defence, and all other pleadings, submissions, statements, or other information supplied to the arbitral tribunal by a party;
  - (ii) any evidence (whether documentary or otherwise) supplied to the arbitral tribunal;
  - (iii) any notes made by the arbitral tribunal of oral evidence or submissions given before the arbitral tribunal;
  - (iv) any transcript of oral evidence or submissions given before the arbitral tribunal;

disclose, in relation to confidential information, includes publishing or communicating or otherwise supplying the confidential information.

...

**6. New sections 14 to 14I substituted.**

Section 14 is repealed and the following sections are substituted:

**14. Application of sections 14A to 14I**

Except as the parties may otherwise agree in writing (whether in the arbitration agreement or otherwise), sections 14A to 14I apply to every arbitration for which the place of arbitration is, or would be, New Zealand.

**14A. Arbitral proceedings must be private**

An arbitral tribunal must conduct the arbitral proceedings in private.

**14B. Arbitration agreements deemed to prohibit disclosure of confidential information**

(1) Every arbitration agreement to which this section applies is deemed to provide that the parties and the arbitral tribunal must not disclose confidential information.

(2) Subsection (1) is subject to section 14C.

**14C. Limits on prohibition on disclosure of confidential information in section 14B**

A party or an arbitral tribunal may disclose confidential information—

- (a) to a professional or other adviser of any of the parties; or
- (b) if both of the following matters apply:
  - (i) the disclosure is necessary –
    - (A) to ensure that a party has a full opportunity to present the party's case, as required under article 18 of Schedule 1; or
    - (B) for the establishment or protection of a party's legal rights in relation to a third party; or
    - (C) for the making and prosecution of an application to a court under this Act; and
  - (ii) the disclosure is no more than what is reasonably required to serve any of the purposes referred to in subparagraph (i)(A) to (C); or
- (c) if the disclosure is in accordance with an order made, or a subpoena issued, by a court; or
- (d) if both of the following matters apply:
  - (i) the disclosure is authorised or required by law (except this Act) or required by a competent regulatory body (including New Zealand Exchange Limited); and
  - (ii) the party who, or the arbitral tribunal that, makes the disclosure provides to the other party and the arbitral tribunal or, as the case may be, the parties, written details of the disclosure (including an explanation of the reasons for the disclosure); or
- (e) if the disclosure is in accordance with an order made by –
  - (i) an arbitral tribunal under section 14D; or
  - (ii) the High Court under section 14E.

14D. Arbitral tribunal may allow disclosure of confidential information in certain circumstances

(1) This section applies if—

- (a) a question arises in any arbitral proceedings as to whether confidential information should be disclosed other than as authorised under section 14C(a) to (d)); and
- (b) at least 1 of the parties agrees to refer that question to the arbitral tribunal concerned.

(2) The arbitral tribunal, after giving each of the parties an opportunity to be heard, may make or refuse to make an order allowing all or any of the parties to disclose confidential information.

14E. High Court may allow or prohibit disclosure of confidential information if arbitral proceedings have been terminated or party lodges appeal concerning confidentiality

(1) The High Court may make an order allowing a party to disclose any confidential information—

- (a) on the application of that party, which application may be made only if the mandate of the arbitral tribunal has been terminated in accordance with article 32 of Schedule 1; or
  - (b) on an appeal by that party, after an order under section 14D(2) allowing that party to disclose the confidential information has been refused by an arbitral tribunal.
- (2) The High Court may make an order under subsection (1) only if—
- (a) it is satisfied, in the circumstances of the particular case, that the public interest in preserving the confidentiality of arbitral proceedings is outweighed by other considerations that render it desirable in the public interest for the confidential information to be disclosed; and
  - (b) the disclosure is no more than what is reasonably required to serve the other considerations referred to in paragraph (a).
- (3) The High Court may make an order prohibiting a party (party A) from disclosing confidential information on an appeal by another party (party B) who unsuccessfully opposed an application by party A for an order under section 14D(2) allowing party A to disclose confidential information.
- (4) The High Court may make an order under this section only if it has given each of the parties an opportunity to be heard.
- (5) The High Court may make an order under this section—
- (a) unconditionally; or
  - (b) subject to any conditions it thinks fit.
- (6) To avoid doubt, the High Court may, in imposing any conditions under subsection (5)(b), include a condition that the order ceases to have effect at a specified stage of the appeal proceedings.
- (7) The decision of the High Court under this section is final.

14F. Court proceedings under Act must be conducted in public except in certain circumstances

- (1) A Court must conduct proceedings under this Act in public unless the Court makes an order that the whole or any part of the proceedings must be conducted in private.
- (2) A Court may make an order under subsection (1)—
- (a) on the application of any party to the proceedings; and
  - (b) only if the Court is satisfied that the public interest in having the proceedings conducted in public is outweighed by the interests of any party to the proceedings in having the whole or any part of the proceedings conducted in private.
- (3) If an application is made for an order under subsection (1), the fact that the application had been made, and the contents of the application, must not be made public until the application is determined.
- (4) In this section and sections 14G to 14I,—
- Court—
- (a) means any court that has jurisdiction in regard to the matter in question; and

- (b) includes the High Court and the Court of Appeal; but
- (c) does not include an arbitral tribunal.

proceedings includes all matters brought before the Court under this Act (for example, an application to enforce an arbitral award).

**14G. Applicant must state nature of, and reasons for seeking, order to conduct Court proceedings in private**

An applicant for an order under section 14F must state in the application—

- (a) whether the applicant is seeking an order for the whole or part of the proceedings to be conducted in private; and
- (b) the applicant's reasons for seeking the order.

**14H. Matters that Court must consider in determining application for order to conduct Court proceedings in private**

In determining an application for an order under section 14F, the Court must consider all of the following matters:

- (a) the open justice principle; and
- (b) the privacy and confidentiality of arbitral proceedings; and
- (c) any other public interest considerations; and
- (d) the terms of any arbitration agreement between the parties to proceedings; and
- (e) the reasons stated by the applicant under section 14G(b).

**14I. Effect of order to conduct Court proceedings in private**

(1) If an order is made under section 14F,—

- (a) no person may search, inspect, or copy any file or any documents on a file in any office of the Court relating to the proceedings for which the order was made; and
- (b) the Court must not include in the Court's decision on the proceedings any particulars that could identify the parties to those proceedings.

(2) An order remains in force for the period specified in the order or until it is sooner revoked by the Court on the further application of any party to the proceedings.