

Review of the International Arbitration Act 1974 – Discussion Paper

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I will briefly respond to each of the questions without repeating the question.

Question A.

I believe that subsection 3(1) - if amended - should follow option 1 as it would make it clear what the writing requirements are. It would lead to a clarification and uncertainty would be removed. However some thought should be given to option 2 which on the other hand would broaden the application of the Model Law and therefore subsection 3(1) would not be required.

The simple question is whether the purpose is to tighten the definition of “writing” then option 1 needs to be included. If the intention is to broaden the application of the Model law then option 2 needs to be considered which also affects subsection 3(1).

Question B

In order to stay in step with international development it is necessary to restrict a refusal to the grounds listed in subsections 8(5), (7) and (8) only.

Question C

In my view it is obvious as it stands. However in order to remove all possibility of a confusion then the answer is yes.

Question D

Absolutely; it follows academic writing on this point as well as other decisions specifically in Singapore. The Eisenwerk decision was wrong as the law of the seat of arbitration is always in “Reserve”

Question E

Consistency is important and hence whether it is on an opt-in or opt-out basis is not the relevant point. Personally I would prefer an opt-out option,

Question F

I consider this question in light with international developments. I think in this case Australia should sit back and see whether the recent amendments have widespread support with other Model law countries. New article 2A does nothing much to the interpretation of the Model Law as the Vienna Convention on the Law of Treaties specifically article 31 introduces good faith anyway. The question of consistency has

been resolved as much academic writing is available which instructs arbitrators on difficult and controversial aspects of interpretation. .

Option 1 of the writing requirements is clearer and the question of separability is easier resolved than by adopting option 2 (which has an advantage of broadening the application of the Model law. As noted in Question A).

Question G

Considering that the Singapore and Hong Kong Arbitral Centres are very successful I would consider that ACICA should take on the functions described in this question. Specially Singapore has proven that an Arbitration Centre is well equipped to perform the functions and besides this solution saves time and costs.

Question H

Absolutely; besides it follows the successful Singapore model/