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Arbitration and Maritime Law in Australia

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Introduction

According to the 2020 survey conducted by the Australian Centre for International Commercial Arbitration ("**ACICA**"), arbitration in Australia is 'thriving'.[1]

The 2010 arbitration law reforms modernised Australia's legal arbitration framework and brought it in line with international standards.[2] Judgments of Australian Courts demonstrate an approach supportive of arbitral proceedings, as well as a pro-enforcement attitude towards foreign arbitral awards.

Australia has well-developed maritime and admiralty laws with the *Admiralty Act 1988* (Cth) ("**Admiralty Act**") and the *Carriage of Goods by Sea Act 1991* (Cth) ("**COGSA**") at the pinnacle. These statutory laws complement the arbitration framework.

Both institutional and ad hoc arbitrations are gaining popularity[3] due in part to the favourable approach of Australian Courts exercising supervisory jurisdiction.

There is a longstanding practice in Australia of recognition and enforcement of arbitral awards rendered by Singaporean arbitral tribunals, of which SCMA is considered to be one of the most important for maritime claims.

Overview of Australian Law on Arbitration

Overview

Arbitration is a significant mode of dispute resolution within the Asia-Pacific region and Australia. ACICA reported that between 2016 to 2019, a total of 223 arbitrations involving an Australian connection were recorded, with over A$35 billion in dispute.[4]

International arbitration in Australia is governed by the *International Arbitration Act 1974* (Cth) ("**IAA**"). In 2010, the international arbitration regime in Australia underwent a series of reforms aimed at supporting arbitration which resulted in the implementation of amendments to the IAA. The IAA gives effect to the UNCITRAL Model Law[5] and implements the New York Convention,[6] which in turn governs the recognition and enforcement of foreign arbitration awards (discussed in greater detail below).

Domestic arbitration is governed by state and territory laws which have all adopted relatively uniform legislation based on the UNCITRAL Model Law in the form of a Commercial Arbitration Act.[7] Where the UNCITRAL Model Law applies, the arbitration law of an Australian State or Territory will not apply under section 21 of the IAA.[8]

Provisions of the IAA

Section 16(1) of the IAA gives force to the UNCITRAL Model Law.[9] Subject to limited exceptions, the provisions of the UNCITRAL Model Law govern international arbitration in Australia. For example, unlike in jurisdictions such as Singapore and Hong Kong, Article 17B of the UNCITRAL Model Law does not form part of Australian law[10] and so in Australia, parties are required to apply to a Court (not the arbitral tribunal) for *ex parte* interim measures, such as freezing or search orders. All other interim measures are permitted.

The IAA contains several provisions in aid of arbitration proceedings that supplement the UNCITRAL Model Law. For example, Division 3 of Part III of the IAA confers powers on the Australian Courts to make

orders assisting parties with gathering evidence in arbitral proceedings, such as issuing subpoenas.[11] Section 23K of IAA confers power on arbitral tribunals to order security for costs.[12] Sections 25 and 26 of the IAA allow for an award of pre and post judgment interest in arbitral proceedings.[13]

Pro-arbitration Spirit

Australia's integrated statutory framework for domestic and international arbitration is supported by a pro-arbitration approach taken by the Australian Courts. For example, the High Court of Australia has recognised that the UNCITRAL Model Law limits the power of Australian Courts to intervene in matters governed by the UNCITRAL Model Law except where curial intervention is provided for by the UNICTRAL Model Law.[14]

Several pieces of legislation in Australia provide for the stay of competing court proceedings in favour of arbitration. Section 7(2) of the IAA provides that on an application by a party to a relevant arbitration agreement, proceedings shall be stayed and referred to arbitration, provided that certain conditions are met.[15] The Federal Court of Australia has recently exercised this power to refer a dispute in relation to a slot charterparty to arbitration.[16] Further, the Federal Court of Australia may stay proceedings in favour of arbitration pursuant to section 29 of the Admiralty Act on a condition that a ship or property under arrest in the proceedings be retained by the Court as security for the satisfaction of any award or judgment that may be made in an arbitration or in a proceeding in the Court of a foreign country.[17] The Federal Court of Australia may also refer proceedings to arbitration with or without the consent of the parties pursuant to section 53A of the *Federal Court of Australia Act 1976* (Cth).[18]

Australian Courts generally uphold arbitration agreements by giving a broad and liberal interpretation to arbitration clauses. As an example, the High Court upheld arbitration agreements contained in three separate deeds which directed parties to resolve disputes '*under this deed*' or '*all disputes hereunder*' by means of arbitration.[19] The exchange of signed letters is also sufficient evidence of a written agreement to arbitrate as provided under Article 7(2) of the UNCITRAL Model Law.[20]

Overview of Maritime Law in Australia

Admiralty Act

At the foundation of maritime law in Australia is the Admiralty Act. The Admiralty Act confers jurisdiction on the Federal Court of Australia and the Supreme Courts of Australian States and Territories to hear maritime claims. The Admiralty Act allows proceedings to be commenced *in rem* against a ship or other property[21] or *in personam* against a person or an organisation.[22]

Part III of the Admiralty Act provides exclusive bases upon which an action *in rem* may be brought, being maritime liens,[23] proprietary maritime claims,[24] owner's liabilities[25] and demise charterer's liabilities.[26]

A maritime lien is a charge attaching to a ship, cargo or freight that secures certain types of maritime claims by giving a right to enforce a claim in a Court exercising Admiralty jurisdiction.[27] In Australia, maritime liens can be supported by claims in relation to ship damage, salvage reward and crew's wages.[28] Claims for towage services and supply of necessities cannot be supported. [29] A maritime lien attaches to the property from the moment the claim arises and so enjoys priority over all other charges.[30] Australian Courts will only enforce a foreign maritime lien[31] if it corresponds to a maritime lien found within the Admiralty Act. For example, this means that maritime liens for the supply of necessaries which are recognised in the United States will not be regarded as maritime liens in Australia.

'Proprietary maritime claims' in respect of which *in rem* proceedings can be brought (broadly) include claims involving rights of possession and ownership of a ship. 'General maritime claims' include claims in

respect of damage to ships and personal injury or personal liability as a result of a defect in a ship,[32] as well as claims for the enforcement of or arising out of an arbitral award made in respect of a claim referred to in the Admiralty Act.[33] Additionally, 'general maritime claims' may be brought against surrogate ships, if the owner of the surrogate ship was the relevant person which owned or chartered, or was in possession or control of, the first ship when the cause of action arose.[34] Holders of maritime liens do not have a right of surrogate ship arrest as maritime liens attach only to the ship in respect of which the claim arises.[35]

The procedure for matters under the Admiralty Act is prescribed by the *Admiralty Rules 1988* (Cth) and is supported by the *Federal Court Rules 2011* (Cth).[36] Broadly speaking, proceedings *in rem* are commenced by the filing of a writ with the Federal Court of Australia which is required to be served on the Respondent. The Applicant may then apply for the arrest warrant to be issued in respect of a ship or property. Given the remoteness of some ports in Australia, the Admiralty Marshal in Australia works closely with local customs or police officers or other suitable persons to assist with arrests.

Limitation periods for *in rem* proceedings are governed by the limitations acts of the respective Australian States and Territories, or in default, are set at three years.[37] For example, in New South Wales the limitation period for actions *in rem* for recovery of crew's wages is six years and an action for damage as a result of a collision or for salvage services is two years.[38] This is in line with limitation periods set out in the *International Convention on Salvage 1989*[39] and the *International Convention Relating to the Arrest of Sea-Going Ships 1952*, respectively.[40]

COGSA

Another important legislation governing maritime law in Australia is the COGSA. The COGSA gives effect to a modified version of the Hague-Visby Rules.

The Australian version of the Hague-Visby Rules, or the Amended Hague Rules,[41] governs sea carriage documents for outward-bound international carriage from Australia.[42] The unmodified version of the Hague-Visby Rules continues to apply to inward-bound international carriage to Australia from the Hague-Visby Contracting States,[43] save for:

(a) inward-bound international carriage to Australia under non-negotiable sea-carriage documents (unless different Rules apply by virtue of the law of the country of shipment),[44] and
(b) inward-bound international carriage to Australia from non-Contracting States (unless sea-carriage document incorporates other Rules).[45]

It should be noted that the definition of '*sea carriage documents*' has been broadened in Australia to include sea waybills and delivery orders, in addition to bills of lading.[46]

Section 11(1)(a) of the COGSA deems the choice of law of sea-carriage documents relating to the carriage of goods by sea out of Australia to be Australian law. Section 11(2)(a) of the COGSA prescribes the compulsory choice of forum for disputes in respect of sea-carriage documents for the carriage of goods by sea into or out of Australia to be Australian Courts.

Any agreement which purports to modify or limit the compulsory choice of law and forum is void[47] and this has led to a number of cases where Australian Courts have struck down clauses providing for arbitration in London.[48] This was clarified by the Full Federal Court of Australia in *Norden*[49] which held that an arbitration clause in a voyage charterparty in favour of foreign arbitration did not fall foul of section 11 of the *COGSA* because a voyage charterparty was an agreement for the hire of a ship and not a '*sea-carriage document'* for the purposes of section 11 of the COGSA.[50]

Section 11(3) of the *COGSA* allows parties to agree on the choice of law applicable in

any arbitration proceedings, provided that those arbitration proceedings take place in Australia.

The limitation of liability provisions in Australia are largely consistent with the unmodified Hague-Visby Rules in that the liability of the shipper or the carrier for loss or damage to the goods is limited to an amount not exceeding 666.67 units of account per package or unit or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.[51]

The Australian modification to Article 4, rule 5(a) of the Hague-Visby Rules which deals with the limitation of liability, is to replace the term '*bill of lading'* with '*sea carriage document'*.[52] This expands the ambit of documents in which shippers may declare the true value and nature of goods (in which case the declared value of goods is taken to be their *prima facie* value).[53] The enumeration of items packed in a container on the face of the sea carriage document is used for the purposes of limitation of liability, even if the document indicates that the carrier does not know the number of items packed.[54]

At present, the Australian position on the burden of proof under the Hague-Visby Rules differs from the position in UK in *Volcafe.*[55] In Australia, a plaintiff bringing a cargo claim is required to establish negligence on the part of the defendant carrier, which constitutes a breach of Article 3, rule 2, before any question of defences arises; proof of damaged goods on arrival alone is insufficient.[56] While the Australian position was considered by the UK Supreme Court in *Volcafe* and rejected, until the High Court of Australia has an opportunity to reconsider this issue, the position in *Great China Metal*[57] remains authoritative in Australia.[58]

Another notable amendment in Australia is the extension of the period of the carrier's responsibility under the Amended Hague Rules beyond tackle to tackle to the period commencing when goods are delivered to the carrier within a port and ending when goods are delivered to the consignee. In *Seafood Imports*,[59] the Federal Court of Australia, in recognising the extension to the carrier's responsibility afforded by the Amended Hague Rules, found the carrier to be in breach of its obligations to '*properly and carefully'* discharge the goods by failing to ensure that the container in which goods had been contained did not defrost upon arrival at the terminal.[60] In that case, a carrier of fish from Japan to Australia was found liable for the loss of fish which went off as a result of the container defrosting.[61]

Enforceability of Foreign Awards in Australia

Australia adheres to the obligation contained in Article III of the New York Convention to recognise arbitral awards as binding and to enforce them by virtue of the provisions contained in section 8 of the IAA, which was proclaimed as constitutionally valid by the High Court of Australia.[62] Subject to the exclusive grounds upon which enforcement of arbitral awards may be denied (mirrored from the New York Convention),[63] foreign awards may be enforced in a Court of an Australian State or Territory as if the award was a judgment or order of that Court.[64]

Australian Courts have a pro-enforcement approach to foreign arbitral awards.[65] For example, the Federal Court of Australia recently allowed enforcement of arbitral awards that were challenged on the basis of procedural irregularities invoking grounds under section 8(5)(c) and (e) of the IAA,[66] and on the basis that an award arguably lacked authenticity.[67]

Section 8(5) of the IAA contains an exhaustive list of grounds upon which a party may seek refusal of an enforcement of a foreign arbitral award. Only two grounds exist upon which an Australian Court may refuse to recognise an arbitral award in the absence of an application from a party against whom an award is sought to be enforced. These are: (a) if the subject matter of the dispute is not capable of arbitration; or (b) to enforce an arbitral award would be contrary to public policy.[68] The term *'public policy'* is defined in the IAA as the situation where *'(a) the making of the*

interim measure or award was induced or affected by fraud or corruption; or (b) a breach of the rules of natural justice occurred in connection with the making of the interim measure or award.'[69]

Resisting enforcement of arbitral awards on the ground of breach of public policy has proven difficult in Australia. The public policy ground for resisting enforcement has been held to require a breach of '*morality*',[70] '*fundamental principles of law and justice*'[71] or '*real unfairness or real practical injustice*'.[72] Errors of law or fact made by an arbitral tribunal are not considered to be in contravention of public policy in the relevant sense.[73]

Although proof of '*reasonable apprehension of bias*' is sufficient to establish a breach of natural justice,[74] Australian Courts adopt a case-by-case approach to the assessment of bias, and denial of natural justice arguments rarely succeed in resisting enforcement of arbitral awards.[75] Whilst serious illegality is likely to be considered a breach of public policy in Australia following English authorities, it is less clear whether the illegality of a less serious nature, such as an underlying contract that is illegal at the place of the seat but not at the place of enforcement, constitutes a breach of public policy. [76]

The procedure for enforcing foreign arbitral awards in Australia is adopted from the New York Convention; this requires that a party seeking enforcement supply to the Court the following documents:[77]

a) an authenticated original or certified copy of the award;
b) an original or certified copy of the arbitration agreement; and
c) a translation of any parts not in English.

An example of these procedural provisions in action is the case of *Sanum Investments*[78] where the Applicant sought leave to serve the Respondent debtors abroad in the purported enforcement proceedings in relation to a US$200 million award handed by the Singapore International Arbitration Centre. One of the requirements for granting leave to serve an application abroad is for the Applicant to demonstrate a *prima facie* case for enforcement of the award. Having found that certified copies of the arbitral award and arbitration agreements had been tendered[79] and that an award had been made in a New York Convention country,[80] the Court was satisfied that the Applicant established a *prima facie* case for the enforcement of the award.[81] The Court left the investigation of challenges to the recognition and enforcement of the arbitral award raised by the Respondents to be considered at the final hearing. Ultimately, the Singapore Court of Appeal in *ST Group*[82] refused to recognise and enforce the arbitral award because it found that the arbitration was not seated in accordance with the agreement of the parties.

Overall, there is a pro-enforcement attitude towards arbitral awards in Australia embedded in the provisions of the IAA, and in the approach of Australian Courts. This is consistent with the support provided in Australia for arbitral proceedings in a form of limited judicial intervention and effective supervisory jurisdiction. The enforceability of foreign arbitration awards in Australia would thus be of interest to those who have obtained arbitral awards outside of Australia and wish to enforce them against award debtors who hold assets in Australia.[83] Australian practice in relation to the enforcement of foreign arbitral awards provides greater certainty to existing and prospective parties to commercial dealings conducted in Australia.

Institutional vs ad hoc Arbitration – Australian perspectives

Australia's leading arbitral institution is ACICA. Each institution has its own set of arbitration rules which parties may select to be the rules governing their arbitral proceedings. The key advantage of institutional arbitration is the certainty provided to the parties by the established rules and procedures.

In contrast, in an ad hoc arbitration, instead of an arbitral institution prescribing arbitration rules and procedures, parties

agree on the conduct of arbitral proceedings. The advantages of ad hoc arbitrations are lower costs,[84] lesser formalities[85] and greater flexibility. Ad hoc arbitrations are, therefore, suited to smaller claims. However, without the guidance of an institutional body, the success of ad hoc arbitrations is significantly dependent on the parties' cooperation and interest in maintaining a relationship in the future. It is also common for parties to ad hoc arbitrations to place greater reliance on the supervisory jurisdiction of the national courts[86] and Australian Courts offer a reliable impartial and rigorous system in support of ad hoc arbitrations.

The rules governing ad hoc arbitrations in Australia are embedded in the UNCITRAL Model Law which is adopted by virtue of section 16(1) of the IAA. Thus, parties have the discretion to choose arbitrators in ad hoc arbitrations and in the event that an agreement cannot be reached, assistance from the national Courts may be sought.

Section 3 of the IAA gives the term '*arbitral award'* the same meaning as that in the New York Convention, which includes '*awards made by arbitrators appointed for each case*'.[87] Accordingly, arbitral awards rendered by ad hoc arbitral tribunals have equal enforcement status in Australia to that of institutional awards.

Pursuant to ACICA's Australian Arbitration Report 2020, most international arbitrations in Australia (including maritime) are commenced pursuant to SIAC or ICC Rules and are seated in Singapore. The most favoured rules for domestic arbitrations are ACICA Rules. Between 2016 and 2019, disputes involving the total value of just over $2 billion were resolved by means of ad hoc arbitrations in Australia, which is the fourth largest total value after ICC, UNCITRAL and SIAC arbitrations. Australian parties prefer UNCITRAL Rules for ad hoc arbitrations.[88]

Status of SCMA Awards in Australia

The SCMA has been an increasingly popular choice in the Asia-Pacific.[89] SCMA's arbitral awards will be recognised and enforced in any New York Convention country.[90] Australia, being one of them, is no exception. Singapore is a popular arbitral seat among Australian parties, and Singaporean arbitral awards have long been granted recognition and enforcement by Australian Courts.[91]

The SCMA Rules prescribe Singapore as the default seat and apply UNCITRAL Model Law,[92] which resembles Australian and global practice. Although there have not been any reported SCMA awards enforced in Australia recently,[93] little reason exists for not awarding the SCMA awards the same status as arbitral awards of other Singaporean institutions which have long been recognised in Australia.

Conclusion

Overall, Australia is a stable and reliable jurisdiction to arbitrate disputes and seek enforcement of arbitral awards. Its modern pro-arbitration approach provides certainty in commercial dealings and preserves party autonomy in choosing a preferred method of dispute resolution. Australia's maritime and admiralty laws provide further support for the arbitration of maritime disputes.

[1] Australian Centre for International Commercial Arbitration, *Australian Arbitration Report* (2020) 6, 4 <https://acica.org.au/wp-content/uploads/2021/03/ACICA-FTI-Consulting-2020-Australian-Arbitration-Report-9-March-2021.pdf > (‘*ACICA Report 2020*’).
[2] Australian Law Reform Commission, *International Arbitration,* <https://www.alrc.gov.au/publication/legal-risk-in-international-transactions-alrc-report-80/11-international-arbitration/>.
[3] According to the *ACICA Report 2020*, 10, the total amount in dispute resolved by means of *ad hoc* arbitration closely follows that of arbitration using rules of major arbitration institutions.
[4] *ACICA Report 2020*, 6.
[5] *UNCITRAL Model Law on International Commercial Arbitration*, UN GAOR, 40th sess, Supp No 17, UN Doc A/40/17 (21 June 1985) annex 1, as amended by UN GAOR, 61st sess, Supp No 17, UN Doc A/61/17 (7 July 2006) annex 1; *International Arbitration Act 1974* (Cth), section 16(1).
[6] *Convention on the Recognition and Enforcement of Arbitral Awards 1958*, opened for signature 10 June 1958, 330 UNTS 38 (entered into force 7 June 1959).
[7] New South Wales: *Commercial Arbitration Act 2010* (NSW); Victoria: *Commercial Arbitration Act 2011* (VIC); Queensland: *Commercial Arbitration Act 2013* (Qld); South Australia: *Commercial Arbitration Act 2013* (SA); Western Australia: *Commercial Arbitration Act 2012* (WA); Northern Territory: *Commercial Arbitration (National Uniform Legislation) Act 2011* (NT); Tasmania: *Commercial Arbitration Act 2011* (TAS).
[8] *International Arbitration Act 1974* (Cth), section 21(1).
[9] *International Arbitration Act 1974* (Cth), section 16(1); cf *ACD Tridon Inc v Tridon Australia Pty Ltd* [2002] NSWSC 896.
[10] *International Arbitration Act 1974* (Cth), section 18B.
[11] *International Arbitration Act 1974* (Cth), section 23J; cf AZB & Partners & Others, *The Asia-Pacific Arbitration Review 2022: A Global Arbitration Review Special Report*, 43, <https://www.claytonutz.com/articledocuments/178/Clayton-Utz-Asia-Pacific-Arbitration-Review-2022.pdf.aspx?Embed=Y>.
[12] *International Arbitration Act 1974* (Cth), section 23K.
[13] *International Arbitration Act 1974* (Cth), section 25 and 26.
[14] *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia* (2013) 251 CLR 533, 53 (Hayne, Crennan, Kiefel and Bell JJ). Cf *International Arbitration Act 1974* (Cth), Sch 2, Article 5.
[15] *International Arbitration Act 1974* (Cth), section 7(2).
[16] *Comandate Marine Corp v Pan Australia Shipping Pty Ltd* (2006) 157 FCR 45, 243 (Allsop J). Cf *Degroma Trading Inc v Viva Energy Australia Pty Ltd* [2019] FCA 649.
[17] *Admiralty Act 1988* (Cth), section 29.
[18] *Federal Court of Australia Act 1976* (Cth), section 53A.
[19] *Rinehart v Rinehart* (2019) 267 CLR 514, 10, 33, 55 (Kiefel CJ, Gageler, Nettle and Gordon JJ).
[20] *Comandate Marine Corp v Pan Australia Shipping* (2006) FCAFC 192, 149 (Allsop J) and 4 (Finn J).
[21] *Admiralty Act 1988* (Cth), sections 14-20.
[22] *Admiralty Act 1988* (Cth), sections 9(1)-(2).
[23] *Admiralty Act 1988* (Cth), section 15.
[24] *Admiralty Act 1988* (Cth), section 16.
[25] *Admiralty Act 1988* (Cth), section 17.
[26] *Admiralty Act 1988* (Cth), section 18.
[27] Martin Davies and Anthony Dickey, *Shipping Law*, (Thomson Reuters, 4th ed, 2016), 134 – 135, 8.10 (‘**Davies and Dickey**’).
[28] Davies and Dickey, 134, 8.10.
[29] Davies and Dickey, 152, 8.310.
[30] Davies and Dickey, 137, 8.60.
[31] *The Ship “Sam Hawk” v Reiter Petroleum Inc* (2016) 246 FCR 337, 9 (Allsop CJ and Edelman J).
[32] *Admiralty Act 1988* (Cth) section 4.
[33] *Admiralty Act 1988* (Cth) section 4(u).
[34] *Admiralty Act 1988* (Cth) section 19.
[35] Davies and Dickey, 140, 8.120.
[36] Federal Court of Australia, *Admiralty Jurisdiction of the Federal Court*, <https://www.fedcourt.gov.au/law-and-practice/national-practice-areas/admiralty/jurisdiction>.
[37] *Admiralty Act 1988* (Cth) section 37(1).
[38] Davies and Dickey, 161, 8.500.
[39] IMO Leg/Conf.7/27, 2 May 1989.
[40] *International Convention Relating to the Arrest of Sea-Going Ships* (Brussels, May 10, 1952).
[41] *Carriage of Goods by Sea Act 1991* (Cth), section 7.
[42] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 10, rule 1.
[43] Hague-Visby Rules (unmodified), Article 10(1).
[44] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 10, rules 2, 3.
[45] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 10, rules 2, 3.
[46] *Sea-Carriage Documents Act 1997* (NSW), section 5; *Sea-Carriage Documents Act 1997* (WA), section 5; *Sea-Carriage Documents Act 1998* (SA), section 5; *Sea-Carriage Documents Act 1996* (QLD), section 3; *Sea-Carriage Documents Act 1998* (NT), section 5; *Sea-Carriage Documents Act 1997* (TAS), section 4; *Sea-Carriage Documents Act 1996* (VIC), section 5.
[47] *Carriage of Goods by Sea Act 1991* (Cth), section 11(2)(b).
[48] See for example, *Kim Meller Imports Pty Ltd v Eurolevant Spa* (1986) 7 NSWLR 269; *Hi-Fert Pty Ltd v Kiukiang Maritime Carriers Inc (No 5)* (1998) 90 FCR 1.
[49] *Dampskibsselskabet Nordon A/S v Gladstone Civil Pty Ltd* [2013] FCAFC 107 (‘***Norden***’).
[50] *Norden,* 67, 68, 71.
[51] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 4, rules 5(a).
[52] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 4, rules 5(a).

[53] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 4, rules 5(a).
[54] *El Greco (Australia) Pty Ltd v Mediterranean Shipping Co SA* (2004) 140 FCR 296, 280.
[55] *Volcafe Ltd v Compania Sud Americana de Vapores SA (T/as CSAV)* [2018] UKSC 61.
[56] *Shipping Corporation of India Ltd v Gamlen Chemical Co (A/asia) Pty Ltd* (1980) 147 CLR 142; *Great China Metal Industries Co Ltd v Malaysian International Shipping Corp Berhad* (1998) 196 CLR 161, 43 (Gaudron, Gummow and Hayne JJ) and 98 (McHugh J); *CV Sheepvaartondernemning Ankergracht v Stemcor (A/sia) Pty Ltd* (2007) 160 FCR 342.
[57] *Great China Metal Industries Co ltd v Malaysian International Shipping Corp Berhad* (1998) 196 CLR 161, 43 (Gaudron, Gummow and Hayne JJ) and 98 (McHugh J).
[58] The position has been applied for example in *C/V Scheepvaartonderneming Ankergracht v Stemcor (A/Asia) Pty Ltd* (2007) 160 FCR 342; *Hildtich Pty ltd v Dorval Kaium KK (No 2)* (2007) 245 ALR 125; *Seafood Imports Pty Ltd v ANL Singapore Pte Ltd* (2010) 272 ALR 149.
[59] *Seafood Imports Pty Ltd v ANL Singapore Pte Ltd* (2010) 272 ALR 149 ('***Seafood Imports***').
[60] *Seafood Imports*, 63.
[61] *Seafood Imports*, 77.
[62] *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia* (2013) 251 CLR 533, 111 (Hayne, Crennan, Kiefel and Bell JJ).
[63] *International Arbitration Act 1974* (Cth) s 8(5); cf *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia* (2013) 251 CLR 533, 111 (Hayne, Crennan, Kiefel and Bell JJ).
[64] *International Arbitration Act 1974* (Cth), section 8(2).
[65] See for example, *Traxys Europe SA v Balaji Coke Industry Pty Ltd (No 2)* [2012] FCA 276, 90 where the 2010 amendments to the IAA were said to bring about a '*pro-enforcement bias*' to the enforcement of arbitral awards.
[66] *Energy City Qatar Holding Company v Hub Street Equipment Pty Ltd (No 2)* [2020] FCA 1116.
[67] *Tianjin Jishengtai Investment Consulting Partnership Enterprise v Huang* [2020] FCA 767.
[68] *International Arbitration Act 1974* (Cth), section 8(7).
[69] *International Arbitration Act 1974* (Cth), section 19.
[70] *Traxys Europe SA v Balaji Coke Industry Pty Ltd (No 2)* [2012] FCA 276, 105.
[71] *Castel Electronics Pty Ltd v TCL Air Conditioner (Zhongshan) Co Ltd (No 2)* [2012] FCA 1214, 19.
[72] *TCL Air Conditioner (Zhongshan) Co Ltd v Castel Electronics Pty Ltd* [2014] FCAFC 83, 55 (Allsop CJ, Middleton and Foster JJ).
[73] *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia* [2013] HCA 5.
[74] Stephen R Tully, 'Challenging Awards Before National Courts For A Denial Of Natural Justice: Lessons From Australia' (2016) 32(4) *Arbitration International,* 674.
[75] Stephen R Tully, 'Challenging Awards Before National Courts For A Denial Of Natural Justice: Lessons From Australia' (2016) 32(4) *Arbitration International,* 667-668.
[76] Chester Brown and Luke Nottage, 'Interpretation and Application of The New York Convention in Australia' in *Recognition and Enforcement of Foreign Arbitral Awards* (Springer International Publishing, 1st ed, 2017), 123. Cf *Soleimany v Soleimany* (1993) 3 All ER 847.
[77] *International Arbitration Act 1974* (Cth), Sch 1, Article 4, section 9.
[78] *Sanum Investments Ltd v St Group Co. Ltd* [2017] FCA 75 ('***Sanum Investments***').
[79] *Sanum Investments*, 8 (Foster J).
[80] *Sanum Investments*, 9 (Foster J).
[81] *Sanum Investments,* 18 confirmed in *Sanum Investments Ltd v ST Group Co Ltd (No 2)* [2019] FCA 1047, 124.
[82] *St Group Co. Ltd v Sanum Investments Ltd* [2019] SGCA 65.
[83] Gregory Nell SC, 'Recent Developments in the Enforcement of Foreign Arbitral Awards in Australia' (2012) 26 *Australian and New Zealand Maritime Law Journal* 24, 25.
[84] Harry L Arkin, 'International Ad Hoc Arbitration: A Practical Alternative' (1987) 53 *Arbitration* 260, 261.
[85] Harry L Arkin, 'International Ad Hoc Arbitration: A Practical Alternative' (1987) 53 *Arbitration* 260, 262.
[86] Toby Boys and Lucy Munt, *Australia: Drafting an effective international arbitration agreement – tricks and traps* <https://www.mondaq.com/australia/arbitration-dispute-resolution/514940/drafting-an-effective-international-arbitration-agreement-tricks-and-traps>.
[87] *International Arbitration Act 1974* (Cth), section 3. Cf *New York Convention*, Article III.
[88] Gitanjali Bajaj and Erin Gourlay, *Commercial Arbitration: Australia* <https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/australia>.
[89] The number of cases has been growing in the past several years, particularly in the Asia-Pacific, according to SCMA's Year in Review 2018, 2019 and 2020 <https://scma.org.sg/SiteFolders/scma/387/YIR/2018YearInReview.pdf > <https://www.scma.org.sg/SiteFolders/scma/387/YIR/2019YearInReview.pdf > <https://scma.org.sg/SiteFolders/scma/387/YIR/SCMA2020YearInReview.pdf >.
[90] *International Arbitration Act 1974* (Cth) section 8.
[91] See for example *Hyundai Engineering Steel Industries Co Ltd v Two Ways Constructions Pty Ltd (No 2)* [2018] FCA 1551.
[92] *Singapore International Arbitration Act (Chapter 143A)*, section 3.
[93] The authors have reviewed the published SCMA reports on Lloyd's Maritime Newsletters and note that there have been no reported SCMA awards involving Australia since 2018 as at 2 August 2021.

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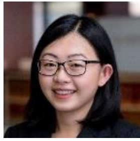

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