

3 December 2020

Our ref: MC-LP

Mr Michael Tidball  
Chief Executive Officer  
Law Council of Australia  
GPO Box 1989  
Canberra ACT 2601

By email: [REDACTED]

Dear Mr Tidball

**Singapore Convention on Mediation – Consultation paper**

Thank you for the opportunity to provide comments on the Attorney-General Department's "Singapore Convention on Mediation – Consultation paper" for inclusion in the Law Council's submission.

Members of Queensland Law Society's Alternative Dispute Resolution Committee have been able to briefly review the consultation paper. Their view is that Australia should become a Party to the *United Nations Convention on International Settlement Agreements Resulting from Mediation*, commonly referred to as the 'Singapore Convention'.

One concern of the Committee, however, is the broad definition of mediation in article 2, paragraph 3:

*3. "Mediation" means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute.*

At article 4, paragraph 1(b) the evidence required to demonstrate the settlement resulted from a mediation can, in the absence of a document signed by a mediator, be any evidence "acceptable to the competent authority" (subparagraph 1(b)(iv)).

These provisions will capture a wide range of agreements reached in a variety of contexts. It is possible, in the circumstances, that parties may not appreciate that they are signing an agreement capable of being enforced against them in accordance with the Convention, without further court process.

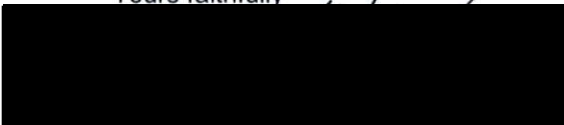

If Australia determines to become a Party to the convention, it may therefore be prudent to make the reservation permitted under article 8, paragraph 1, to the effect that the Convention will only apply to the extent that the parties to the settlement agreement have agreed to its application. Presumably, this will require the incorporation of a notice in the agreement alerting

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the parties to the Convention and its import. This will assist in avoiding any misapprehension.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on (07) 3842 5930.

Yours faithfully



Luke Murphy  
**President**