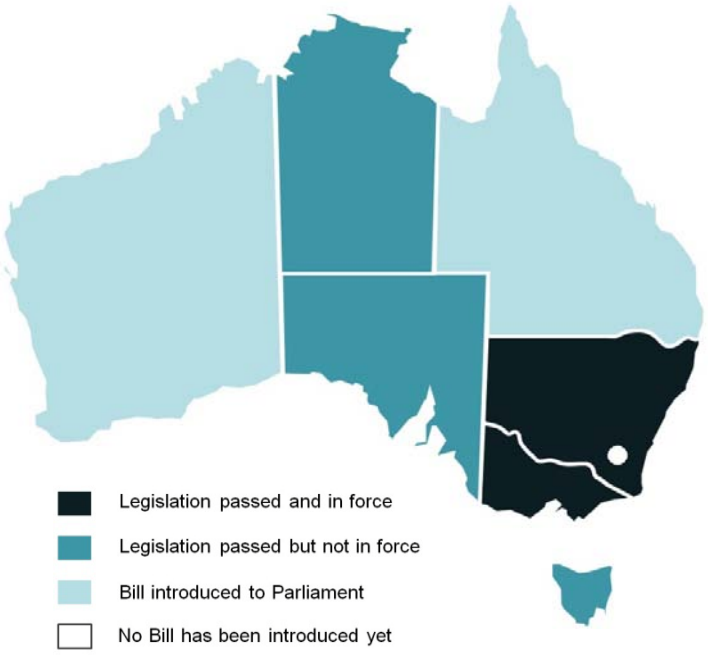
REFORM OF DOMESTIC ARBITRATION IN AUSTRALIA

Australia is currently on a path towards implementing a uniform, updated domestic arbitration regime. In May 2010, the Standing Committee of Attorneys-General agreed to effect a Model Commercial Arbitration Bill (**Model Bill**). If enacted throughout Australia, the Model Bill will bring about a fundamental change in domestic arbitration legislation which will bring it in line with the international arbitration regime.

NSW was the first to act by swiftly passing the *Commercial Arbitration Act 2010*, which came into force in October 2010. In 2011, Tasmania, Victoria, Northern Territory and South Australia followed suit, although so far only Victoria's Act has come into force. Western Australia and Queensland currently have a Commercial Arbitration Bill before parliament whilst the Australian Capital Territory has yet to introduce a Bill.

Key Changes

The key changes embodied in the Model Bill and endorsed in the new Commercial Arbitration Acts which have been passed to date include:



1. **Mandatory stay of proceedings:** Courts are required to refer parties to arbitration if there is an arbitration agreement in place which is not null or void, inoperative or incapable of being performed. The courts will no longer retain any discretion to decide whether or not to stay court proceedings in these circumstances.
2. **Limited appeal rights:** A right to apply for leave to appeal an arbitral award will only be available in situations where agreement is reached between the parties within three months of the arbitral award having been issued and with leave of the court.
3. **Greater clarity:** The Commercial Arbitration Acts are expressed to apply only to domestic arbitration, that is, the Acts will not be applicable to international arbitration. This removes any uncertainty and confusion that was caused by some earlier court decisions which afforded scope for domestic arbitration legislation to apply to international arbitrations.
4. **Evidence:** Whilst courts will continue to have the power to issue subpoenas, the legislation requires that a party must first obtain the approval of the arbitrator before approaching the court for a subpoena.
5. **Limited Judicial Intervention:** The legislation aims to limit the court's role to specific mechanisms in support of arbitration, allowing intervention in circumstances such as where parties have failed to agree on the appointment of an arbitrator, deciding on a challenge to an arbitrator, terminating the mandate of an arbitrator who is unable to perform, reviewing an arbitral tribunal's decision on jurisdiction and making orders about the costs of an abortive arbitration.
6. **Confidentiality:** New provisions prohibiting the disclosure of confidential information about arbitral proceedings, except in limited circumstances, have been introduced.
7. **Interim measures:** Parties have the right to obtain interim measures from the arbitral tribunal, as well as the court, in relation to arbitration proceedings. Where an arbitral tribunal has granted an interim measure, a party can obtain recognition and enforcement of that interim measure in court.
8. **Med-arb:** There are new provisions to facilitate med-arb, a process whereby an arbitrator may act as a mediator. Med-arb may occur if the arbitration agreement provides for it or the parties have consented to it. An arbitrator who has acted as a mediator in mediation proceedings that have been terminated may not conduct subsequent arbitration proceedings in relation to the dispute, unless all parties to the arbitration consent in writing on or after the termination of the mediation.

Georgia Quick & Lorraine Hui, **Blake Dawson**