AUSTRALIA AS AN ARBITRATION-FRIENDLY COUNTRY: THE TENSION BETWEEN PARTY AUTONOMY AND FINALITY

Louise Parsons* & Jack Leonard**

ABSTRACT

The landmark decision of the High Court of Australia in the recent case of TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia [2013] HCA 5 reinforced the importance of the principle of party autonomy in international commercial arbitration in Australia. The case was highly acclaimed as a case that confirmed Australia as an “arbitration-friendly” country. This article examines the tension between the interest in finality and enforcement of arbitral awards, and the interest in a quality award. The first interest would generally argue against contractual expansion of judicial review clauses in the arbitration agreement; by contrast the second interest would support a contractual mechanism for the review of arbitral awards and contractually expanded judicial review clauses. By enforcing

* Louise Parsons (BA (cum laude), BA Hons (French), BA Hons (English) (cum laude), BA Hons (Philosophy) (cum laude), BProc, LLB, LLM) is Assistant Professor and Director of Mooting at Bond University. She was previously Senior Counsel for the South African Reserve Bank. She is a current PhD Candidate at Bond University. Contact – lparsons@bond.edu.au;

**Jack Leonard is a student at Bond University and a recipient of a Vice-Chancellor’s Scholarship. He is currently enrolled for the double degree of LLB and Bachelor of Business (Management). He was a member of the Bond University 2013-2014 Willem C Vis East International Commercial Arbitration Moot Competition team and is currently the President of the Bond University Students Association. Contact - jack.leonard@student.bond.edu.au;

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contractually expanded judicial review clauses, the interests of the “winner” (with an interest in finality and enforcement) and the shared interests of both parties in a quality award (irrespective of them being winner or loser) will be protected.

This article argues that Australia may be arbitration-friendly from the point of view that arbitral awards will be enforced, but that it may only be fully “arbitration-friendly” if there is the possibility to enforce contractually expanded review clauses. A country that protects both the interest in finality and enforcement of arbitral awards and the interest in the quality of arbitral awards, and will further give full effect to the meaning of party autonomy in the context of arbitration as a contractual form of dispute resolution, will be a truly arbitration-friendly country.

**KEYWORDS:** arbitration, finality, party autonomy, review, Australia, extended review clause