

29 September 2011

The Hon Adele Farina MLC
Chairman Standing Committee on Uniform Legislation & Statutes Review

Reference: **ENQUIRY INTO COMMERCIAL ARBITRATION BILL 2011**

For attention Ms Renae Jewell

Email: rjewell@parliament.wa.gov.au

Dear Chairman

Reference your letter 23 September 2011 requesting me to provide a written submission on matters of interpretation of the above Bill as drafted and with particular respect to clause 27D – particularly 27D(7).

I support, in principle, the provisions of clause 27D which allow an Arbitrator to act as mediator, conciliator or other non arbitral intermediary. The adoption of this condition in the normal course of proceedings should expedite the matter and would save costs to the parties.

I find it difficult however to accept the provision clause 3(b) allowing any party to the dispute to withdraw consent to the Arbitrator acting as Mediator in the proceedings once the mediation proceedings have commenced. My reasons being

- (i) The provision allows for one party to withdraw consent on virtually any grounds. Such grounds could include dislike of the Mediator or a perception – whether right or wrong - that the Mediator appears to be not favouring the party concerned; and
- (ii) One party could extend the proceedings continually by withdrawing consent with subsequent Mediators.

It would be preferable for this condition to itemise the grounds under which consent may be withdrawn.

With respect to clause 27D(7) I find that it would be necessary for the Arbitrator to disclose to all parties information received from each of the parties during the mediation proceedings. This would be necessary to ensure the Arbitrator complies with the intent of the Arbitration Act relative to general justice and fairness.

I have no difficulty with your Committee using this submission as they see fit.

Yours sincerely



ANTHONY BRAND AM