1. Introduction

<table>
<tr><td colspan="2">Definition of arbitration</td><td>Distinguishing from litigation</td></tr>
<tr><td colspan="2">• Arbitration can be described as a consensual, private process for the submission of a dispute for a decision of a tribunal, comprising one or more independent third persons.
• In making its decision, the tribunal has to follow certain basic requirements, such as acting fairly and impartially, allowing each party to put its case and to respond to that of its opponent.
• The decision of the tribunal – called the award – is final and legally binding on the parties and will be enforced by the courts of most States around the world.
• Important legislation:
– NYC=United Nations Conference on International Commercial Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards
– UNCITRAL Arbitration Rules (2010) are selected by parties either as part of their contract, or after a dispute arises, to govern the conduct of an arbitration intended to resolve a dispute or disputes between themselves.
– UNCITRAL Model Law (1985) provides a pattern that law-makers in national governments can adopt as part of their domestic legislation on arbitration.
– International Arbitration Act 1974 (Cth): s 16 the Model Law has the force of law in Australia
• "international" <u>Model Law Art 1(3)</u>
– The parties have places of business in different states;
– outside the state in which the parties have business: the place of arbitration , the place of enforcement
– the subject matter related to more than one country</td><td rowspan="2">• Arbitration is a consensual process – a party cannot be compelled to arbitrate a dispute unless it has agreed to arbitration.
• Arbitration is a private and (under many systems of law) a confidential process.
• In arbitration the parties have the power and freedom to select the tribunal (or agree on the method of selection); choose the rules that will apply to the proceedings; and choose the language of the arbitration.
• VS other forms of ADR: ADR comprises other methods of settling disputes which do not involve a formal hearing and a binding decision by an independent third party
• ADR incurs less lower cost than litigation</td></tr>
<tr><td>• Advantage:
– 1. Privacy and confidentiality
– 2. Flexibility
– 3. Commencement of proceedings
– 4. Neutrality
– 5. Technical expertise
– 6. Speed and cost
– 7. Finality
– 8. Enforceability</td><td>• Disadvantages
– 1. Pre-emptive remedies
– 2. Joinder
– 3. Procedural/substantive uncertainty
– 4. Some matters not suitable for resolution by arbitration</td></tr>
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2. Arbitration agreement

Substance	• AA is an agreement that empowers an independent tribunal which is chosen by the parties to make a decision on the rights and obligations of the parties in accordance with agreed process, which decision is binding and enforceable at law • Two types: arbitration clause – future dispute & submission agreement – existing disputes
Formality: Summary of NYC	• the agreement must be in writing (Art II(1)); • it must deal with existing or future disputes (Art II(1)); • these disputes must arise in respect of a defined legal relationship, whether contractual or not (Art II(1)); • they must concern a subject matter capable of settlement by arbitration (Art II(1)); • The arbitration agreement must not be "void, inoperative, or incapable of being performed" (Art II(3)); • the parties must have legal capacity under the law applicable to them (Art V(1)(a)); and • the arbitration agreement must be valid under the law to which the parties have subjected it, or under the law of the country where the award was made (Art V(1)(a))