Chapter 3

Enforcement of Foreign Awards in Australia and New Zealand

Richard Garnett and Michael Pryles

This chapter examines the current status and interpretation of the New York Convention (NYC)[1] provisions on recognition and enforcement of awards in Australia and New Zealand, a closely integrated economy sharing a similar legislative framework. While there have been no New Zealand decisions so far, Australian courts have considered a number of important issues including the effect of interim and interlocutory awards, the limitation period applicable to enforcement proceedings, the existence of a residual discretion not to enforce an award, the consequences of misnaming of a party, and public policy. While some decisions have been consistent with the NYC's objectives and purposes, in others courts have arguably relied too heavily on principles of Australian domestic law. Statutory amendments in 2010 should help address that tendency. However, that new regime only applies as explained in Chapter 2 Part VII above, and the original legislation and case law also help explain the rationale for some of the 2010 amendments.

I Introduction

There have been comparatively few cases on recognition and enforcement of arbitral awards under the NYC in Australia and no decisions at all in New Zealand. Part of the explanation for this could be that Australian and New Zealand corporations are less involved in international arbitrations than entities from other countries.[2] Alternatively, it may be that Australian and New Zealand parties have been more dutiful in honouring awards given against them. Another possibility is that Australian and other law firms have been less informed or keen to contest enforcement proceedings, but

1 Convention on the Recognition and Enforcement of Foreign Arbitral Awards 330 UNTS 3, signed 10 June 1958 (entered into force 7 June 1959).

2 In International Chamber of Commerce (ICC) arbitrations filed over 2005-2009, for example, 49 parties (24 claimants and 25 respondents) were Australian. In 2009, the 15 Australian parties constituted 0.72 per cent of all parties involved. Thanks to Simon Greenberg (ICC Deputy Secretary-General) for these statistics (personal communication of 6 May 2010, on file with the editors). For a more detailed analysis of ICC arbitration, see Greenberg, Chapter 6 of this volume.