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Dear Sir/ Madam,

**Consultation on the Proportionate Liability Model Provisions**

The Chartered Institute of Arbitrators - Australian branch (CI Arb) makes the following submission in support of the adoption of the Proportionate Liability Model Provisions (Model Provisions) released by the Standing Council on Law and Justice (SCLJ) in October 2013, in the State of NSW.

In September 2011, the SCLJ released Consultation Draft Model Proportionate Liability Provisions. The underlying purpose was to promote greater national consistency of approach towards proportionate liability. The Draft Provisions provided, in part, for Proportionate Liability (PL) to apply to arbitrations seated in Australia.

Interested stakeholders made submissions in response to the Draft Provisions. CI Arb made a submission in October 2011 which, for relevant purposes, opposed the application of PL to arbitrations. We **attach** a copy of our earlier submission for your convenience. The other two peak Australian arbitral institutions – ACICA and IAMA - as well as some other interested stakeholders (including the Victorian Bar and the Law Institute of Victoria), similarly opposed the application of PL to arbitration.

In October 2013, the SCLJ released PL Model Provisions for adoption in each jurisdiction. Unlike the Draft Provisions, the revised provisions exclude the application of PL to arbitrations. Section 3 of the Model Provisions makes it clear that the Proportionate Liability regime does not apply to arbitration. Section 12(3) in effect provides that arbitration is an exception to the prohibition on contracting-out.

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It is self-evident that the SCLJ was persuaded by the submissions made by various stakeholders that applying PL to arbitrations would undermine the inter-governmental efforts to promote domestic and international arbitration in Australia. We respectfully submit that the Department should implement the Model Provisions as part of the law of NSW.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Rashda Rana', is positioned below the 'Yours sincerely,' text.

**Rashda Rana** FCIArb FACICA

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