

## Article Information

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Service: Commercial Disputes, Dispute Resolution & Litigation

Sector: Corporate & Commercial

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## Global Tools, Local Rules: How to resist a Hague Convention Letter of Request

**Piper Alderman successfully substantially limited the scope of evidence that an Australian deponent, the subject of a Hague Convention Letter of Request from the United States.**

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Piper Alderman has previously successfully acted for foreign parties seeking to enforce letters of request issued by an overseas jurisdiction under the Hague Evidence Convention. Our insights published following those matters and the process of getting evidence for foreign proceedings can be found [here](#), [here](#) and [here](#).

In the recent matter of *Louis Dreyfus (f/k/a Louis Dreyfus Commodities B.V.) v Glencore Ltd [2025] NSWSC 388 (Glencore Matter)*, Piper Alderman was engaged by a deponent who was the subject of a Hague Evidence Convention application, to resist the production sought under that application. The matter was commenced by a commercial applicant based in New York (NY) and was heard before her Honour Justice Peden.

### Settlement of unsettled law

While Australian Superior Courts generally accept Letters of Request (**LOR**) issued pursuant to the Hague Convention as being valid once issued from an overseas jurisdiction, the following issues had not been dealt with extensively and were clarified in the judgment delivered in the *Glencore Matter*:

- whether an application is invalid where one of its purposes is ulterior to the proceedings in which it seeks the evidence (in conflict with the wording of section 32(1)(b) of the *Evidence on Commission Act 1995* (NSW) (**Act**));
- whether an irregularity on the form of the LOR is sufficient basis for the Court to dismiss an application; and
- whether, where broad categories of documents are sought to be produced, the Court can intervene to limit those categories by way of judicial “redrafting”.

We have explored each of those issues in detail below.

### Improper purpose

Section 32(1)(b) of the Act establishes that an application to grant a LOR can only be made in circumstances where the Court is satisfied that *the evidence to which the application relates is to be obtained for the purpose of proceedings which... have been instituted before the requesting court*.

In the *Glencore Matter*, there was evidence which indicated the LOR was being used as a vehicle to obtain evidence for a collateral purpose, being to potentially decertify a separate but related class action in NY. Production of the evidence sought by way of the LOR was therefore resisted on that basis.

In applying *Application of Forsyth; Re Cordova v Philips Rozane Laboratories Inc* (1984) 2 NSWLR 327, her Honour found that an application for evidence in foreign proceedings can be brought for multiple purposes and the Court need only be satisfied that one of those purposes was for evidence sought for use in the proceedings in which it was issued. Once the Court was satisfied that such a purpose existed, it was irrelevant whether the party would use the evidence for another (and potentially dominant) purpose.

Accordingly, the Court had the power to make orders effecting the LOR where it was satisfied that one particular purpose

of the LOR was proper in accordance with section 32(1)(b) of the Act.

#### Irregularity

In the *Glencore Matter*, the LOR issued by the NY Court did not include what later formed Annexures A and B to an affidavit in support of the Applicant's motion filed in the Glencore Matter (being the questions to be put to the proposed deponent and list of documents to be inspected). It was submitted that the Court ought to exercise its discretion to dismiss the application on the basis that the whole of the application was clearly deficient and had not been issued properly under the Hague Convention.

Her Honour determined that the irregularity did not effect the LOR in circumstances where the content of the intended Annexures is clear and therefore did not hinder the Court's power to make an order pursuant to s33 of the Act. Justice Peden found that a clerical error which arose in the *Application of Computer Sciences Corporation under the Evidence Commission Act 1995* (NSW) [2017] NSWSC 810 was analogous. In that case, an exhibit was not attached to an LOR application, but later tendered at the hearing of the motion and accepted by the Court as forming part of the original application.

#### Prohibition of pre-trial discovery

The LOR predominantly sought broad categories of documents, as opposed to specific documents individually named, which Piper Alderman submitted was akin to 'pre-trial discovery' (as opposed to evidence). The deponent's position was that the Court was precluded from making orders for pre-trial discovery and referred her Honour to the matter of *Application of Monier Inc* (2009) 76 NSWLR 158 (**Monier**). In *Monier*, the Court concluded that the wording of section 33(6)(b) of the Act, being "*particular documents specified in the order*", should be understood to mean "*individual documents separately described*".

Piper Alderman further argued that *Monier* could be used as an authority for the proposition that the Court cannot redraft or remould categories of documents which were the subject of an LOR and instead the Court must reject those categories which were too broadly drafted.

The Applicant made submissions that *Monier* ought not be followed as the facts in that case were distinguishable from the facts arising in this application. Her Honour rejected the Applicant's submissions and ordered that the majority of the categories of documents sought by the Applicant be removed in their entirety, thus significantly narrowing the scope of documents required to be produced by the deponent.

#### **What to do if you receive a Hague Convention Letter of Request?**

Recipients of Hague Convention Letters of Request should carefully consider the breadth of the documents sought and the purpose of the LOR before complying or objecting to the evidence sought.

Further, consider whether there are any deficiencies in the form of the request and whether such deficiencies are a matter of oversight, clerical error or poor drafting.

Piper Alderman are the leading experts in dealing with LORs and are available to assist parties in relation to applications made under the Act. Please feel free to contact us should you have any questions about the process and how to make or deal with any applications under the Hague Convention.