



ANNO VICESIMO SECUNDO

ELIZABETHAE SECUNDAE REGINAE

No. 34 of 1973

**An Act to consolidate and amend the law relating to  
arbitration**

[ASSENTED TO 26TH APRIL, 1973]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title and commencement.** (1) This Act may be cited as the *Arbitration Act 1973*.

(2) Subject to subsection (3), this Act shall commence on the day on which it receives the Royal Assent.

(3) Part VIII shall come into operation on a date to be fixed by Proclamation.

2. **Arrangement of Act.** This Act is divided into Parts as follows:—

PART I—PRELIMINARY (ss. 1–6);

PART II—GENERAL PROVISIONS AS TO ARBITRATION (ss. 7–12);

PART III—ARBITRATORS AND UMPIRES (ss. 13–17);

PART IV—CONDUCT OF PROCEEDINGS, WITNESSES (ss. 18–19);

PART V—AWARDS (ss. 20–28);

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Abbreviations used in notes to sections appearing at the beginning of the section have the following meaning:—U.K. The Arbitration Act 1950 (United Kingdom); Vict. the Arbitration Act 1958 (Victoria); N.S.W. the Arbitration Act 1902–1957 (New South Wales); S. A. the Arbitration Act 1891–1934 (South Australia).

PART VI—SPECIAL CASES, REMISSION, CORRECTION AND SETTING  
ASIDE OF AWARDS (ss. 29–36);

PART VII—GENERAL (ss. 37–40);

PART VIII—RECOGNITION AND ENFORCEMENT OF FOREIGN AWARDS  
AND AGREEMENTS (ss. 41–44).

**3. Repeal and Savings.** Cf. U.K. ss. 33, 44 (3). (1) The Act mentioned in the First Schedule is repealed to the extent indicated in that Schedule except in relation to arbitrations commencing before the commencement of this Act.

(2) This Act shall not affect any arbitration commenced before the commencement of this Act, but shall apply to an arbitration commenced after the commencement of this Act under an agreement to arbitrate made before the commencement of this Act; and any reference in any Act or other document to any enactment hereby repealed shall be construed as including a reference to this Act.

**4. Interpretation.** Cf. Vict. s. 3; U.K. s. 32. (1) In Parts I to VII (both inclusive) unless the contrary intention appears—

“agreement to arbitrate” means a written agreement that is signed by the parties or is contained in an exchange of letters or telegrams by the parties under which or under a clause of which the parties undertake to submit to arbitration (whether or not an arbitrator is named or designated in the agreement or clause) all or any present or future differences between them;

“Court” means the Supreme Court of Queensland or where the amount in dispute and the subject matter thereof are within the jurisdiction of a District Court the appropriate District Court;

“District Court” means a District Court within the meaning of the *District Courts Act 1967–1972*;

“imperfect execution of powers” includes failure to comply with the requirements of section 24;

“Judge” means a Judge of the Supreme Court of Queensland or a Judge of District Courts as the case may be;

“misconduct” includes—

(a) corruption, fraud or undue influence in relation to the umpire or the arbitrators or any of them;

(b) evident partiality or bias in relation to the umpire or the arbitrators or any of them;

(c) any excess of powers or imperfect execution of powers by the arbitrators or the umpire;

(d) failure to make a final and definite award upon the subject matter by the arbitrators or the umpire;

“party” includes a personal representative or assign of a party;

“Rules of Court” means the Rules of the Supreme Court or, as the case may be, the District Courts Rules, 1968.

(2) A reference in this Act to an arbitrator appointed under an agreement to arbitrate shall, unless a contrary intention appears from the agreement, be read as including a reference to an arbitrator appointed by name or designation in the agreement.

5. **Application of Act.** Nothing in this Act shall affect the operation of Part V of *The Hire-purchase Act of 1959*, section 21A of *The Insurance Acts 1960 to 1968* or section 7 of *The Agricultural Holdings Act of 1905*.

6. **Act to bind Crown.** Cf. U.K. s. 30; N.S.W. s. 26. This Act shall apply to any arbitration to which the Crown is a party.

## PART II—GENERAL PROVISIONS AS TO ARBITRATION

7. **Revocation.** Cf. U.K. s. 1. (1) The authority of an arbitrator or umpire appointed by or by virtue of an agreement to arbitrate shall, unless a contrary intention is expressed therein, or unless otherwise agreed by all parties concerned, be irrevocable except by leave of the Court or a Judge thereof.

(2) The Court or a Judge thereof may order that an agreement to arbitrate shall cease to have effect as regards any particular dispute where the matter in dispute forms part of a transaction or a series of transactions which are the subject of litigation in that Court.

(3) Where it appears to the Court at or before the hearing of any action that by reason of the existence of an agreement to arbitrate some issues which might otherwise arise in the action or some persons who might otherwise be made parties to the action are bound to go to arbitration and it is more convenient and beneficial to have all the issues disposed of or all the parties before it in the same action or to do both of these things as the case may be, the Court may make an order that such agreement to arbitrate shall cease to have effect with regard to that action and the actions shall be heard as if such agreement to arbitrate had not been entered into.

8. **Death of party.** Cf. U.K. s. 2. (1) An agreement to arbitrate shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased.

(2) The authority of an arbitrator shall not be revoked by the death of any party.

(3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

9. **Bankruptcy.** Cf. U.K. s. 3. Subject to the *Bankruptcy Act 1966–1970* of the Commonwealth and any Act in amendment thereof or in substitution therefor where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connexion therewith shall be referred to arbitration the said term shall unless the trustee in bankruptcy disclaims the contract be enforceable by or against him so far as relates to any such differences.

10. **Power to stay proceedings.** Cf. U.K. s. 4 (1). (1) If any party to an agreement to arbitrate, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement to arbitrate, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings,

apply to that court to stay the proceedings and that court or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement and that the applicant was at the time when the proceedings were commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

(2) The powers conferred by subsection (1) shall be exercised to the same extent and in the same manner in cases where there is a provision (whether in an agreement to arbitrate or otherwise) that an award under an agreement to arbitrate shall be a condition precedent to the bringing of an action with respect to any matter to which such agreement applies, as in cases where there is no such provision and such provision shall be read only as an agreement to arbitrate and shall not prevent any cause of action from accruing before arbitration and subject to any order made under subsection (1) shall not affect the institution, prosecution or defence of any action or counterclaim.

**11. Interpleader.** Cf. U.K. s. 5. Where relief by way of interpleader is granted and it appears to the court that the claims in question are matters to which an agreement to arbitrate, to which the claimants are parties, applies, the court may direct the issue between the claimants to be determined in accordance with the agreement to arbitrate.

**12. Admiralty proceedings.** If the basis of jurisdiction be a cause of action *in rem* which would otherwise be justiciable in admiralty any party to an agreement to arbitrate may take proceedings in admiralty to seize any vessel or other property of another party thereto according to the usual course of proceedings in admiralty and the Supreme Court may then direct the parties to proceed with an arbitration upon the agreement.

### PART III—ARBITRATORS AND UMPIRES

**13. Presumption of single arbitrator.** Cf. U.K. s. 6. Unless a contrary intention is expressed therein every agreement to arbitrate shall, if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator.

**14. Power of parties in certain cases to supply vacancy.** Cf. U.K. s. 7. Where an agreement to arbitrate provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein—

- (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;
- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally, or by way of substitution as aforesaid, for fourteen clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent,

but the Court or a Judge thereof may set aside any appointment made in pursuance of this section.

**15. Umpires.** Cf. U.K. s. 8. (1) Unless a contrary intention is expressed therein, every agreement to arbitrate shall, where the reference is to two arbitrators, be deemed to include a provision that the two arbitrators shall appoint an umpire immediately after they are themselves appointed.

(2) Unless a contrary intention is expressed therein, every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to include a provision that if the arbitrators have delivered to any party to the agreement to arbitrate or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(3) At any time after the appointment of an umpire, however appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the agreement to arbitrate, order that the umpire shall enter upon the reference in lieu of the arbitrators and as if he were a sole arbitrator.

**16. Agreements for reference to three arbitrators.** Cf. U.K. s. 9. (1) Where an agreement to arbitrate provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, the agreement to arbitrate shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

(2) Where an agreement to arbitrate provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in subsection (1), the award of any two of the arbitrators shall be binding.

**17. Power of Court in certain cases to appoint an arbitrator or umpire.** Cf. U.K. s. 10. In any of the following cases:—

- (a) where an agreement to arbitrate provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;
- (b) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the agreement to arbitrate does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;
- (c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him, or where two arbitrators are required to appoint an umpire and do not appoint him;
- (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the agreement to arbitrate does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint or, as the case may be, concur in appointing, an arbitrator, umpire or third arbitrator, and if the

appointment is not made within fourteen clear days after the service of the notice, the Court or a Judge thereof may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

#### PART IV—CONDUCT OF PROCEEDINGS, WITNESSES

##### 18. Conduct of proceedings. Cf. U.K. s. 12; N.S.W. ss. 10 and 22.

(1) Unless a contrary intention is expressed therein, every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to the reference, and all persons claiming through them respectively, shall, in relation to the matters in dispute but subject to any legal objections, produce before the arbitrator or umpire all documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrator or umpire may require.

(2) Unless a contrary intention is expressed therein, every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to contain a provision that the witnesses on the reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.

(3) An arbitrator or umpire shall, unless a contrary intention is expressed in the agreement to arbitrate, have power to administer oaths to, or take the affirmation of, the witnesses on a reference under the agreement.

(4) Any party to a reference under an agreement to arbitrate may sue out of the Court in aid of the reference a writ of subpoena *ad testificandum* or a writ of subpoena *duces tecum* and no order of the Court for the issue of such a writ shall be necessary, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

(5) A writ of subpoena issued pursuant to this section—

(a) shall be issued in accordance with the practice and forms, with such variations as circumstances may require, of the Supreme Court or of District Courts as the case may be;

(b) continues to have effect until the disposal of proceedings on the reference at which the attendance of the witness is required;

(c) shall be served personally,

and unless duly served on the person to whom it is directed not less than four days, or such other period as the Court may fix, before the day on which the attendance of that person is required, that person shall not be liable to any penalty or process for failing to obey the writ.

(6) An application to set aside a writ of subpoena issued in aid of a reference may be heard by a Judge of the Court.

(7) The Court or a Judge thereof may order that a writ of subpoena *ad testificandum* or a writ of subpoena *duces tecum* shall be issued to compel the attendance before an arbitrator or umpire of a witness.

(8) Every person whose attendance is required pursuant to a subpoena issued in accordance with this section shall be entitled to the like conduct money or payment of expenses as upon a trial in the Court.

(9) No person shall be compelled in any arbitration to answer any question he would not be compelled to answer at the trial of an action.

(10) The Court or a Judge thereof shall have the same power of making orders in respect of the production of a prisoner for examination before an arbitrator or umpire as it or he has under section 31 of the *Prisons Act 1958-1969* for the purpose of and in relation to an action, trial or matter in the Court.

(11) The Court or a Judge thereof shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of—

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) the giving of evidence by affidavit;
- (d) examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction;
- (e) the preservation, interim custody or sale of any goods which are the subject matter of the reference;
- (f) securing the amount in dispute in the reference;
- (g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorizing for any of those purposes any persons to enter upon or into any land or building in the possession of any party to the reference, or authorizing any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence;
- (h) interim injunctions or the appointment of a receiver; and
- (i) delivery of pleadings,

as it or he has for the purpose of and in relation to an action or matter in the Court and where it is not possible to apply any Rules of Court or any part thereof because of any difference in procedure, the Court or a Judge thereof shall apply such Rules or part thereof as nearly as possible so as to achieve the same purpose.

(12) Nothing in subsection (11) shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters specified in that subsection, and any such order may be enforced by the Court or a Judge thereof in the same way and failure to comply therewith shall have the same consequence as if the order had been made by the Court or a Judge thereof.

(13) If the parties to any reference agree with respect to any of the matters set out in paragraphs (a), (b), (c), (f), (g) and (i) of subsection (11) such agreement shall have the same effect as if it were contained in an order of the Court or a Judge thereof made pursuant to that subsection.

**19. Duties of parties.** (1) If any party to a reference who has been given reasonable notice of the hearing of such reference shall at any time neglect or refuse to attend on such hearing without having shown to the arbitrator or to a majority of the arbitrators and their umpire, if any, good and sufficient cause for such neglect or failure, it shall be lawful for the hearing of the reference to proceed *ex parte* and for an award thereon to be made in the same manner as if the party had attended.

(2) The parties to any reference shall at all times do all things which the arbitrator or a majority of the arbitrators and their umpire, if any, may require to enable a just award to be made, and no party shall wilfully or wrongfully do or cause to be done, any act to delay or prevent an award being made.

#### PART V—AWARDS

**20. Time for making award.** Cf. U.K. s. 13. (1) Subject to the provisions of subsection (2) of section 30 and anything to the contrary in the agreement to arbitrate an arbitrator or umpire shall have power to make an award at any time.

(2) The time, if any, limited for making an award, whether under this Act or otherwise, may from time to time be enlarged by order of the Court or a Judge thereof whether that time has expired or not.

(3) The Court or a Judge thereof may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, and an arbitrator or umpire who is removed by the Court or a Judge thereof under this subsection shall not be entitled to receive any remuneration in respect of his services.

(4) For the purposes of subsection (3) the expression “proceeding with the reference” includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

**21. Interim awards.** Cf. U.K. s. 14. Unless a contrary intention is expressed therein, every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire may, if he thinks fit, make an interim award and any reference in this Act to an award includes a reference to an interim award.

**22. Specific performance.** Cf. U.K. s. 15. Unless a contrary intention is expressed therein, every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire shall have the same power as the Supreme Court to order specific performance of any contract other than a contract relating to land or any interest in land.

**23. Awards to be final.** Cf. U.K. s. 16. Unless a contrary intention is expressed therein, every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to contain a provision that the award to be made by the arbitrator or umpire shall be final and binding on the parties and the persons claiming under them respectively.



**24. Form of award.** (1) Notwithstanding anything to the contrary contained in an agreement to arbitrate, the arbitrator or umpire shall—

(a) make the award in writing; and

(b) contemporaneously with the award, furnish to the parties a written statement of the reasons for the award,

but the parties may, at any time after the dispute has arisen and before the award is made, by notification in writing to the arbitrator or umpire dispense with either or both of the requirements specified in paragraphs (a) and (b).

(2) A written statement shall, when furnished in accordance with the requirements of paragraph (b) of subsection (1), be taken to form part of the award of the arbitrator or umpire as the case may be.

**25. Power to correct slips.** Cf. U.K. s. 17. Unless a contrary intention is expressed in the agreement to arbitrate, the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

**26. Costs.** Cf. U.K. s. 18. (1) Unless a contrary intention is expressed therein, every agreement to arbitrate shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire who may direct to and by whom and in what manner those costs or any part thereof shall be paid and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between solicitor and client and in giving any directions as to costs may take into account any offer or tender made by any party to another.

(2) Any costs directed by an award to be paid shall unless the award otherwise directs be taxable in the Court.

(3) Any provision in an agreement to arbitrate to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof shall be void, and this Part shall, in the case of an agreement to arbitrate containing any such provision, have effect as if that provision were not contained therein:

Provided that nothing in this subsection shall invalidate such a provision when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.

(4) If no provision is made by an award with respect to the costs of the reference, any party to the reference may within fourteen days of the publication of the award or such further time as the Court or a Judge thereof may direct, apply to the arbitrator for an order directing by and to whom those costs shall be paid and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

(5) A solicitor shall have a charge for his taxed costs on any property recovered or preserved through his instrumentality to the same extent as he would have if the arbitration had been an action in the Court and the Court or a Judge thereof may make such orders in

relation to the taxation of his costs and the payment thereof out of the property as it or he thinks just provided that no order shall be made if the right to recover the costs is barred by any Statute of Limitations. Subject to the provisions of the *Real Property Act* 1861–1972 no conveyance transfer or other dealing with any such property shall operate to defeat such a charge except in the case of a sale for valuable consideration to a bona fide purchaser without notice of the charge.

**27. Taxation of arbitrator's or umpire's fees.** Cf. U.K. s. 19. (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him the Court or a Judge thereof may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further, that the fees demanded shall be taxed by the taxing officer of the Court and that out of the money paid into court there shall be paid to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation and that the balance of the money if any shall be paid out to the applicant.

(2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

**28. Interest.** Cf. U.K. s. 20. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

#### PART VI—SPECIAL CASES, REMISSION, CORRECTION AND SETTING ASIDE OF AWARDS

**29. Case stated.** Cf. U.K. s. 21. (1) An arbitrator or umpire may, and shall if so directed by the Court or a Judge thereof, state—

(a) any question of law arising in the course of the reference; or

(b) an award or any part of an award,

in the form of a special case for the decision of the Court.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the Court or a Judge thereof to be stated, notwithstanding that proceedings under the reference are still pending.

(3) A decision of the Court under this section shall, for the purpose of an appeal, be an order or judgment of the Court; but no appeal shall lie from the decision of the Court on any case stated under paragraph (a) of subsection (1) without the leave of the Supreme Court or a Judge thereof.

**30. Power to remit.** Cf. U.K. s. 22. (1) In all cases of reference to arbitration the Court or a Judge thereof may from time to time remit the matters referred or any of them or any special case with any directions it or he sees fit to the reconsideration of the arbitrators or umpire.

(2) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their or his award within three months after the date of the order.

**31. Power to correct award.** The Court may make an order modifying or correcting the award upon the application of any party to the agreement to arbitrate—

- (a) where there is an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award;
- (b) where the arbitrators have awarded upon a matter not submitted to them if it is a matter not affecting the merits of the decision upon the matter submitted;
- (c) where the award is imperfect in matter of form not affecting the merits of the controversy.

**32. Misconduct.** Cf. U.K. s. 23. (1) Where the Court is satisfied that there has been misconduct on the part of an arbitrator or umpire himself or in his conduct of the proceedings, the Court may remove him.

(2) Where the Court is satisfied that there has been misconduct on the part of an arbitrator or umpire himself or in his conduct of the proceedings, or an arbitration or an award has been improperly procured, the Court may set the award aside.

(3) Where an application is made to set aside an award, the Court or a Judge thereof may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.

**33. Partiality and fraud.** Cf. U.K. s. 24. (1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known that the arbitrator, by reason of his relation towards any other party to the agreement or of his connexion with the subject referred, might not be capable of impartiality.

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to arbitration, and a dispute which so arises involves the question whether any such party has been guilty of fraud, the Court or a Judge thereof

shall, so far as may be necessary to enable the question to be determined by the Court or a Judge thereof, have power to order that the agreement shall cease to have effect and power to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

(3) In any case where by virtue of this section the Court or a Judge thereof has power to order that an agreement to arbitrate shall cease to have effect or to give leave to revoke the authority of an arbitrator or umpire, the Court or a Judge thereof may refuse to stay any action brought in breach of the agreement.

**34. Power of Court to appoint. Cf. U.K. s. 25.** (1) Where an arbitrator (not being a sole arbitrator) or two or more arbitrators (not being all the arbitrators) or an umpire who has not entered on the reference is or are removed by the Court or a Judge thereof, the Court or a Judge thereof may, on the application of any party to the agreement to arbitrate, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

(2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the Court or a Judge thereof or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the Court or a Judge thereof, the Court or a Judge thereof may, on the application of any party to the agreement to arbitrate, either—

- (a) appoint a person to act as sole arbitrator in place of the person or persons removed; or
- (b) order that the agreement to arbitrate shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the Court or a Judge thereof as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the agreement to arbitrate.

**35. Enforcement of award. Cf. U.K. s. 26.** An award on an agreement to arbitrate may, by leave of the Court or a Judge thereof, be enforced in the same manner as a judgment or order to the same effect and where leave is so given judgment may be entered in terms of the award.

**36. Power to extend time. Cf. U.K. s. 27.** Where the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court or a Judge thereof, if it or he is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on such terms if any as the justice of the case may require, but without prejudice to the provisions of any enactment limiting the time for the commencement of arbitration proceedings, extend the time for such period as it or he thinks proper.

## PART VII—GENERAL

**37. Costs.** Cf. U.K. s. 28; Vict. s. 20 and S.A. s. 15. (1) Any order made under this Act may be made on such terms as to costs or otherwise as the authority making the order thinks just.

(2) Any person taking proceedings under this Act in the Supreme Court which could have been taken in a District Court shall, unless the Supreme Court for good cause shown otherwise orders, recover no greater costs than he would have received if the proceedings had been taken in a District Court.

(3) A reference in subsection (2) to the Supreme Court or a District Court includes a reference to a Judge.

**38. Severance.** If any provision of this Act or the application thereof to any person or circumstance is held to be invalid the invalidity shall not affect any other provision or application of the Act which can be given effect to without the invalid provision or application, and the provisions of this Act shall be deemed severable accordingly.

**39. Exercise of powers by officers.** Cf. Vict. s. 21. The power to make rules of court under any Act includes power to make rules of court for conferring on any officer of the court all or any of the jurisdiction conferred by this Act on the court or a judge thereof and for regulating the procedure under this Act.

**40. Penalty for perjury.** Cf. s. 22, 15 Geo. 6 No. 2. The provisions of ss. 120, 123, 126, 127, 128, 129, 130 respectively of *The Criminal Code* shall apply to and with respect to the hearing of a reference by an arbitrator or arbitrators and umpire as if the hearing were a "judicial proceeding", and the arbitrator or arbitrators and umpire were a "tribunal", within the meaning of those provisions.

## PART VIII—RECOGNITION AND ENFORCEMENT OF FOREIGN AWARDS AND AGREEMENTS

**41. Interpretation.** In this Part, unless the contrary intention appears—

"agreement to arbitrate" has the same meaning as in Part I;

"arbitration" means arbitration under an agreement to arbitrate;

"award" means an arbitral award made on a reference to arbitration, and includes an interim award;

"Convention country" means a country other than Australia that is a Contracting State within the meaning of the Convention;

"Court" has the same meaning as in Part I;

"enforce", in relation to an award, includes rely on the award by way of defence, set-off or counterclaim in any legal proceedings, and "enforceable" and "enforcement" have corresponding meanings;

"foreign award" means an award arising out of differences between persons and made by an arbitrator or arbitrators appointed by those persons, or by a permanent arbitral body to which those persons have submitted, in a country, or part of a country, other than Australia;

“the Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration at its twenty-fourth meeting in 1958, a copy of the English text of which is set out in the Second Schedule.

**42. Foreign arbitration agreements.** (1) This Part applies to an agreement to arbitrate that—

- (a) is governed by a law other than a law of the State or of another State or Territory of the Commonwealth;
- (b) expressly provides for arbitration in a Convention country; or
- (c) is made between parties one or more of whom was domiciled or ordinarily resident in a Convention country at the time when the agreement was made.

(2) If a party, or a person claiming through or under a party, to an agreement to arbitrate to which this Part applies commences proceedings in a court against another party, or a person claiming through or under another party, to the agreement to arbitrate in respect of a matter agreed to be referred to arbitration under the agreement, a party to the proceedings may apply to the court to stay the proceedings.

(3) An application under subsection (2) for a stay of proceedings in the Court may be made at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, and any application under that subsection for a stay of proceedings in any other court may be made at any time after service of process and before taking any other steps in the proceedings.

(4) If the court hearing an application to stay proceedings under this section is satisfied that—

- (a) the agreement to arbitrate is an agreement to which this Part applies;
- (b) the agreement to arbitrate is not null and void, inoperative or incapable of being performed; and
- (c) the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration,

the court shall make an order staying the proceedings and referring the matter to arbitration.

(5) Where pursuant to subsection (4) the court refers a matter to arbitration, the provisions of this Act, so far as they are applicable and with the necessary adaptations, apply to and in relation to the arbitration as if that matter had been submitted to arbitration pursuant to an agreement to arbitrate.

**43. Recognition of foreign awards.** (1) Subject to this Part, a foreign award—

- (a) is enforceable in the State in the same manner as an award on an agreement to arbitrate is enforceable under Part VI; and

(b) is, by virtue of this Act, binding for all purposes on the parties to the agreement to arbitrate under which it was made.

(2) A foreign award (being an award that is made in a country that is not a Convention country at the time when a person seeks to enforce the foreign award under this Part) is not enforceable under this Part in the State unless the person so seeking to enforce it under this Part is domiciled or ordinarily resident in a country that is a Convention country, that is entitled under Article XIV of the Convention to avail itself of the Convention against the Commonwealth in respect of such an award.

(3) For the purposes of subsection (2), in proceedings for the enforcement of a foreign award a certificate purporting to be signed by the Secretary to the Department of Foreign Affairs of the Commonwealth stating that a specified country is a Convention country and is entitled under Article XIV of the Convention to avail itself of the Convention against the Commonwealth in respect of a foreign award that is made in a country that is not a Convention country at a specified time is evidence of the matters so stated.

(4) Subject to subsection (5), the Court may refuse to enforce a foreign award only if it is established by a party to the proceedings to enforce the award that—

- (a) a party to the agreement to arbitrate in pursuance of which the foreign award was made was under some legal incapacity;
- (b) the agreement to arbitrate was not valid under the law expressed in the agreement to be applicable to it or, where no law has been so expressed to be applicable, under the law of the country where the award was made;
- (c) the applicant was not given proper notice of the appointment of the arbitrator by whom the foreign award was made or of the arbitration proceedings in respect of which the foreign award was made, or was otherwise unable to present his case in the arbitration proceedings;
- (d) the foreign award deals with a difference not contemplated by, or not falling within the terms of, the agreement to arbitrate, or contains a decision on a matter beyond the scope of the agreement to arbitrate;
- (e) the composition of the arbitral authority by whom, or the arbitral procedure in respect of which, the foreign award was made was not in accordance with the agreement to arbitrate or, where the agreement is silent on the composition of that authority or the arbitral procedure, was not in accordance with the law of the country where the arbitration took place; or
- (f) the foreign award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the foreign award was made.

(5) Where a foreign award referred to in subsection (4) contains decisions on matters falling within the scope of the agreement to arbitrate in pursuance of which it was made and also matters not falling within the scope of the agreement, a decision in the foreign award on a matter properly submitted to arbitration is, subject to this Part, enforceable to the extent to which the Court is satisfied that it can be separated from decisions in the award on matters beyond the scope of the agreement to arbitrate.

(6) A foreign award is not enforceable if the Court is of the opinion that—

- (a) the difference between the parties to the foreign award is not capable of settlement by arbitration under the laws of the State; or
- (b) the recognition and enforcement of the foreign award would be contrary to public policy.

(7) Where, in proceedings for the enforcement of a foreign award, a party to the award satisfies the Court that there is an application before a competent authority of the country or part of the country in which, or under the law of which, the foreign award was made for the setting aside or suspension of the foreign award, the Court—

- (a) may, if it considers it proper so to do, make an order adjourning the proceedings before it until after the expiration of such period as appears to the Court to be reasonably sufficient for that application to be dealt with by that competent authority or such further period as the Court, on application by that party made either before or after the expiration of the first-mentioned period, allows; and
- (b) on the application of the party seeking the enforcement of the foreign award, may make the order for the adjournment of the proceedings conditional on the giving of such security by the party seeking the adjournment as the Court thinks fit.

**44. Evidence of foreign award.** (1) The party seeking to enforce a foreign award shall produce to the Court—

- (a) the duly authenticated original award or a copy or photographic representation of such an original; and
- (b) the original agreement to arbitrate under which the award purports to have been made or a copy or photographic representation of the original agreement.

(2) A copy or photographic representation of an original foreign award or agreement to arbitrate shall be certified as a true copy or photographic representation by the arbitrator or, if the foreign award was made by a tribunal, by an officer of the tribunal.

(3) If a document or part of a document produced under subsection (2) is not written in the English language, a translation, in the English language, of the document or that part shall be produced with the document.

(4) The translation shall be verified in writing as a correct translation by an official or sworn translator of the country in which the award was made or by a diplomatic or consular agent in Australia of that country.



FIRST SCHEDULE			[s. 3]
Reference to Act	Title of Act	Extent of Repeal	
31 Vic. No. 11 ..	<i>Interdict Act of 1867</i> ..	Sections 2-21 inclusive	

## SECOND SCHEDULE

[s. 41]

UNITED NATIONS CONFERENCE ON INTERNATIONAL  
COMMERCIAL ARBITRATIONCONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN  
ARBITRAL AWARDS ADOPTED BY THE CONFERENCE AT ITS 24TH  
MEETING

## ARTICLE I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under Article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

## ARTICLE II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The terms "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

## ARTICLE III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous

SECOND SCHEDULE—*continued*

conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding article the party applying for recognition and enforcement shall, at the time of the application, supply:—

- (a) the duly authenticated original award or a duly certified copy thereof.
- (b) the original agreement referred to in Article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:—

- (a) the parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or failing any indication thereon, under the law of the country where the award was made; or
- (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:—

- (a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

SECOND SCHEDULE—*continued*

- (b) the recognition or enforcement of the award would be contrary to the public policy of that country.

## ARTICLE VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in Article V (1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

## ARTICLE VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any rights he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound, and to the extent that they become bound, by this Convention.

## ARTICLE VIII

1. This Convention shall be open until 31st December, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specified agency of the United Nations, or which is or hereafter becomes a party of the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

## ARTICLE IX

1. This Convention shall be open for accession to all States referred to in Article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

## ARTICLE X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

**SECOND SCHEDULE—continued**

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

**ARTICLE XI**

In the case of a federal or non-unitary State, the following provisions shall apply:—

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;
- (c) A federal State party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

**ARTICLE XII**

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

**ARTICLE XIII**

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under Article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

SECOND SCHEDULE—*continued*

## ARTICLE XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

## ARTICLE XV

The Secretary-General of the United Nations shall notify the States contemplated in Article VIII of the following:—

- (a) Signature and ratifications in accordance with Article VIII;
- (b) Accessions in accordance with Article IX;
- (c) Declarations and notifications under Articles I, X, and XI;
- (d) The date upon which this Convention enters into force in accordance with Article XII;
- (e) Denunciations and notification in accordance with Article XIII.

## ARTICLE XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in Article VIII.