



Australian Capital Territory

# **Arbitration Act 1902 (repealed)**

**A1902-29**

**Republication No 1**

**Effective: 2 January 1992**

Republication date: 20 February 2008

As repealed by A1986-84 s 3 (as amended  
by A1990-32 s 4)

Authorised by the ACT Parliamentary Counsel

## **About this republication**

### **The republished law**

This is a republication of the *Arbitration Act 1902* (repealed) effective 2 January 1992.

### **Kinds of republications**

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.



Australian Capital Territory

## **ARBITRATION ACT 1902 (NEW SOUTH WALES)**

*As at 2 January 1992 (Repealed by No. 84, 1986 as am No. 32, 1990)*

### **TABLE OF PROVISIONS**

Section

#### **PART I—PRELIMINARY**

1. Short title
3. Interpretation

#### **PART II—REFERENCES BY CONSENT OUT OF COURT**

4. Effect of submission
5. Provisions to be implied in submissions
6. Stay of proceedings where there is a submission
7. Appointment of arbitrator, umpire etc.
8. Power of parties to fill vacancy
9. Powers of arbitrator
10. Summoning of witnesses
11. Enlargement of time for making award
12. Power to remit award to arbitrators
13. Power to set aside award
14. Enforcement of award

#### **PART III—REFERENCES UNDER ORDER OF COURT**

15. Power to refer in certain cases
16. Powers and remuneration of referees and arbitrators
17. Court to have powers as in references by consent

**TABLE OF PROVISIONS—continued**

Section

**PART IV—GENERAL**

- 18. Compelling attendance of witnesses
- 19. Statement of case pending arbitration
- 21. Orders for obtaining evidence
- 22. Protection of witnesses
- 23. Evidence taken under orders to be received
- 24. Costs
- 25. Penalty for giving false evidence
- 26. Commonwealth to be bound
- 27. Application of Act to references under statutory powers

**SECOND SCHEDULE**



Australian Capital Territory

---

## **ARBITRATION ACT 1902 (NEW SOUTH WALES)**

An Act to consolidate the enactments relating to arbitration

### **PART I—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the Arbitration Act 1902.<sup>1</sup>

#### **Interpretation**

3. In this Act, unless the context or subject-matter otherwise indicates or requires—

“Court” means the Supreme Court or a Judge thereof.

“Judge” means a Judge of the Supreme Court.

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

### **PART II—REFERENCES BY CONSENT OUT OF COURT**

#### **Effect of submission**

4. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court, and shall have the same effect in all respects as if it had been made an order of Court.

**Provisions to be implied in submissions**

5. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the Second Schedule, so far as they are applicable to the reference under the submission.

**Stay of proceedings where there is a submission**

6. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such 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, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, 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.

**Appointment of arbitrator, umpire etc.**

7. In any of the following cases—

- (a) where a submission 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 submission 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;
- (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission 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 an arbitrator, umpire, or third arbitrator.

If the appointment is not made within 7 clear days after the service of the notice, the Court 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.

### **Power of parties to fill vacancy**

**8.** Where a submission provides that the reference shall be to 2 arbitrators, 1 to be appointed by each party, then, unless the submission expresses a contrary intention—

- (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; and
- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for 7 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:

Provided that the Court may set aside any appointment made in pursuance of this section.

### **Powers of arbitrator**

**9.** The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

- (a) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and
- (b) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

### **Summoning of witnesses**

**10.** Any party to a submission may sue out a writ of subpoena ad testificandum, or a writ of subpoena duces tecum; 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: Provided that every person whose attendance is so required shall be entitled to the like conduct money and payment for expenses as upon a trial in the Court.

**Enlargement of time for making award**

**11.** The time for making an award may from time to time be enlarged by order of the Court, whether the time for making the award has expired or not.

**Power to remit award to arbitrators**

**12. (1)** In all cases of reference to arbitration, the Court may from time to time remit the matters referred, or any of them, 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 award within 3 months after the date of the order.

**Power to set aside award**

**13. (1)** Where an arbitrator or umpire has misconducted himself, the Court may remove him.

**(2)** Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

**Enforcement of award**

**14.** An award on a submission may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect.

No writ of attachment shall be issued to enforce payment of any money, costs, or expenses under such award; but writs of fieri facias or capias ad satisfaciendum, and such other writs as may be necessary, shall be issued by order of the Court, or in vacation by order of a Judge, and every such order shall have the force and effect of a judgment at law or decree in equity.

**PART III—REFERENCES UNDER ORDER OF COURT****Power to refer in certain cases**

**15.** In any cause or matter (other than a criminal proceeding by the Crown)—

- (a) if all the parties interested who are not under disability consent;
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot, in the



opinion of the Court, conveniently be made before a jury or conducted by the Court through its other ordinary officers; or

- (c) if the question in dispute consists wholly or in part of matters of account,

the Court may at any time order the whole cause or matter or any question or issue of fact arising therein, to be tried before an arbitrator agreed on by the parties, or before a referee appointed by the Court for the purpose.

### **Powers and remuneration of referees and arbitrators**

**16. (1)** In all cases of reference under an order of the Court in any cause or matter, the referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by rules of Court, and subject thereto as the Court may direct.

**(2)** The report or award of any referee or arbitrator on any such reference shall, unless set aside by the Court, be equivalent to the verdict of a jury.

**(3)** The remuneration to be paid to any referee or arbitrator to whom any matter is referred under order of the Court shall be determined by the Court.

### **Court to have powers as in references by consent**

**17.** The Court shall, as to references under order of the Court, have all the powers which are by this Act conferred on the Court as to references by consent out of Court.

## **PART IV—GENERAL**

### **Compelling attendance of witnesses**

**18. (1)** The Court may order that a writ of subpoena ad testificandum or subpoena duces tecum shall issue to compel the attendance before a referee, or before any arbitrator or umpire, of a witness wherever he may be within the jurisdiction.

**(2)** The Court may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before a referee, or before any arbitrator or umpire.

### **Statement of case pending arbitration**

**19.** Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court, state in the form of a

special case for the opinion of the Court any question of law arising in the course of the reference.

### **Orders for obtaining evidence**

**21.** In all cases of reference to arbitration under any authority whatsoever, it shall be lawful for the Court to make an order or issue a commission for the examination of any party to such reference, or any witness whose evidence by reason of absence or intention to depart from the Territory, or illness, age, distance of residence, or other cause, would otherwise be liable to be lost, and to give all such directions as to the time, place and manner of examination and other matters connected therewith as such court shall think fit. And every such order or commission may be made or issued in like manner as orders are made or commissions issued for the examination of witnesses in any proceedings in the said court or as near thereto as may be. Any person authorized to take the evidence of witnesses under any such order or commission shall take such evidence upon oath.

### **Protection of witnesses**

**22.** No person shall be compelled under any such order or by any arbitrator to answer any question he would not be compelled to answer at a trial.

### **Evidence taken under orders to be received**

**23.** All evidence taken under any such order or commission shall be received by the arbitrators, saving all just exceptions, in like manner as evidence taken under any order or commission made or issued by the Court in proceedings pending therein is received at the trial of such proceedings.

### **Costs**

**24.** 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.

### **Penalty for giving false evidence**

**25.** Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

**Commonwealth to be bound**

**26.** This Act shall apply to any arbitration under a contract to which the Commonwealth is a party, being a contract that is governed by a law of the Territory.

**Application of Act to references under statutory powers**

**27.** This Act shall apply to every arbitration under a law of the Territory as if the arbitration were in pursuance of a submission, except in so far as this Act is inconsistent with the law regulating the arbitration or with any rules or procedure authorized or recognised by that law.

---

**SECOND SCHEDULE***Provisions to be implied in submissions*

- (a) If no other mode of reference is provided, the reference shall be to a single arbitrator.
  - (b) If the reference is to 2 arbitrators, the 2 arbitrators may appoint an umpire at any time within the period during which they have power to make an award.
  - (c) The arbitrators shall make their award in writing within 3 months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.
  - (d) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission 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.
  - (e) The umpire shall make his award within 1 month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.
  - (f) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings, and 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 arbitrators or umpire may require.
  - (g) The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath.
  - (h) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.
  - (i) The costs of the reference and award shall be in the discretion of the arbitrators 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 paid or any part thereof, and may award costs to be paid as between solicitor and client.
-

**NOTE**

1. The Arbitration Act 1902 of the State of New South Wales (No. 29, 1902) as shown in this reprint was one of the laws in force in the Australian Capital Territory before 1 January 1911 and was therefore continued in force by the *Seat of Government Acceptance Act 1909* of the Commonwealth.

The text of the Arbitration Act 1902 of the State of New South Wales in its application in the Territory as at 10 August 1984 comprises Part 3 of Schedule 2 to the *New South Wales Acts Application Act 1984* (No. 41, 1984) as amended, details of those amendments are as follows:

Sections 2 and 20 and the First Schedule were repealed by the *New South Wales Acts Application Act 1984*.

Section 27 was substituted by the *New South Wales Act Application Act 1984*.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

This Act was repealed on 1 January 1992 by the Commercial Arbitration Act 1986 A1986-84 s 3 (as amended by A1990-32 s 4).

© Australian Capital Territory 2008