

AUSTRALIAN CAPITAL TERRITORY

SUPREME COURT (ARBITRATION) ORDINANCE 1990

EXPLANATORY STATEMENT

No. 8, 1990

The purpose of the Ordinance is to give the Supreme Court of the Australian Capital Territory (the Supreme Court) greater power to use court-appointed arbitrators or referees. It does this by extending the rule-making power of the Judges of the Supreme Court. This extension permits the Judges of the Supreme Court to make Rules enabling the Supreme Court, in civil proceedings, to refer the whole proceedings, or a question of law or fact ensuing in proceedings to an arbitrator or referee for inquiry and report or for determination, and to regulate matters relating to such a reference.

The legislation which at present governs referral of matters arising in civil proceedings before the Supreme Court to an arbitrator or referee is Part III of the Arbitration Act 1902 of NSW in its application to the Territory (the Arbitration Act). The Arbitration Act, permits the Supreme Court or a Judge of the Court to refer matters to arbitration only with the consent of the parties or where the cause or matter requires prolonged examination of documents or scientific investigation or the question in dispute consists wholly or in part of matters of account.

The Ordinance is part of a scheme of uniform legislation under which State and Territory legislation is amended by

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replacing provisions equivalent to the Arbitration Act with modern commercial arbitration legislation. This Ordinance could not be made when the rest of the uniform legislation was introduced in the ACT because an amendment had first to be made to the Australian Capital Territory Supreme Court Act 1933. That amendment has now been made.

Details of the clauses in the proposed Ordinance are set out in the attachment.

Authorised by the Minister
for Justice and Consumer
Affairs

56/89

ATTACHMENT

Details of Supreme Court (Arbitration) Ordinance 1990

Section 1 provides for the citation of the Ordinance.

Section 2 gives expressions used in the Ordinance the same meaning as in the Australian Capital Territory Supreme Court Act 1933 of the Commonwealth.

Section 3 enables the Supreme Court to make Rules of Court in relation to matters that may be referred by the Supreme Court to an arbitrator or referee. Such rules may also cover related matters including the appointment of and fees to be paid to arbitrators or referees, the consequences of determinations or reports by arbitrators or referees, the provision of the services of the officers of the Court and the provision of facilities for referees or arbitrators and any other matters associated with a reference.

Section 4 provides that from the date Rules of Court are made for the purposes of clause 2, Part III of the Arbitration Act 1902 of the State of New South Wales will cease to apply to proceedings in the Supreme Court, except in proceedings where an order under the Arbitration Act has already been made before that date.

Section 5 amends the Reserved Laws (Administration) Ordinance 1989 to provide that the Attorney-General shall administer the Supreme Court (Arbitration) Ordinance 1990.