

**2016**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**COMMERCIAL ARBITRATION BILL 2016**

**EXPLANATORY STATEMENT**

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## COMMERCIAL ARBITRATION BILL 2016

### **Overview of the Bill**

This Commercial Arbitration Bill 2016 (the Bill) replaces the *Commercial Arbitration Act 1986* with a model Bill agreed to by the former Standing Committee of Attorneys-General (SCAG) in May 2010.

The paramount object of the Bill is to facilitate the fair and final resolution of commercial disputes by impartial tribunals without unnecessary delay or expense.

The Bill encourages the use of arbitration as a means of resolving domestic commercial disputes. It harmonises the procedures for resolution of such disputes with those applicable to the resolution of international commercial disputes under the *International Arbitration Act 1974* of the Commonwealth ('the Commonwealth Act').

The Bill facilitates the use of arbitration agreements to manage domestic commercial disputes by adopting the provisions of the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration ('the Model Law'), taking into account the Commonwealth Act, and with appropriate modifications for domestic commercial arbitration. The Bill also contains a number of additional provisions supporting the arbitration process and some optional provisions which may be used by the parties to an arbitration agreement should a dispute arise between them. These include provisions relating to assistance from the Supreme Court (or another court nominated by the parties), the consolidation of arbitral proceedings, the disclosure of confidential information and the awarding of interest and costs. The Bill also provides for the issue of subpoenas, and the recognition and enforcement of awards with respect to domestic commercial arbitrations.

This Bill contains minor technical amendments to make the Bill consistent with the *Commercial Arbitration Act 2010* (NSW) and contains transitional provisions and consequential amendments to other Acts. The Bill is drafted consistent with ACT drafting practice.

The places where the Bill and the Model Law differ (in other than minor technical respects) are identified in the Bill by notes. The Bill reflects the numbering of the Model Law and, to ensure consistency with the numbering of it, contains gaps in numbering and use of alphabetical numbering.

### **Human Rights Implications**

Section 28 of the *Human Rights Act 2004* (HRA) provides that human rights are subject only to reasonable limits set by laws that can be reasonably justified in a free and democratic society. Section 28(2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

### ***Section 21 – the right to a fair trial***

Section 21 of the HRA provides:

- (1) Everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- (2) However, the press and public may be excluded from all or part of a trial –
  - (a) to protect morals, public order or national security in a democratic society; or
  - (b) if the interest of the private lives of the parties require the exclusion; or
  - (c) if, and to the extent that, the exclusion is strictly necessary, in special circumstances of the case, because publicity would otherwise prejudice the interests of justice.
- (3) But each judgment in a criminal or civil proceeding must be made public unless the interest of a child requires that the judgment not be made public.

#### **The nature of the right affected (s 28(2)(a))**

The Bill places certain limits on the right of parties who have freely entered into a commercial arbitration agreement to take their civil disputes with a party to the agreement to court. To this extent the Bill engages and limits the right to fair trial in s 21.

#### **The importance of the purpose of the limitation (s28(2)(b))**

The Bill (clause 8, based on article 8 of the Model Law) requires that where there is a commercial arbitration agreement on foot and a party later starts court proceedings despite the agreement, the court must set aside the proceedings on the request of the other party (unless the agreement cannot be performed).

Clause 34A limits the ability of a party to unilaterally appeal an arbitral award. An appeal may be brought on a question of law where the parties agree, before the appeal period, that an appeal may be made and the court grants leave to appeal.

Both of these clauses are important as they prevent commercial arbitration agreements and commercial arbitrations being undermined. In the absence of these provisions, a party to a commercial arbitration agreement could avoid their arbitration agreement and litigate (or threaten to litigate) disputes arising between the parties at great expense to the other party. In the case of a large venture involving a number of other parties who rely on the dispute between the parties being resolved quickly, the delay of court proceedings could cause a ‘domino effect’ and threaten the viability of the venture.

These provisions are also based on equivalent provisions in the uniform model law already legislated in each other Australian State and Territory.

#### Nature and extent of the limitation (s28(2)(c))

The limitation only applies to parties to commercial arbitration agreements where the parties have agreed that their disputes (as set out in the commercial arbitration agreement) will be resolved by commercial arbitration.

Parties to commercial agreements who have not agreed to settle their disputes by commercial arbitration are not subject to the limitation. While they may engage in alternative dispute resolution, unless they enter a commercial arbitration agreement they are not bound by these limitations.

There are specified circumstances in the Bill set out in clause 34 (based on article 34 of the Model Law) where the court may set aside an award of an arbitral tribunal, such as where a party to the arbitral agreement was under some incapacity or the agreement is not valid under the law to which the parties have subjected it to, or failing any indication in it, under the law of the Territory. The court may also set aside an award under clause 34 where the court finds that the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Territory or the award is in conflict with the public policy of the Territory.

Other provisions in the Bill (listed in clause 6, based on article 6), while they provide for court access and assistance, are designed to promote the integrity and fairness of the arbitration process (such as settlement over disputes relating to the constitution of the arbitral tribunal).

#### Relationship between the limitation and its purpose (s28(2)(d))

The provisions limit the right to fair trial by preventing a party to a commercial arbitration avoiding arbitration and taking their dispute to court. In this regard they go to the paramount object of the Bill, which is to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense.

Any less restrictive means reasonably available to achieve the purpose (s28(2)(e))

Limiting the appeal rights in commercial arbitration process is the least restrictive way of achieving the purpose of an effective alternative dispute resolution mechanism for these types of disputes. Parties do not have to enter into this type of arbitration if they so choose.

### ***Section 12 – Privacy and reputation***

The Bill includes clauses which engage and promote the right to privacy in the HRA. The relevant provisions are designed to protect the confidentiality of commercial or trade information. To the extent the provisions also protect the confidential commercial interests of individuals, the provisions promote the right.

Clause 27E of the Bill provides that unless otherwise agreed by the parties, parties must not disclose confidential information in relation to the proceedings other than in limited circumstances. These include circumstances set out in clause 27F. The Bill provides for disclosure by order of the arbitral tribunal (clause 27G). The court may make an order prohibiting disclosure of confidential information (clause 27H) and to allow a party to disclose confidential information (clause 27I).

### ***Section 8 – Recognition and equality before the law***

The Bill also engages and promotes the human right to recognition and equality before the law in the HRA. Clause 18 of the Bill (based on article 18 of the Model Law) provides that the parties must be treated with equality and each party must be given a reasonable opportunity of presenting the party's case.

## Clause Notes

### Part 1A Preliminary

**Clause 1A Name of Act** – states the name of the Act as the *Commercial Arbitration Act 2016*.

**Clause 1B Commencement** – states that the commencement of the Act is a day fixed by the Minister by written notice. Notes are included in the section about commencement of legislation in the *Legislation Act 2001*. Note 3 states that where a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period.

**Clause 1C Paramount object of Act** – states that the paramount object of the Act is to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense.

**Clause 1D Act to bind Crown** – No provision is included here; only a note that the section is not necessary in the ACT because this matter is covered by the *Legislation Act 2001*.

**Clause 1E Dictionary** – states that the dictionary at the end of the Act is part of the Act.

**Clause 1F Notes** – states that a note included in the Act is explanatory and not part of the Act.

### Part 1 General Provisions

**Clause 1 Scope of Application** – this clause states that the Act applies to domestic commercial arbitrations. An arbitration is a ‘domestic’ arbitration if the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in Australia and have (whether in the arbitration agreement or in any other document in writing) agreed that any dispute that has arisen or may arise between them is to be settled by arbitration. It is not a domestic arbitration if it is an arbitration to which the Model Law (as given effect to by the Commonwealth Act) applies as that Act covers the field with respect to international commercial arbitrations. Clause 1(5) also makes it clear that the Act is not intended to affect any other Act that provides that certain disputes may not be submitted to arbitration or may only be submitted according to provisions other than those of the proposed Act.

**Clause 2 Rules of interpretation** – this clause contains provisions for interpreting referential phrases in the Act, including provisions relating to the meaning of a reference to the fact that the parties have agreed and that a reference to leaving the parties free to determine an issue includes the right of the parties to authorise a third party (including an institution) to determine the issue.

This clause differs from equivalent provisions in the model Bill in that the definitions have been moved to the dictionary to the Act, consistent with ACT drafting practice. A note is

included in clause 2 explaining that the section differs from the Model Law to the extent that the definitions in Article 2(1) are set out in the dictionary to the Act.

**Clause 2A International origin and general principles** – this clause makes it clear that in interpreting the Act, regard should be had to promoting uniformity between the application of the proposed Act to domestic commercial arbitrations and the application of the Model Law (as given effect by the Commonwealth Act) to international commercial arbitrations.

**Clause 3 Receipt of written communications** – this clause deems written communications to have been received by a party in specified circumstances.

**Clause 4 Waiver of right to object** – this clause waives the right of a party to object to non-compliance with a provision of the Act or of an arbitration agreement if the party proceeds with an arbitration but fails to object to that non-compliance either without delay or within any time-limit.

**Clause 5 Extent of court intervention** – this clause makes it clear that a court is not to intervene in matters governed by this Act, except as provided by this Act.

**Clause 6 Court for certain functions of arbitration assistance and supervision** – this clause specifies the functions of arbitration assistance and supervision to be performed by the Supreme Court, or by the Magistrates Court if the parties so provide in the arbitration agreement, under the Act.

## **Part 2 Arbitration agreement**

**Clause 7 Definition and form of *arbitration agreement*** – this clause defines arbitration agreement as an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement must be “in writing”. The proposed section makes it clear that “in writing” has an expanded meaning. An agreement may be concluded orally, by conduct or other means, provided that its content is recorded in some form, including electronic communication. An agreement will also be in writing if it is contained “in an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other”.

**Clause 8 Arbitration agreement and substantive claim before court** – this clause requires a court before which an action is brought in a matter that is the subject of an arbitration agreement to refer the matter to arbitration if a party so requests in the circumstances specified in the proposed section. It also allows an arbitration to be commenced or continued while the issue is pending before the court.

**Clause 9 Arbitration agreement and interim measures by court** – this clause allows a party to obtain an interim measure of protection from a court, before or during arbitral proceedings.

## Part 3 Composition of arbitral tribunal

**Clause 10** **Number of arbitrators** – this clause allows the parties to determine the number of arbitrators and specifies that, in the absence of agreement between the parties, the default number of arbitrators is one.

**Clause 11** **Appointment of arbitrators** – this clause allows the parties to agree on the procedure for appointing arbitrators. It provides a default with ultimate recourse to the Supreme Court (or another court agreed by the parties as referred to in section 6) if agreement cannot be reached or the agreed procedure is not followed.

**Clause 12** **Grounds for challenge** – this clause sets out the grounds on which the appointment of an arbitrator may be challenged. It obliges proposed arbitrators to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. This obligation starts when a person is approached to be an arbitrator and continues throughout the person's appointment as an arbitrator. Clause 12(5) and (6) provide that the test for whether there are justifiable doubts as to the impartiality or independence of an arbitrator is whether there is a real danger of bias. This is based on the test for bias applied by the House of Lords in *R v Gough* [1993] AC 646.

**Clause 13** **Challenge procedure** – this clause provides that the parties are free to determine the procedure for challenging an arbitrator and provides a default procedure for challenging the appointment or continued appointment of an arbitrator in the absence of agreement for such a challenge. It also provides that if a challenge fails, a party may have recourse to a court to determine the matter.

**Clause 14** **Failure or impossibility to act** – this clause provides for the termination of the mandate of an arbitrator in certain circumstances.

**Clause 15** **Appointment of substitute arbitrator** – this clause requires the appointment of a substitute arbitrator according to the appointment procedure and any other eligibility requirements that were applicable to the arbitrator being replaced.

## Part 4 Jurisdiction of arbitral tribunal

**Clause 16** **Competence of arbitral tribunal to rule on its jurisdiction** – this clause makes it clear that an arbitral tribunal is competent to make a determination as to whether or not it has jurisdiction to arbitrate a commercial dispute. It also makes it clear that an arbitration agreement may be severed from the contract in which it is contained (if applicable) so that it may stand independently. It expressly provides that any determination that the contract is invalid does not mean that the arbitration clause is invalid. The provision also allows a party to seek a ruling from the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) from a determination of the tribunal that it has jurisdiction.

## **Part 4A Interim measures**

### **Division 1 Interim measures**

**Clause 17 Power of arbitral tribunal to order interim measures** – this clause confers power on an arbitral tribunal to grant interim measures (unless otherwise agreed by the parties) similar to the ex parte orders that could be obtained from the court during litigation prior to the final determination of a dispute for purposes such as maintenance of the status quo and preservation of assets and evidence.

**Clause 17A Conditions for granting interim measures** – this clause requires a party requesting certain interim measures to satisfy the arbitral tribunal (to the extent the arbitral tribunal considers appropriate) that if the measure considered is not ordered then harm not adequately reparable by award of damages is likely to result. It must also satisfy the arbitral tribunal that there is a reasonable opportunity that the requesting party will succeed on the merits of the claim.

### **Division 2 Preliminary orders**

**Clause 17B Applications for preliminary orders and conditions for granting preliminary orders** – Article 17B of the Model Law is not adopted by the Act but the clause numbering and title of the provision is retained.

**Clause 17C Specific regime for preliminary orders** – Article 17C of the Model Law is not adopted by the Act but the clause numbering and title of the provision is retained.

### **Division 3 Provisions applicable to interim measures**

**Clause 17D Modification, suspension, termination** – this clause allows an arbitral tribunal to modify, suspend or terminate an interim measure either on the application of any party or, in exceptional circumstances and having given prior notice, on the tribunal's own initiative.

**Clause 17E Provision of security** – this clause allows an arbitral tribunal to require a party that requests an interim measure to provide appropriate security.

**Clause 17F Disclosure** – this clause allows an arbitral tribunal to require any party to disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.

**Clause 17G Costs and damages** – this clause imposes a liability on a party that requests an interim measure for any costs and damages caused by the measure to any party to the arbitration agreement, if the tribunal subsequently determines that it should not have granted that interim measure.

## **Division 4 Recognition and enforcement of interim measures**

**Clause 17H Recognition and enforcement** – this clause provides for the recognition and enforcement of an interim measure issued under a law of the ACT, or an interim measure issued under a law of a State or another Territory of Australia, in certain circumstances.

**Clause 17I Grounds for refusing recognition or enforcement** – this clause outlines the circumstances in which the recognition or enforcement of an interim measure may be refused.

## **Division 5 Court-ordered interim measures**

**Clause 17J Court-ordered interim measures** – this clause makes it clear that the Supreme Court (or another court agreed by the parties as referred to in section 6) has the same power to issue an interim measure in arbitration proceedings as it has in relation to proceedings in courts.

## **Part 5 Conduct of arbitral proceedings**

**Clause 18 Equal treatment of parties** – this clause makes it clear that parties must be given a fair hearing.

**Clause 19 Determination of rules of procedure** – this clause provides that the parties are free to agree on the procedure to be followed by the arbitral tribunal. It allows the arbitral tribunal to conduct the arbitration in the manner it considers appropriate in the absence of such agreement. The clause specifies the powers conferred on the arbitral tribunal and provides that, by leave of the Supreme Court (or another court agreed by the parties as referred to in section 6), an arbitration tribunal's order or direction may be enforced by a judgment being entered in terms of the order or direction.

**Clause 20 Place of arbitration** – this clause provides that the parties are free to agree on the place of arbitration and allows an arbitral tribunal to determine the place of arbitration in the absence of such agreement.

**Clause 21 Commencement of arbitral proceedings** – this clause provides for arbitral proceedings to commence on the date that a request for the referral to arbitration is received by the respondent.

**Clause 22 Language** – this clause provides that the parties are free to agree on the language or languages to be used in arbitral proceedings. Failing such agreement the arbitral tribunal is to determine the language or languages to be used. The agreement or determination applies to written statements and any hearing, award, decision or other communication of the arbitral tribunal unless otherwise agreed by the parties. The proposed section also allows an arbitral tribunal to make an order for documentary evidence to be accompanied by an appropriate translation.

**Clause 23 Statements of claim and defence** – this clause sets out requirements with respect to statements of claim and defence. The clause applies unless otherwise agreed by the parties and is subject to directions of the arbitral tribunal.

**Clause 24 Hearings and written proceedings** – this clause sets out the procedure for the conduct of the arbitral proceedings. Unless otherwise agreed by the parties, the arbitral tribunal can decide whether to hold an oral hearing or to make a decision on the papers and other materials submitted. The discretion to make a decision on the papers is limited in so far as the arbitral tribunal must hold an oral hearing if requested by a party, provided that they have not agreed beforehand that no hearings are to be held. The proposed section makes it clear that documents sought to be relied on must be communicated to another party to the arbitration.

**Clause 24A Representation** – this clause allows a party to appear in person or be represented by any person of their choice in oral hearings of the tribunal.

**Clause 24B General duties of parties** – this clause imposes a duty on the parties to do all things necessary for the proper and expeditious conduct of arbitral proceedings.

**Clause 25 Default of a party** – this clause states the powers of an arbitral tribunal in the event of a party’s failure to communicate a statement of claim or a statement of defence or to appear at a hearing or produce documentary evidence. The clause applies unless otherwise agreed by the parties.

**Clause 26 Expert appointed by arbitral tribunal** – this clause allows an arbitral tribunal, unless otherwise agreed by the parties, to appoint experts to report on specific issues determined by the tribunal, and if necessary to appear at a hearing for the purpose of examination. It also allows the arbitral tribunal, unless otherwise agreed by the parties, to require a party to give information or to provide access in order to inspect documents, goods or other property.

**Clause 27 Court assistance in taking evidence** – this clause allows a request to be made to the Supreme Court (or another court agreed by the parties as referred to in section 6) by an arbitral tribunal or a party with the approval of an arbitral tribunal, for assistance in taking evidence.

**Clause 27A Parties may obtain subpoenas** – this clause allows the Supreme Court (or another court agreed by the parties as referred to in section 6) to issue a subpoena requiring a person to attend the arbitral proceedings for examination, or to produce documents, on the application of a party made with the consent of the arbitral tribunal. The clause is similar to section 17 of the *Commercial Arbitration Act 1986*.

**Clause 27B Refusal or failure to attend before arbitral tribunal or to produce document** – this clause provides that, unless otherwise agreed by the parties, on application to the Supreme Court (or another court agreed by the parties as referred to in section 6) by a party or the arbitral tribunal the court may order a person in default to comply with a subpoena or a requirement of the arbitral tribunal and may make consequential orders as to the transmission of evidence or documents to the arbitral tribunal. The clause is similar to section 18 of the *Commercial Arbitration Act 1986*.

**Clause 27C Consolidation of arbitration proceedings** – this clause allows the consolidation of certain arbitral proceedings. The clause applies unless otherwise agreed by the parties. This clause is similar to section 26 of the *Commercial Arbitration Act 1986*.

**Clause 27D Power of arbitrator to act as mediator, conciliator or other non-arbitral intermediary** – this clause provides that an arbitrator can act as mediator in the proceedings if the parties so agree. It also outlines the circumstances in which mediation can be terminated. This includes where any party withdraws their consent to the mediation. It also prohibits an arbitrator who has acted in mediation proceedings that have been terminated from conducting subsequent arbitration, without the written consent of all the parties to the arbitration.

**Clause 27E Disclosure of confidential information** – this clause provides for the protection of confidential information. Confidential information is defined in the dictionary as information that relates to arbitral proceedings or to an award made in those proceedings

**Clause 27F Circumstances in which confidential information may be disclosed** – this clause sets out the general circumstances in which confidential information can be disclosed by a party to the proceedings or the arbitral tribunal. These circumstances include where all the parties have consented, it is necessary for the establishment or protection of the legal rights of a party, disclosure is required by subpoena or a court order or where disclosure is authorised or required by another relevant law (including a law of the Commonwealth or of a State or another Territory) or for the purposes of enforcing an arbitral award.

**Clause 27G Arbitral tribunal may allow disclosure of confidential information in certain circumstances** – this clause allows an arbitral tribunal to authorise the disclosure of confidential information in circumstances other than those mentioned in section 27F at the request of one of the parties and only once the other parties have been heard.

**Clause 27H Court may prohibit disclosure of confidential information in certain circumstances** – this clause outlines the circumstances in which the Supreme Court (or another court agreed by the parties as referred to in section 6) may make an order prohibiting the disclosure of confidential information on the application of a party and giving all the parties an opportunity to be heard. It requires consideration of whether or not the public interest would be served by disclosure or non-disclosure and whether disclosure is more than reasonable for the purpose. The proposed section deals with the situation where consent of all the parties has not been obtained under section 27F(2) or where the arbitral tribunal refuses to make an order under section 27G.

**Clause 27I Court may allow disclosure of confidential information in certain circumstances** – this clause outlines the circumstances in which the Supreme Court (or another court agreed by the parties as referred to in section 6) may make an order allowing the disclosure of confidential information and sets out the matters the court must take into consideration before making an order.

**Clause 27J Determination of preliminary point of law by court** – this clause allows a party to make an application to the Supreme Court (or another court agreed by the parties as referred to in section 6), and confers jurisdiction on the court, to determine a question of law that arises in the course of arbitration, unless otherwise agreed.

## Part 6 Making of award and termination of proceedings

**Clause 28 Rules applicable to substance of dispute** – this clause allows the parties to choose the substantive law to be applied to the particular facts of the matter in dispute (as opposed to determining the arbitral law under which the dispute is resolved). It makes it clear that an arbitral tribunal is to make a determination in accordance with the terms of the contract, taking into account the usages of the trade applicable to it.

**Clause 29 Decision-making by panel of arbitrators** – this clause specifies that a majority of arbitral tribunal members (if there is more than one arbitrator) is necessary to constitute a decision of the tribunal unless otherwise agreed by the parties.

**Clause 30 Settlement** – this clause provides for the recording of a settlement between the parties in the form of an award.

**Clause 31 Form and contents of award** – this form prescribes the form and content of an award which must be in writing and signed by the arbitrator or arbitrators.

**Clause 32 Termination of proceedings** – this clause prescribes the circumstances in which arbitral proceedings are terminated, principally by the final award of the arbitrator or arbitrators.

**Clause 33 Correction and interpretation of award, and making additional award** – this clause sets out when a party can ask the arbitral tribunal to correct an award, and how.

**Clause 33A Specific performance** – this clause allows an arbitrator to make an order for specific performance of a contract where the Supreme Court would have the power to do so, unless otherwise agreed by the parties.

**Clause 33B Costs** – this clause allows the arbitral tribunal (unless otherwise agreed by the parties) to determine costs (including the fees and expenses of the arbitrator or arbitrator) at its discretion and to direct that they be limited to a specified amount. A direction limiting the amount must be given sufficiently in advance for the parties to take it into account in managing their own costs.

**Clause 33C Application of Legal Profession Act 2006** – this clause applies the *Legal Profession Act 2006*, division 3.2.7 (Costs assessment), to the assessment of costs by a court exercising jurisdiction under section 33B.

**Clause 33D Costs of abortive arbitration** – this clause allows the Supreme Court (or another court agreed by the parties as referred to in section 6), to make orders with respect to the costs of an abortive arbitration. It is similar to section 36 of the *Commercial Arbitration Act 1986*.

**Clause 33E Interest up to making of award** – this clause provides for the imposition (unless otherwise agreed by the parties) by the arbitral tribunal of interest in an award for payment of money for the period before the making of the award.

**Clause 33F Interest on debt under award** – this clause provides for the imposition (unless otherwise agreed by the parties) by the arbitral tribunal of interest on the debt under an award.

## **Part 7 Recourse against award**

**Clause 34 Application for setting aside as exclusive recourse against arbitral award** – this clause outlines the circumstances in which an application to the Supreme Court (or another court agreed by the parties as referred to in section 6) may be made for the setting aside of an award, or an appeal against an award, and the criteria to be applied. In particular it requires the court to find either that the subject matter of the dispute is not capable of settlement by arbitration under a law of the ACT, or that the award is in conflict with public policy. Section 19 of the Commonwealth Act declares that, for the purposes of the application of the Model Law by that Act, an award is in conflict with public policy if the making of the award was induced or affected by fraud or corruption or a breach of the rules of natural justice occurred in connection with the making of the award.

**Clause 34A Appeals against awards** – this clause allows an appeal to the Supreme Court (or another court agreed by the parties as agreed in section 6) on a question of law, if the parties have agreed prior to the commencement of arbitration that such appeals may be made and the court grants leave.

## **Part 8 Recognition and enforcement of awards**

**Clause 35 (Recognition and enforcement) and clause 36 (Grounds for refusing recognition or enforcement)** – these clauses establish a framework for the recognition and enforcement of arbitral awards in the ACT.

## **Part 9 Miscellaneous**

**Clause 37 Death of party** – this clause outlines the effect that the death of a party has on an arbitration agreement. It is similar to section 52 of the *Commercial Arbitration Act 1986*.

**Clause 38 Interpleader** – this clause makes provision for relief by way of interpleader. It is based on section 54 of the *Commercial Arbitration Act 1986*.

**Clause 39 Immunity** – this clause confers immunity on an arbitrator acting in good faith.

**Clause 40 Court rules** – this clause allows rules of court to be made to make further provision for giving effect to the Act.

**Clause 41 Regulation-making power** – this clause provides for the making of regulations for the Act by the Executive.

## **Part 10 Repeal and consequential amendments**

**Clause 42 Legislation repealed** – this clause provides for the repeal of the *Commercial Arbitration Act 1986*.

**Clause 43** **Legislation amended—sch 1** – this clause provides that Act amends the legislation mentioned in schedule 1.

## **Part 20 Transitional**

**Clause 200** **Definitions – pt 20** – this clause contains definitions for defined terms used in part 20 of the Act.

**Clause 201** **Arbitration under repealed Act** – this clause provides savings and transitional provisions applicable to arbitrations that have commenced before the commencement of the Act.

**Clause 202** **Transitional regulations** – this clause allows the making of regulations of a transitional nature. Regulations may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the Act or to modify part 20.

**Clause 203** **Expiry—pt 20** – this clause provides for the expiry of part 20, which is two years after the commencement day of the Act.

## **Schedule 1 Consequential amendments**

### **Part 1.1 Anglican Church of Australia Constitution Act 1961**

#### **Amendment 1.1 Section 9**

Amendment 1.1 substitutes section 9 in the *Anglican Church of Australia Constitution Act 1961* with a new section. References to “*Commercial Arbitration Act 1986*” are substituted with references to the “*Commercial Arbitration Act 2016*”, a reference to ‘arbitrator’ (as a tribunal) in the section is substituted with a reference to ‘arbitral tribunal’ for consistency with the Act. The section is re-drafted in plain English, consistent with current drafting style.

### **Part 1.2 Evidence (Miscellaneous Provisions) Act 1991**

#### **Amendment 1.2 Section 16, definition of *territory court*, paragraph (e)**

Amendment 1.2 substitutes section 16, definition of *territory court*, paragraph (e), which refers to the *Commercial Arbitration Act 1986* and ‘arbitrator or umpire’, with a new section which refers to the Act and to ‘an arbitral tribunal’, consistent with language in the Act.

#### **Amendment 1.3 New section 16 (2)**

Amendment 1.3 inserts a new subsection 16(2) and a definition of ‘arbitral tribunal’ for section 16.

## **Part 1.3 Health Act 1993**

### **Amendment 1.4 New section 106 (3)**

Amendment 1.4 substitutes a reference to the *Commercial Arbitration Act 1986* with a reference to the Act.

## **Part 1.4 Independent Competition and Regulatory Commission Act 1997**

### **Amendment 1.5 Sections 31 and 40 (1)**

Amendment 1.5 substitutes references to the *Commercial Arbitration Act 1986* with references to the Act.

### **Amendment 1.6 Section 40 (2)**

Amendment 1.6 substitutes a reference to the *Commercial Arbitration Act 1986* with a reference to the Act.

### **Amendment 1.7 Section 40 (6)**

Amendment 1.7 substitutes a reference to the *Commercial Arbitration Act 1986* with a reference to the Act.

## **Part 1.5 Road Transport (General) Act 1999**

### **Amendment 1.8 Section 90, definition of *CTP arbitrator***

Amendment 1.8 substitutes section 90, definition of *CTP arbitrator* with a new definition which refers to ‘arbitral tribunal’, consistent with language used in the Act.

## **Part 1.6 Road Transport (General) Regulation 2000**

### **Amendment 1.9 Schedule 1, part 1.9A, item 1, column 3**

Amendment 1.9 substitutes a reference to ‘arbitrator’ with a reference to ‘arbitral tribunal’, consistent with language used in the Act.

## **Part 1.7 Road Transport (Third-Party Insurance) Act 2008**

### **Amendment 1.10 Section 45 (2)**

Amendment 1.10 substitutes a reference to the *Commercial Arbitration Act 1986* with a reference to the Act.

**Amendment 1.11 Section 45 (3)**

Amendment 1.11 substitutes a reference to the ‘arbitrator for the matter’ with a reference to ‘the arbitral tribunal for the matter’, consistent with language used in the Act.

**Amendment 1.12 Section 45(5) and notes**

Amendment 1.12 substitutes a reference to ‘arbitrator’ with a reference to ‘arbitral tribunal’, consistent with language used in the Act.

Note 2 is amended to substitute a reference to ‘arbitrator’ with a reference to ‘arbitral tribunal’.

**Amendment 1.13 New section 45 (7)**

Amendment 1.13 inserts a new subsection 45(7) to define ‘arbitral tribunal’ for section 45.

## **Part 1.8 Utilities Act 2000**

**Amendment 1.14 Section 225 (3) (g)**

Amendment 1.14 substitutes a reference to the *Commercial Arbitration Act 1986* with a reference to the Act.

## **Part 1.9 Workers Compensation Act 1951**

**Amendment 1.15 Section 223 (2) (j)**

Amendment 1.15 substitutes a reference to the *Commercial Arbitration Act 1986* with a reference to the Act.

## **Part 1.10 Workers Compensation Regulation 2002**

**Amendment 1.16 Section 49**

Amendment 1.16 substitutes a reference to the *Commercial Arbitration Act 1986* with a reference to the Act.

## **Dictionary**

The dictionary contains definitions for defined terms used in the Act.  
The *Legislation Act 2001* contains definitions for terms used more generally in ACT legislation.