

WESTERN AUSTRALIA.

ARBITRATION.

59° Victoriae No. 13.

[As amended by Acts:

1° and 2° Edward VII No. 14, assented to 19th February, 1902;

No. 36 of 1935,¹ reserved 7th January, 1936, Royal Assent proclaimed 3rd April, 1936,

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to amend the Laws relating to Arbitration.

[Assented to, 11th September, 1895.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "The Arbitration Act, 1895-1935." Short title.

2. In this Act, unless the contrary intention appears— Definition of terms.

"Submission" means a written agreement, signed or otherwise assented to by the parties, to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

"Court" means the Supreme Court of Western Australia.

¹ Came into operation on 1st May, 1936. See Gazette 9th April, 1936.

Arbitration.

“Judge” means a Judge of the said Court.

“Rules of Court” means the Rules of the Supreme Court made by the proper authority.

REFERENCES BY CONSENT OUT OF COURT.

Submission irrevocable, and to have same effect as an order of the Court.

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

Provisions implied in submissions.

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

Reference to officer of the Court.

5. Where a submission provides that the reference shall be to an officer of the Supreme Court, or to an official referee (if any), such officer, or any official referee to whom application is made, shall, subject to any order of the Court or a Judge as to transfer or otherwise, hear and determine the matters agreed to be referred.

Power to stay 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 step in the proceedings, apply to the Court to stay the proceedings, and the Court, or a Judge thereof, 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.

7. In any of the following cases:—

- (a) Where a submission provides that the reference shall be to a single arbitrator, and after differences between the parties have arisen any such appointment is not made;
- (b) If a single arbitrator refuses to act, or is incapable of acting, or dies, or is removed, and the submission does not show that it was intended that the vacancy should not be supplied, and the vacancy is not supplied;
- (c) Where the parties, or the arbitrators are, or any other person, body, or society is at liberty to appoint an umpire or third arbitrator, and do or does not appoint him;
- (d) Where an umpire or third arbitrator refuses to act, or is incapable of acting, or dies, or is removed, and the submission does not show that it was intended that the vacancy should not be supplied, and such vacancy is not supplied;
- (e) Where in any other case it is necessary to appoint or nominate, either originally or by way of substitution, an arbitrator or arbitrators, or an umpire, and any difficulty arises in connection with such appointment or nomination:

Power for Court in certain cases to appoint an arbitrator or umpire.

any party may serve the other parties, or the arbitrators, or such other person, body, or society, as the case may be, with a written notice to appoint an arbitrator or umpire, or third arbitrator.

If the appointment is not made within seven days after the service of the notice, the Court or a Judge 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 in certain cases to fill vacancies.

8. Where a submission provides that the reference shall be to two or more arbitrators, with or without an umpire or third arbitrator, 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, or is removed, the party, person, body, or society who appointed him may appoint a new arbitrator in his place;
- (b) If, on such a reference, one party or any person, body, or society having the power of appointment fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party, person, body, or society 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 or a Judge may set aside any appointment made in pursuance of this section.

Powers of arbitrators.

9. The arbitrators or umpire, whether appointed under this Act or otherwise acting under a submission, shall, unless the submission expresses a contrary intention, have power—

- (a) To administer oaths to, or take the affirmation of the parties and witnesses appearing;
- (b) To state an award as to the whole or part thereof, in the form of a special case for the opinion of the Court or a Judge thereof; and
- (c) To correct in an award any clerical mistake or error arising from any accidental slip or omission.

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.

Witnesses
summoned
by subpoena.

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

Power to
enlarge time
for award.

12. (1) In all cases of reference to arbitration, the Court or a Judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

Power to
remit award.

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

13. (1) Where an arbitrator or umpire has left the State temporarily or otherwise, misconducted himself, or is, in the opinion of the Court or a Judge, directly or indirectly interested, the Court or a Judge may remove him.

Power to
remove
arbitrator or
umpire.

(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.

Power to set
aside award.

14. An award on a submission may, by leave of the Court or a Judge, be entered, and in every respect enforced as a judgment or order of the Court to the same effect.

Award
entered as
judgment.

15. The fees payable to any arbitrator or umpire may, by leave of the Court or a Judge, be taxed by the Master of the Court before payment.

Arbitrators'
fees may
be taxed.

REFERENCES UNDER ORDER OF COURT.

16. [*Repealed by No. 36 of 1935, s. 3.*]
 17. [*Repealed by No. 36 of 1935, s. 3.*]
 18. [*Repealed by No. 36 of 1935, s. 3.*]
 19. [*Repealed by No. 36 of 1935, s. 3.*]

GENERAL.

Attendance
of prisoner
as witness.

20.* The Court or a Judge may 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.

21.* Any referee, arbitrator, or umpire may, at any stage of the proceedings, under a reference, and shall, if so directed by the Court or a Judge, state in the form of a special case, for the opinion of the Court or a Judge thereof, any question of law arising in the course of the reference, and any opinion given shall be subject to appeal.

Costs.

22. 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.

23. [*Repealed by 1 and 2 Edw. VII, No. 14, s. 3.*]

Crown to be
bound in
certain cases.

24.* This Act shall, except as in this Act expressly mentioned, and subject to the provisions of the next following section, apply to any arbitration to which Her Majesty the Queen or any Minister of the Crown on behalf of the Crown is a party; but nothing in this Act shall empower the Court or a Judge to order any proceedings to which Her Majesty or any Minister as aforesaid is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer, without the consent of the Attorney General of the State, or shall affect the law as to costs payable by the Crown.

* The provisions of this section, so far as they may refer to references under an order of the Supreme Court, are repealed by Act No. 36 of 1935, s. 3.

25. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration, or with any rules or procedure authorised or recognised by that Act.

Application of Act to references under statutory powers.

26. This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.

Saving for pending arbitrations.

27. (1) The enactments described in the second Schedule to this Act are hereby repealed to the extent therein mentioned, but this repeal shall not affect anything done or suffered, or any right acquired, or duty imposed, or liability incurred before the commencement of this Act, or the institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining or enforcing any such liability.

Repeal.

(2) Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

In the name and on behalf of the Queen I hereby assent to this Act.

ALEX. C. ONSLOW,
Administrator.

THE FIRST SCHEDULE REFERRED TO.

Section 4.

- (1) If no other mode of reference is provided, the reference shall be to a single arbitrator.
- (2) If the reference is to two or more arbitrators, the arbitrators, or if more than two, a majority of them, may appoint an umpire at any time within the period during which they have power to make an award.

Arbitration.

- (3) The arbitrators shall make their award in writing within two 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.
- (4) If the arbitrators have allowed their time, or extended time, to expire, without making an award, or if they, or either or any of them, 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, or may forthwith make his award if he has already heard the evidence, or so much of it as he deems material.
- (5) The umpire shall make his award within one 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.
- (6) 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 or affirmation, 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 and 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.
- (7) The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.
- (8) 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.
- (9) 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 settle or direct the taxation by the Master of the Supreme Court of the amount of costs to be so paid, or any part thereof, and may award costs to be paid as between solicitor and client.

THE SECOND SCHEDULE.

Year and Number.	Title or Short Title.	Extent of Repeal.
44 Victoria, No. 10	The Supreme Court Act, 1880	Section 20, from "subject to any Rules of Court" down to "as a judgment by the Court," both inclusive, and the words "special referees or." Sections 21 and 22.
9 William III., No. 15 (Imperial Act)	An Act for determining differences by arbitration	The whole Act, so far as applicable to this Colony.
3 and 4 William IV. c. 42 (Imperial Act)	An Act for the further amendment of the law and the better advancement of justice	So much of Sections 39 to 41, both inclusive, as are adopted in or apply to this Colony.
17 and 18 Victoria c. 125 (Imperial Act)	The Common Law Procedure Act of 1854	So much of Sections 3 to 17, both inclusive, as are adopted in or apply to this Colony.