



Australian Capital Territory

# **Commercial Arbitration Act 1986**

**A1986-84**

**Republication No 11**

**Effective: 6 October 2010 – 1 November 2010**

Republication date: 6 October 2010

Last amendment made by A2010-40

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Commercial Arbitration Act 1986* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 6 October 2010. It also includes any commencement, amendment, repeal or expiry affecting the republished law to 6 October 2010.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### 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.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

## Commercial Arbitration Act 1986

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An Act to make provision with respect to the arbitration of certain disputes, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Commercial Arbitration Act 1986*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

### 4 Application of Act

- (1) This Act applies to an arbitration agreement and to an arbitration under an arbitration agreement.
- (2) This Act applies to arbitrations provided for in any other territory law as if—
  - (a) the other law were an arbitration agreement; and
  - (b) the arbitration were under an arbitration agreement; and
  - (c) the parties to the dispute which, under the other law, is referred to arbitration were the parties of the arbitration agreement.



- (3) However—
- (a) subsection (2) applies only to the extent provided for in the other territory law; and
  - (b) nothing in this Act applies to an arbitration under any other territory law that is prescribed by regulation as an arbitration to which this Act does not apply.

## Part 2 Appointment of arbitrators and umpires

### 6 Presumption of single arbitrator

An arbitration agreement shall be taken to provide for the appointment of a single arbitrator unless—

- (a) the agreement otherwise provides; or
- (b) the parties otherwise agree in writing.

### 7 Presumption as to joint appointment of arbitrator

Unless otherwise agreed in writing by the parties to the arbitration agreement, an arbitrator who is to be appointed for the purposes of an arbitration to be conducted under an arbitration agreement shall be jointly appointed by the parties to the agreement.

### 8 Default in the exercise of power to appoint arbitrator

- (1) Where a person who has a power of appointment in relation to an arbitrator defaults in the exercise of that power, a party to the relevant arbitration agreement may, by notice in writing—
  - (a) require the person in default to exercise the power within such period (not being a period of less than 7 days after service of the notice) as is specified in the notice; and
  - (b) propose that in default of that person so doing—
    - (i) a person named in the notice (a *default nominee*) should be appointed to the office in respect of which the power is exercisable; or

- (ii) specified arbitrators (being the arbitrators who have prior to the date of the notice been appointed in relation to the arbitration) should be the sole arbitrators in relation to the arbitration.
- (2) A notice under subsection (1) (or, where appropriate, a copy of the notice) shall be served on—
  - (a) each party to the arbitration agreement (except the party by whom the notice is given); and
  - (b) each other person (not being a party to the arbitration agreement) who is in default in the exercise of a power of appointment in relation to the office in question;and the notice shall be deemed to have been served when service is last effected under this subsection.
- (3) Where a person who is in default in the exercise of a power of appointment fails to exercise the power as required by a notice under subsection (1), then—
  - (a) where the notice named a default nominee—that nominee shall be deemed to have been duly appointed to the office in respect of which the power was exercisable; or
  - (b) where the notice proposed that specified arbitrators should be the sole arbitrators in relation to the arbitration—
    - (i) the power to which the notice relates shall lapse; and
    - (ii) the arbitrators specified in the notice may enter on the arbitration as if they were the sole arbitrators to be appointed in relation to the arbitration; and
    - (iii) the arbitration agreement shall be construed subject to such modifications (if any) as are necessary to enable those arbitrators effectively to enter on and conduct the arbitration.

- (4) The court may, on the application of a party to an arbitration agreement, set aside an appointment or any other consequence of noncompliance with a notice under this section that takes effect by operation of subsection (3), and may itself make an appointment to the office in respect of which the relevant power of appointment was exercisable.
- (5) For this section, a person defaults in the exercise of a power of appointment if, after an occasion for the exercise of the power has arisen, that person does not exercise the power within the time fixed by the relevant arbitration agreement or, if no time is so fixed, within a reasonable time.

**9 Power to appoint new arbitrator or umpire**

Unless otherwise agreed in writing by the parties to the arbitration agreement, where a person has a power of appointment in relation to an arbitrator or umpire, that power extends to the appointment of a new arbitrator or umpire in place of an arbitrator or umpire who dies or otherwise ceases to hold office.

**10 General power of court to fill vacancy**

Where there is a vacancy in the office of arbitrator or umpire (whether or not an appointment has previously been made to that office) and—

- (a) neither the provisions of the arbitration agreement nor the provisions of this Act (other than this section) provide a method for filling the vacancy; or
- (b) the method provided by the arbitration agreement or this Act (other than this section) for filling the vacancy fails or for any reason cannot reasonably be followed; or

- (c) the parties to the arbitration agreement agree that, notwithstanding that the provisions of the arbitration agreement or of this Act (other than this section) provide a method for filling the vacancy, the vacancy should be filled by the court;

the court may, on the application of a party to the arbitration agreement, make an appointment to fill the vacancy.

## **11 Power of court where arbitrator or umpire is removed**

- (1) Where an arbitrator or umpire is removed by the court, the court may, on the application of a party to the arbitration agreement—
- (a) appoint a person as arbitrator or umpire in place of the person removed; or
  - (b) subject to subsection (2), order that the arbitration agreement shall cease to have effect with respect to the dispute to which the arbitration relates.
- (2) Subsection (1) (b) does not apply unless all the parties to the arbitration agreement are domiciled or ordinarily resident in Australia at the time the arbitration agreement is entered into.
- (3) Subsection (2) does not apply to a Territory law that is treated as an arbitration agreement for this Act by virtue only of the operation of section 3 (3) (a).

## **12 Appointment of umpire**

- (1) Unless otherwise agreed in writing by the parties to the arbitration agreement, where an arbitration agreement provides for the appointment of an even number of arbitrators, the arbitrators may appoint an umpire at any time after they are themselves appointed and must do so if they fail to determine a matter arising for determination.

- (2) An umpire appointed in relation to an arbitration is not required to sit with the arbitrators while the arbitrators are conducting proceedings under the arbitration agreement.

**13 Position of person appointed by court etc**

An arbitrator or umpire appointed under a power conferred by this part shall be deemed to have been appointed under the provisions of the arbitration agreement.

## **Part 3**

# **Conduct of arbitration proceedings**

### **14 Procedure of arbitrator or umpire**

Subject to this Act and to the arbitration agreement, the arbitrator or umpire may conduct proceedings under that agreement in such manner as the arbitrator or umpire thinks fit.

### **15 How decisions are made**

Unless a contrary intention is expressed in the arbitration agreement, where an arbitration agreement provides for the appointment of 3 or more arbitrators—

- (a) the arbitrators may, by a majority, appoint one of their number to preside; and
- (b) any decision to be made in the course of the proceedings may be made by a majority; and
- (c) if the arbitrators are equally divided in opinion, and one of the arbitrators has been appointed to preside (whether under this section or the agreement)—the decision of the presiding arbitrator shall prevail.

### **16 Circumstances in which umpires may enter on arbitration**

- (1) Unless otherwise agreed in writing by the parties to the arbitration agreement, an umpire appointed in relation to an arbitration may enter on the arbitration in place of the arbitrators and as if the umpire were the sole arbitrator in any case where—
  - (a) the arbitration agreement fixes a time within which an award is to be made and the arbitrators fail to make the award within that time or any extension of that time granted by the court under section 48; or

- (b) the arbitrators fail to determine a matter arising for determination and by reason of that failure the dispute cannot be resolved under the arbitration agreement and at least 1 of the arbitrators has served on a party to the dispute or the umpire a notice in writing to that effect.
- (2) At any time after the appointment of an umpire, the court may, on the application of a party to the arbitration agreement and notwithstanding anything to the contrary in that agreement or any other agreement (whether oral or written) made between the parties to the arbitration agreement, order that the umpire shall enter on the arbitration in place of the arbitrators and as if the umpire were the sole arbitrator.

**17 Subpoenas to attend etc**

- (1) On application by a party to an arbitration agreement, the court may issue a subpoena requiring a person—
  - (a) to attend for examination before the arbitrator or umpire; or
  - (b) to attend for examination and produce stated documents to the arbitrator or umpire.
- (2) A person may not be compelled under the subpoena to answer any question or produce any document that the person could not be compelled to answer or produce on the trial of a proceeding in the court.

**18 Failure to attend before arbitrator or umpire etc**

- (1) Unless a contrary intention is expressed in an arbitration agreement, a party to the agreement, or the arbitrator or umpire, may apply to the court for an order under this section against a person who—
  - (a) fails to appear before the arbitrator or umpire when required by subpoena or the arbitrator or umpire; or



- (b) as a witness, fails to do any of the following when required by the arbitrator or umpire:
  - (i) take an oath;
  - (ii) make an affidavit;
  - (iii) answer a question;
  - (iv) produce a document or thing;
  - (v) any other thing.
- (2) On the hearing of the application, the court may order the person to attend before the court—
  - (a) for examination; or
  - (b) to produce the document or thing; or
  - (c) to do the relevant thing.
- (3) Where the court makes an order under subsection (2), it may in addition make orders for the transmission to the arbitrator or umpire of—
  - (a) a record of any evidence given under the order; or
  - (b) any document produced under the order or a copy of any such document; or
  - (c) particulars of anything done under the order;and any such evidence, document or thing shall be deemed to have been given, produced or done (as the case requires) in the course of the arbitration proceedings.
- (4) Subsection (5) applies if a party to an arbitration agreement—
  - (a) fails to attend before the umpire or arbitrator for examination when required by subpoena or the arbitrator or umpire; or
  - (b) fails to comply with a requirement of the arbitrator or umpire within a stated time or, if no time is stated, a reasonable time.

- (5) The umpire or arbitrator may continue an arbitration proceeding in a case mentioned in subsection (4) if, in a similar default in a proceeding before the Supreme Court, the court could continue the proceeding.

## **19 Evidence before arbitrator or umpire**

- (1) Unless a contrary intention is expressed in the arbitration agreement, evidence before the arbitrator or umpire—
  - (a) may be given orally or in writing; and
  - (b) shall, if the arbitrator or umpire so requires, be given on oath or affirmation or by affidavit.
- (2) Unless a contrary intention is expressed in the arbitration agreement, an arbitrator or umpire may administer an oath or affirmation or take an affidavit for the purposes of proceedings under that agreement.
- (3) Unless otherwise agreed in writing by the parties to the arbitration agreement, an arbitrator or umpire in conducting proceedings under an arbitration agreement is not bound by rules of evidence but may inform himself or herself in relation to any matter in such manner as the arbitrator or umpire thinks fit.

## **20 Representation**

- (1) A party to an arbitration agreement may be represented in proceedings before the arbitrator or umpire by a lawyer, but only in the following cases:
  - (a) where a party to the proceedings is, or is represented by, a legally qualified person;
  - (b) where all the parties agree;
  - (c) where the amount or value of the claim subject to the proceedings exceeds \$20 000 or such other amount as is prescribed instead by regulation;

- (d) where the arbitrator or umpire gives leave for such representation.
- (2) A party to an arbitration agreement may be represented in proceedings before the arbitrator or umpire by a representative who is not a lawyer, but only in the following cases:
- (a) where the party is an incorporated or unincorporated body and the representative is an officer, employee or agent of the body;
  - (b) where all the parties agree;
  - (c) where the arbitrator or umpire gives leave for such representation.
- (3) If a party applies for leave permitting representation by a lawyer or other representative, it shall be granted if the arbitrator or umpire is satisfied—
- (a) that the granting of leave is likely to shorten the proceedings or reduce costs; or
  - (b) that the applicant would, if leave were not granted, be unfairly disadvantaged.
- (4) A party is entitled to be represented by a lawyer or other representative on leave granted under subsection (3), notwithstanding any agreement to the contrary between the parties.
- (5) A person who is not a lawyer does not commit an offence against, or breach a provision of, the *Legal Profession Act 2006* or any other territory law only because the person represents a party in an arbitration proceeding in the ACT.
- (6) A reference in this section to—
- (a) a lawyer is a reference to a person who is admitted as, or entitled to practise as, a lawyer the ACT or anywhere else, including outside Australia; and

- (b) a legally qualified person is a reference to—
- (i) a lawyer; or
  - (ii) a person who has qualifications or experience in law (whether acquired in the ACT or anywhere else, including outside Australia) that, in the opinion of the arbitrator or umpire, would be likely to provide an advantage in the proceeding.

**U** **20A**      **Appearance by audiovisual or audio links**

- (1) This section applies where, in relation to a proceeding or a part of a proceeding (the relevant proceeding), the arbitrator or umpire has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings).
- (2) Where this section applies a person who, in a relevant proceeding—
- (a) is required or entitled to appear personally, whether as a party or as a witness; or
  - (b) is entitled to appear for another person;
- may appear in that proceeding and participate or give evidence, as the case requires, in accordance with the direction.
- (3) A person who appears in a relevant proceeding in accordance with this section shall be taken to be before the arbitrator or umpire.
- (4) An arbitrator or umpire shall not give a direction referred to in subsection (1) if the arbitration agreement expresses the intention that such a direction not be given.

**21 Effect of appointment of new arbitrator or umpire on evidence previously given and awards and determinations previously made**

Unless otherwise agreed in writing by the parties to the arbitration agreement, where an umpire enters on the arbitration in place of the arbitrators and as if the umpire were the sole arbitrator or a new arbitrator or umpire is appointed in place of an arbitrator or umpire who dies or otherwise ceases to hold office—

- (a) the umpire or arbitrator shall treat any evidence given, document produced or thing done in the course of the earlier proceedings in the same manner in all respects as if it had been given, produced or done in the course of the proceedings conducted by the umpire or arbitrator; and
- (b) any interim award made in the course of the earlier proceedings shall be deemed to have been made by the umpire or arbitrator; and
- (c) the umpire or arbitrator may adopt and act on any determination of a matter made in the course of the earlier proceedings without applying his or her own judgment to the matter.

**22 Determinations to be made according to law or as *amiable compositeur* or *ex aequo et bono* (see UNCITRAL Arbitration Rules art 33, par 2)**

- (1) Unless otherwise agreed in writing by the parties to the arbitration agreement, any question that arises for determination in the course of proceedings under the agreement shall be determined according to law.
- (2) If the parties to an arbitration agreement so agree in writing, the arbitrator or umpire may determine any question that arises for determination in the course of proceedings under the agreement by reference to considerations of general justice and fairness.

**23 Interim awards**

Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire may make an interim award.

**24 Specific performance**

Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to make an award ordering specific performance of a contract if the Supreme Court would have power to order specific performance of that contract.

**25 Extension of ambit of arbitration proceedings**

(1) Where—

- (a) under an arbitration agreement a dispute between the parties to the agreement is referred to arbitration; and
- (b) there is some other dispute between those same parties (whenever the dispute arose), being a dispute to which the same agreement applies;

then, unless the arbitration agreement otherwise provides, the arbitrator or umpire may, on application being made to the arbitrator or umpire by the parties to the arbitration agreement at any time before a final award is made in relation to the firstmentioned dispute, make an order directing that the arbitration be extended so as to include that other dispute.

(2) An arbitrator or umpire may make an order under subsection (1) on such terms and conditions (if any) as the arbitrator or umpire thinks fit.

**26 Consolidation of arbitration proceedings**

- (1) The following provisions of this subsection apply to arbitration proceedings all of which have the same arbitrator or umpire:
  - (a) the arbitrator or umpire may, on the application of a party in each of the arbitration proceedings, order—
    - (i) those proceedings to be consolidated on such terms as the arbitrator or umpire thinks just; or
    - (ii) those proceedings to be heard at the same time, or one immediately after the other; or
    - (iii) any of those proceedings to be stayed until after the determination of any of them;
  - (b) if the arbitrator or umpire refuses or fails to make such an order—the court may, on application by a party in any of the proceedings, make such an order as could have been made by the arbitrator or umpire.
- (2) The following provisions of this subsection apply to arbitration proceedings not all of which have the same arbitrator or umpire:
  - (a) the arbitrator or umpire for any one of the arbitration proceedings may, on the application of a party in the proceeding, provisionally order—
    - (i) the proceeding to be consolidated with other arbitration proceedings on such terms as the arbitrator or umpire thinks just; or
    - (ii) the proceeding to be heard at the same time as other arbitration proceedings, or one immediately after the other; or
    - (iii) any of those proceedings to be stayed until after the determination of any of them;

- (b) an order ceases to be provisional when consistent provisional orders have been made for all of the arbitration proceedings concerned;
  - (c) the arbitrators or umpires for arbitration proceedings may communicate with each other for the purpose of conferring on the desirability of making orders under this subsection and of deciding on the terms of any such order;
  - (d) if a provisional order is made for at least 1 of the arbitration proceedings concerned, but the arbitrator or umpire for another of the proceedings refuses or fails to make such an order (having received an application from a party to make such an order)—the court may, on application by a party in any of the proceedings, make an order or orders that could have been made under this subsection;
  - (e) if inconsistent provisional orders are made for the arbitration proceedings—the court may, on application by a party in any of the proceedings, alter the orders to make them consistent.
- (3) An order or a provisional order may not be made under this section unless it appears—
- (a) that some common question of law or fact arises in all of the arbitration proceedings; or
  - (b) that the rights to relief claimed in all of the proceedings are in respect of or arise out of the same transaction or series of transactions; or
  - (c) that for some other reason it is desirable to make the order or provisional order.



- (4) When arbitration proceedings are to be consolidated under this section, the arbitrator or umpire for the consolidated proceedings shall be the person agreed on for the purpose by all the parties to the individual proceedings, but, failing any such agreement, the court may appoint an arbitrator or umpire for the consolidated proceedings.
- (5) Any proceedings before an arbitrator or umpire for this section shall be taken to be part of the arbitration proceedings concerned.
- (6) Arbitration proceedings may be commenced or continued, notwithstanding that an application to consolidate them is pending under subsection (1) or (2) and notwithstanding that a provisional order has been made in relation to them under subsection (2).
- (7) Subsections (1) and (2) apply in relation to arbitration proceedings whether or not all or any of the parties are common to some or all of the proceedings.
- (8) Nothing in subsection (1) or (2) prevents the parties to 2 or more arbitration proceedings from agreeing to consolidate those proceedings and taking such steps as are necessary to effect that consolidation.

## **27 Settlement of disputes otherwise than by arbitration**

- (1) Parties to an arbitration agreement—
  - (a) may seek settlement of a dispute between them by mediation, conciliation or similar means; or
  - (b) may authorise an arbitrator or umpire to act as a mediator, conciliator or other non-arbitral intermediary between them (whether or not involving a conference to be conducted by the arbitrator or umpire);

whether before or after proceeding to arbitration, and whether or not continuing with the arbitration.

- (2) Where—
- (a) an arbitrator or umpire acts as a mediator, conciliator or intermediary (with or without a conference) under subsection (1); and
  - (b) that action fails to produce a settlement of the dispute acceptable to the parties to the dispute;

no objection shall be taken to the conduct by the arbitrator or umpire of the subsequent arbitration proceedings solely on the ground that the arbitrator or umpire had previously taken that action in relation to the dispute.

- (3) Unless the parties otherwise agree in writing, an arbitrator or umpire is bound by the rules of natural justice when seeking a settlement under subsection (1).
- (4) Nothing in subsection (3) affects the application of the rules of natural justice to an arbitrator or umpire in other circumstances.
- (5) The time appointed by or under this Act or fixed by an arbitration agreement or by an order under section 48 for doing any act or taking any proceeding in or in relation to an arbitration is not affected by any action taken by an arbitrator or umpire under subsection (1).
- (6) Nothing in subsection (5) shall be construed as preventing the making of an application to the court for the making of an order under section 48.

## Part 4 Awards and costs

### 28 Award to be final

Unless a contrary intention is expressed in the arbitration agreement, the award made by the arbitrator or umpire shall, subject to this Act, be final and binding on the parties to the agreement.

### 29 Form of award

- (1) Unless otherwise agreed in writing by the parties to the arbitration agreement, the arbitrator or umpire shall—
  - (a) make the award in writing; and
  - (b) sign the award; and
  - (c) include in the award a statement of the reasons for making the award.
- (2) Where an arbitrator or umpire makes an award otherwise than in writing, the arbitrator or umpire shall, upon request by a party within 7 days after the making of the award, give to the party a statement in writing signed by the arbitrator or umpire of the date, the terms of the award and the reasons for making the award.

### 30 Power to correct award

Where an award made under an arbitration agreement contains—

- (a) a clerical mistake; or
- (b) an error arising from an accidental slip or omission; or
- (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the award; or
- (d) a defect of form;

the arbitrator or umpire may correct the award or the court, on the application of a party to the agreement, may make an order correcting the award.

### **31 Interest up to making of award**

- (1) Unless a contrary intention is expressed in the arbitration agreement, but subject to subsection (4), where the arbitrator or umpire determines to make an award for the payment of money (whether on a claim for a liquidated or an unliquidated amount), the arbitrator or umpire shall have power to include in the sum for which the award is made interest at such rate as the arbitrator or umpire may direct (being a rate not exceeding the rate at which interest is payable on a judgment debt of the Supreme Court) on the whole or any part of the money for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
- (2) Unless a contrary intention is expressed in the arbitration agreement, but subject to subsection (4), where—
  - (a) arbitration proceedings have been commenced for the recovery of a debt or liquidated damages; and
  - (b) payment of the whole or part of the debt or damages is made during the currency of the proceedings and prior to or without an award being made in respect of the debt or damages;

the arbitrator or umpire may order that interest be paid at such rate as the arbitrator or umpire may direct (being a rate not exceeding the rate at which interest is payable on a judgment debt of the Supreme Court) on the whole or any part of the money paid for the whole or any part of the period between the date when the cause of action arose and the date of the payment.

- (3) Without limiting subsection (2), arbitration proceedings shall, for that subsection, be deemed to have been commenced if—

- (a) a dispute to which the relevant arbitration agreement applies has arisen; and
- (b) a party to the agreement—
  - (i) has served on another party to the agreement a notice requiring that other party to appoint an arbitrator or to join or concur in or approve of the appointment of an arbitrator in relation to the dispute; or
  - (ii) has served on another party to the agreement a notice requiring the other party to refer, or to concur in the reference of, the dispute to arbitration; or
  - (iii) has taken any other step contemplated by the agreement or the law in force at the time the dispute arose, with a view to referring the dispute to arbitration or appointing, or securing the appointment of, an arbitrator in relation to the dispute.
- (4) This section does not—
  - (a) authorise the awarding of interest upon interest; or
  - (b) apply in relation to any amount on which interest is payable as of right whether under an agreement or otherwise; or
  - (c) affect the damages recoverable for the dishonour of a bill of exchange.

### **32 Interest on debt under award**

- (1) Unless a contrary intention is expressed in the arbitration agreement, where the arbitrator or umpire makes an award for the payment of money, the arbitrator or umpire shall have power to direct that interest at the same rate as that at which interest is payable on a judgment debt of the Supreme Court shall be payable on and from the date of making of the award or such later date as the arbitrator or umpire specifies on so much of the money as is from time to time

unpaid, and any interest that so accrues shall be deemed to form part of the award.

- (2) If judgment is entered by the court in terms of an award, interest shall cease to accrue under a direction under this section on the date of the entry of the judgment.

### **33 Enforcement of award**

An award made under an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect, and where leave is so given, judgment may be entered in terms of the award.

### **34 Costs**

- (1) Unless a contrary intention is expressed in the arbitration agreement, the costs of the arbitration (including the fees and expenses of the arbitrator or umpire) shall be in the discretion of the arbitrator or umpire, who may—
  - (a) direct to and by whom and in what manner the whole or any part of those costs shall be paid; and
  - (b) assess or settle the amount of costs to be so paid or any part of those costs; and
  - (c) award costs to be assessed or settled as between party and party or as between solicitor and client.
- (2) Any costs of the arbitration (other than the fees or expenses of the arbitrator or umpire) that are directed to be paid by an award shall, except so far as assessed or settled by the arbitrator or umpire, be assessed by the court.
- (3) A provision in an arbitration agreement (being an arbitration agreement that provides for the reference of future disputes to arbitration) is void if—

- (a) it is to the effect that a particular party, or the parties, to the agreement shall in any event pay their own costs of the arbitration or any part of those costs; or
  - (b) except in so far as it relates to a right of indemnity or a right of subrogation—it is to the effect that a particular party to the agreement shall in any event pay the costs of any other party or any part of those costs.
- (4) If no provision is made by an award with respect to the costs of the arbitration, a party to the arbitration agreement may, within 14 days of the publication of the award, apply to the arbitrator or umpire for directions as to the payment of those costs, and on receiving the application, the arbitrator or umpire must, after hearing any party who wishes to be heard, amend the award by adding to it such directions as the arbitrator or umpire thinks proper with respect to the payment of the costs of the arbitration.
- (5) Where a sum of money has been paid into the court in accordance with rules of court in satisfaction of a claim to which an arbitration agreement applies, the arbitrator or umpire shall, in exercising the discretion as to costs conferred on the arbitrator or umpire by subsection (1), take into account both the fact that money was paid into the court and the amount of that payment.
- (6) Where in accordance with rules of court an offer of compromise has been made in relation to a claim to which an arbitration agreement applies, the arbitrator or umpire shall, in exercising the discretion as to costs conferred on the arbitrator or umpire by subsection (1), take into account both the fact that the offer was made and the terms of the offer.
- (7) An arbitrator or umpire shall, in exercising the discretion as to costs conferred on the arbitrator or umpire by subsection (1), take into account any refusal or failure by a party to the arbitration agreement to comply with the provisions of section 37.

**35 Assessment of arbitrator's or umpire's fees or expenses**

- (1) If an arbitrator or umpire refuses to deliver an award except on payment of the fees and expenses demanded by the arbitrator or umpire, the court may, on application made by a party to the arbitration agreement, order that—
  - (a) the arbitrator or umpire deliver the award to the applicant on such terms as to the payment of the fees and expenses of the arbitrator or umpire as the court considers appropriate; and
  - (b) the fees and expenses demanded by the arbitrator or umpire be assessed by the court.
- (2) Notwithstanding that the amount of the fees or expenses of an arbitrator or umpire may be fixed by the award, those fees or expenses may, on the application of a party to the arbitration agreement or of the arbitrator or umpire, be assessed by the court.
- (3) The arbitrator or umpire and any party to the arbitration agreement shall be entitled to appear and be heard on any assessment under this section.
- (4) Where the fees and expenses of an arbitrator or umpire are assessed in the court, the arbitrator or umpire shall be entitled to be paid by way of fees and expenses only such sum as is found reasonable by the assessment.

**36 Costs of abortive arbitration**

- (1) Unless otherwise agreed in writing by the parties to the arbitration agreement, where an arbitration is commenced but for any reason the arbitration fails, the court may, on the application of a party to the arbitration agreement or the arbitrator or umpire, make such orders in relation to the costs of the arbitration as it thinks just.
- (2) For this section, where—
  - (a) a final award is not made by the arbitrator or umpire before the arbitration terminates; or



(b) an award made is wholly set aside by the court;  
an arbitration shall be deemed to have failed.

**37 Duties of parties**

The parties to an arbitration agreement shall at all times do all things which the arbitrator or umpire requires to enable a just award to be made and no party shall wilfully do or cause to be done any act to delay or prevent an award being made.

## Part 5 Powers of the court

### 38 Judicial review of awards

- (1) Without prejudice to the right of appeal conferred by subsection (2), the court shall not have jurisdiction to set aside or remit an award on the ground of error of fact or law on the face of the award.
- (2) Subject to subsection (4), an appeal shall lie to the Supreme Court on any question of law arising out of an award.
- (3) On the determination of an appeal under subsection (2) the Supreme Court may by order—
  - (a) confirm, amend or set aside the award; or
  - (b) remit the award, together with the Supreme Court's opinion on the question of law which was the subject of the appeal, to the arbitrator or umpire for reconsideration or, where a new arbitrator or umpire has been appointed, to that arbitrator or umpire for consideration;

and where the award is remitted under paragraph (b) the arbitrator or umpire shall, unless the order otherwise directs, make the award within 3 months after the date of the order.

- (4) An appeal under subsection (2) may be brought by any of the parties to an arbitration agreement—
  - (a) with the consent of all the other parties to the arbitration agreement; or
  - (b) subject to section 40, with the leave of the Supreme Court.

- (5) The Supreme Court shall not grant leave under subsection (4) (b) unless it considers that—
- (a) having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of 1 or more parties to the arbitration agreement; and
  - (b) there is—
    - (i) a manifest error of law on the face of the award; or
    - (ii) strong evidence that the arbitrator or umpire made an error of law and that the determination of the question may add, or may be likely to add, substantially to the certainty of commercial law.
- (6) The Supreme Court may make any leave which it grants under subsection (4) (b) subject to the applicant complying with any conditions it considers appropriate.
- (7) Where the award of an arbitrator or umpire is amended on an appeal under subsection (2), the award as amended shall have effect (except for this section) as if it were the award of the arbitrator or umpire.

### **39 Determination of preliminary point of law by Supreme Court**

- (1) Subject to subsection (2) and section 40, on an application to the Supreme Court made by any of the parties to an arbitration agreement—
- (a) with the consent of an arbitrator who has entered on the reference or, if an umpire has entered on the reference, with the consent of the umpire; or
  - (b) with the consent of all the other parties;

the Supreme Court shall have jurisdiction to determine any question of law arising in the course of the arbitration.

- (2) The Supreme Court shall not entertain an application under subsection (1) (a) with respect to any question of law unless it is satisfied that—
- (a) the determination of the application might produce substantial savings in costs to the parties; and
  - (b) the question of law is one in respect of which leave to appeal would be likely to be granted under section 38 (4) (b).

**40 Exclusion agreements affecting rights under s 38 and s 39**

- (1) Subject to this section and section 41—
- (a) the Supreme Court shall not, under section 38 (4) (b), grant leave to appeal with respect to a question of law arising out of an award; and
  - (b) no application may be made under section 39 (1) (a) with respect to a question of law;

if there is in force an agreement in writing (in this section and section 41 called an *exclusion agreement*) between the parties to the arbitration agreement which excludes the right of appeal under section 38 (2) in relation to the award or, in a case falling within paragraph (b), in relation to an award to which the determination of the question of law is material.

- (2) An exclusion agreement may be expressed so as to relate to a particular award, to awards under a particular arbitration agreement or to any other description of awards, whether arising out of the same arbitration agreement or not.
- (3) An agreement may be an exclusion agreement for this section whether it is entered into before or after the commencement of this Act and whether or not it forms part of an arbitration agreement.
- (4) Except as provided by subsection (1), sections 38 and 39 shall have effect notwithstanding anything in any agreement purporting—

- (a) to prohibit or restrict access to the Supreme Court; or
  - (b) to restrict the jurisdiction of the Supreme Court.
- (5) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of, an arbitration being an arbitration under any other Territory law.
- (6) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of, an arbitration under an arbitration agreement which is a domestic arbitration agreement unless the exclusion agreement is entered into after the commencement of the arbitration in which the award is made or, as the case requires, in which the question of law arises.
- (7) In this section:
- domestic arbitration agreement* means an arbitration agreement which does not provide, expressly or by implication, for arbitration in a country other than Australia and to which neither—
- (a) an individual who is a national of, or habitually resident in, any country other than Australia; nor
  - (b) a body corporate which is incorporated in, or whose central management and control is exercised in, any country other than Australia;
- is a party at the time the arbitration agreement is entered into.

#### **41 Exclusion agreements not to apply in certain cases**

- (1) Subject to subsection (2), if an award or a question of law arising in the course of an arbitration relates, in whole or in part, to—
- (a) a question or claim falling within the admiralty jurisdiction of the Supreme Court; or
  - (b) a dispute arising out of a contract of insurance;

an exclusion agreement shall have no effect in relation to the award or question unless either—

- (c) the exclusion agreement is entered into after the commencement of the arbitration in which the award is made or, as the case requires, in which the question of law arises; or
  - (d) the award or question relates to a contract which is expressed to be governed by a law other than the law of the ACT.
- (2) The regulations may provide that subsection (1)—
- (a) shall cease to have effect; or
  - (b) subject to such conditions as may be specified in the regulations, shall not apply to any exclusion agreement made in relation to an award of a description specified in the regulations;

and regulations made under this subsection may contain supplementary, incidental and transitional provisions.

## **42 Power to set aside award**

- (1) Where—
- (a) there has been misconduct on the part of an arbitrator or umpire or an arbitrator or umpire has misconducted the proceedings; or
  - (b) the arbitration or award has been improperly procured;
- the court may, on the application of a party to the arbitration agreement, set the award aside either wholly or in part.
- (2) Where the arbitrator or umpire has misconducted the proceedings by making an award partly in respect of a matter not referred to arbitration under the arbitration agreement, the court may set aside that part of the award if it can do so without materially affecting the remaining part of the award.

- (3) Where an application is made under this section to set aside an award, the court may order that any money made payable by the award shall be paid into court or otherwise secured pending the determination of the application.

**43 Court may remit matter for reconsideration**

Subject to section 38 (1), the court may remit any matter referred to arbitration by an arbitration agreement together with any directions it thinks proper to the arbitrator or umpire for reconsideration or, where a new arbitrator or umpire has been appointed, to that arbitrator or umpire for consideration.

**44 Removal of arbitrator or umpire**

Where the court is satisfied that—

- (a) there has been misconduct on the part of an arbitrator or umpire or an arbitrator or umpire has misconducted the proceedings; or
- (b) undue influence has been exercised in relation to an arbitrator or umpire; or
- (c) an arbitrator or umpire is incompetent or unsuitable to deal with the particular dispute;

the court may, on the application of a party to the arbitration agreement, remove the arbitrator or umpire.

**45 Party not prevented from alleging that arbitrator appointed by that party not impartial, suitable or competent**

- (1) A party to an arbitration agreement is not prevented from alleging in any legal proceedings with respect to the agreement that an arbitrator is not or may not be impartial, suitable or competent by reason of a power of appointment having been exercised by that party in relation to the appointment of that arbitrator or by reason of

facts or circumstances that that party knew or ought to have known when exercising that power.

- (2) For this section, where an arbitrator is named or designated in an arbitration agreement, a party to the agreement shall be deemed—
  - (a) to have exercised a power of appointment in relation to the appointment of that arbitrator; and
  - (b) to have exercised that power at the time when the party entered into the arbitration agreement.

#### **46 Delay in prosecuting claims**

- (1) Unless a contrary intention is expressed in the arbitration agreement, it is an implied term of the agreement that in the event of a dispute arising to which the agreement applies it is the duty of each party to the agreement to exercise due diligence in the taking of steps that are necessary to have the dispute referred to arbitration and dealt with in arbitration proceedings.
- (2) Where there has been undue delay by a party, the court may, on the application of any other party to the dispute or an arbitrator or umpire, make orders—
  - (a) terminating the arbitration proceedings; and
  - (b) removing the dispute into court; and
  - (c) dealing with any incidental matters.
- (3) The court shall not make an order under subsection (2) unless it is satisfied that the delay—
  - (a) has been inordinate and inexcusable; and
  - (b) will give rise to a substantial risk of it not being possible to have a fair trial of the issues in the arbitration proceedings or is such as is likely to cause or to have caused serious prejudice to other parties to the arbitration proceedings.



**47 General power of court to make interlocutory orders**

The court shall have the same power of making interlocutory orders for the purposes of and in relation to arbitration proceedings as it has for the purposes of and in relation to proceedings in the court.

**48 Extension of time**

- (1) Subject to subsection (3), the court shall have power on the application of a party to an arbitration agreement or an arbitrator or umpire to extend the time appointed by or under this Act or fixed by the agreement or by an order under this section for doing any act or taking any proceeding in or in relation to an arbitration.
- (2) The court may make an order under this section although an application for the making of the order was not made until after the expiration of the time appointed or fixed for doing the act or taking the proceeding.
- (3) An order shall not be made under this section extending the time within which arbitration proceedings might be commenced unless—
  - (a) the court is satisfied that in the circumstances of the case undue hardship would otherwise be caused; and
  - (b) the making of the order would not contravene the provision of any Territory law limiting the time for the commencement of arbitration proceedings.

**49 Power to impose terms on orders etc**

Subject to this Act, an order, direction or decision made under this Act by the court may be made on such terms and conditions (including terms and conditions as to costs) as the court thinks just.

## **Part 6**                      **General provisions as to arbitration**

### **50**                      **Authority of arbitrator or umpire**

Subject to this Act, the authority of an arbitrator or umpire is, unless a contrary intention is expressed in the arbitration agreement or the parties to the agreement otherwise agree in writing, irrevocable.

### **51**                      **Liability of arbitrator or umpire**

An arbitrator or umpire is not liable for negligence in respect of anything done or omitted to be done by the arbitrator or umpire in the capacity of arbitrator or umpire but is liable for fraud in respect of anything done or omitted to be done in that capacity.

### **52**                      **Death of party**

- (1) Unless a contrary intention is expressed in the arbitration agreement, where a party to an arbitration agreement dies the agreement shall not be discharged (either as respects the deceased or any other party) and the authority of an arbitrator or umpire shall not be revoked by the death of that party but the agreement shall be enforceable by or against the personal representative of the deceased.
- (2) Nothing in subsection (1) shall be taken to affect the operation of any Territory law under which a right of action is extinguished by the death of a person.

### **53**                      **Power to stay court proceedings**

- (1) If a party to an arbitration agreement commences proceedings in a court against another party to the arbitration agreement in respect of a matter agreed to be referred to arbitration by the agreement, that other party may, subject to subsection (2), apply to that court to stay the proceedings and that court, if satisfied—

- (a) that there is no sufficient reason why the matter should not be referred to arbitration in accordance with the agreement; and
- (b) that the applicant was at the time when the proceedings were commenced and still remains ready and willing to do all things necessary for the proper conduct of the arbitration;

may make an order staying the proceedings and may further give such directions with respect to the future conduct of the arbitration as it thinks fit.

- (2) An application under subsection (1) must not, except with the leave of the court in which the proceeding is started, be made after the applicant has filed pleadings or taken any other step in the proceeding other than the filing of a notice of intention to respond or defence.
- (3) Notwithstanding any rule of law to the contrary, a party to an arbitration agreement shall not be entitled to recover damages in any court from another party to the agreement by reason that that other party takes proceedings in a court in respect of the matter agreed to be referred to arbitration by the arbitration agreement.

## **54 Interpleader**

Where relief by way of interpleader is granted in any court and it appears to that court that the claims in question are matters to which an arbitration agreement (to which the claimants are parties) applies, the court may, unless it is satisfied that there is sufficient reason why the matters should not be referred to arbitration in accordance with the agreement, make an order directing the issue between the claimants to be determined in accordance with the agreement.

## **55 Effect of Scott v Avery clauses**

- (1) Where it is provided (whether in an arbitration agreement or some other agreement, whether oral or written) that arbitration or an award under arbitration proceedings or the happening of some other

event in or in relation to arbitration is a condition precedent to the bringing or maintenance of legal proceedings in respect of a matter or the establishing of a defence to legal proceedings brought in respect of a matter, that provision, notwithstanding that the condition contained in it has not been satisfied—

- (a) shall not operate to prevent—
    - (i) legal proceedings being brought or maintained in respect of that matter; or
    - (ii) a defence being established to legal proceedings brought in respect of that matter; and
  - (b) shall, where no arbitration agreement relating to that matter is subsisting between the parties to the provision, be construed as an agreement to refer that matter to arbitration.
- (2) Subsection (1) does not apply to an arbitration agreement unless all the parties to the agreement are domiciled or ordinarily resident in Australia at the time the arbitration agreement is entered into.
- (3) Subsection (2) does not apply to a Territory law that is treated as an arbitration agreement for this Act by virtue only of the operation of section 3 (3) (a).

## Part 7                      Miscellaneous

### 57                      Service of notices

Where under this Act a notice is required or permitted to be served on any person, the notice may be served in or out of the Territory—

- (a) by delivering it personally to the person to be served; or
- (b) by leaving it at the usual or last-known place of residence or business of the person to be served with a person apparently over the age of 16 years and apparently residing at that place or (in the case of a place of business) apparently in charge of or employed at that place; or
- (c) by sending it by post addressed to the person to be served at the usual or last-known place of residence or business of that person; or
- (d) by serving it in such other manner as the court, on application made to it in that behalf, directs.

### 58                      Regulation-making power

The Executive may make regulations for this Act.

*Note*                      Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- exercise
- Magistrates Court
- oath
- person
- Supreme Court.

***arbitration agreement*** means an agreement in writing to refer present or future disputes to arbitration.

***arbitrator*** includes, where there are 2 or more arbitrators, the arbitrators.

***award*** means final or interim award.

***court*** means—

- (a) the Supreme Court; or
- (b) the Magistrates Court if—
  - (i) an arbitration agreement provides that the Magistrates Court has jurisdiction under this Act; or
  - (ii) the parties to an arbitration agreement that is in force have agreed in writing that the Magistrates Court has jurisdiction under this Act.

***misconduct*** includes corruption, fraud, partiality, bias and a breach of the rules of natural justice.

***party***, in relation to an arbitration agreement, includes any person claiming through or under a party to the arbitration agreement.

***power of appointment***, in relation to an arbitrator or umpire, means a power to—

- (a) appoint an arbitrator or umpire; or
- (b) join in the appointment of an arbitrator or umpire; or
- (c) concur in or approve of the appointment of an arbitrator or umpire; or
- (d) take any other step for the appointment of an arbitrator or umpire.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired



### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Commercial Arbitration Ordinance Act 1986* No 84(Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### Legislation before becoming Territory enactment

##### **Commercial Arbitration Act 1986 No 84**

notified 22 December 1986

commenced 2 March 1987 (s 2 and Cwlth Gaz 1987 No G6)

as amended by

##### **Administrative Arrangements (Consequential Amendments)**

###### **Ordinance 1988 No 17 sch 2**

notified 22 April 1988

commenced 22 April 1988

##### **Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

remainder commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

## Endnotes

3 Legislation history

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### **Legislation after becoming Territory enactment**

#### **Commercial Arbitration (Amendment) Act 1990 No 32 s 4**

notified 2 October 1990 (Gaz 1990 No S69)  
s 1, s 2 commenced 2 October 1990 (s 2 (1))  
s 4 commenced 1 January 1992 (s 2 (2))

#### **Commercial Arbitration (Amendment) Act 1991 No 36**

notified 26 August 1991 (Gaz 1991 No S83)  
commenced 26 August 1991

#### **Acts Revision (Position of Crown) Act 1993 No 44 sch 2**

notified 27 August 1993 (Gaz 1993 No S165)  
commenced 27 August 1993 (s 2)

#### **Courts and Tribunals (Audio Visual and Audio Linking) Act 1999 No 22 pt 4**

notified 14 April 1999 (Gaz 1999 No S16)  
s 1, s 2 commenced 14 April 1999 (s 2 (1))  
pt 4 commenced 1 September 1999 (s 2 (2) and Gaz 1999 No 35)

#### **Justice and Community Safety Legislation Amendment Act 2000 (No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)  
commenced 1 June 2000 (s 2)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 66**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 66 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

#### **Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 sch 2 pt 2.1**

notified LR 31 October 2003  
s 1, s 2 commenced 31 October 2003 (LA s 75 (1))  
sch 2 pt 2.1 commenced 30 April 2004 (s 2 and LA s 79)

#### **Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.9**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.9 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

**Legal Profession Act 2006 A2006-25 sch 2 pt 2.2**

notified LR 21 June 2006  
 s 1, s 2 commenced 21 June 2006 (LA s 75 (1))  
 sch 2 pt 2.2 commenced 1 July 2006 (s 2)

**Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 2 pt 2.9**

notified LR 28 September 2006  
 s 1, s 2 commenced 28 September 2006 (LA s 75 (1))  
 sch 2 pt 2.9 commenced 29 September 2006 (s 2 (1))

**Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.19**

notified LR 22 March 2007  
 s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))  
 sch 3 pt 3.19 commenced 12 April 2007 (s 2 (1))

**Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.14**

notified LR 12 August 2008  
 s 1, s 2 commenced 12 August 2008 (LA s 75 (1))  
 sch 3 pt 3.14 commenced 26 August 2008 (s 2)

**Justice and Community Safety Legislation Amendment Act 2010 (No 3) A2010-40 sch 1 pt 1.2, sch 2 pt 2.2**

notified LR 5 October 2010  
 s 1, s 2 commenced 5 October 2010 (LA s 75 (1))  
 s 3, sch 1 pt 1.2 commenced 6 October 2010 (s 2 (1))  
 sch 2 pt 2.2 commences 2 November 2010 (s 2 (2))

**4 Amendment history****Name of Act**

s 1 sub A2007-3 amdt 3.84

**Dictionary**

s 2 om 2001 No 44 amdt 1.758  
 ins A2007-3 amdt 3.85

**Notes**

s 3 hdg sub 2001 No 44 amdt 1.759  
 s 3 am 1990 No 32 s 4; 2001 No 44 amdts 1.760-1.762; ss renum  
 R4 LA (see 2001 No 44 amdt 1.763)  
 sub A2007-3 amdt 3.85

## Endnotes

4 Amendment history

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### Application of Act

s 4 **prev s 4**  
am 1991 No 36 s 4  
defs reloc to dict A2007-3 amdt 3.88  
om A2007-3 amdt 3.89  
def **power of appointment** or **power to appoint** om A2007-3  
amdt 3.87  
**pres s 4**  
ins A2007-3 amdt 3.85  
am A2010-40 amdt 1.2

### Crown to be bound

s 5 am 1989 No 38 sch 1  
om 1993 No 44 sch 2

### Presumption of single arbitrator

s 6 sub 1991 No 36 s 5

### Presumption as to joint appointment of arbitrator

s 7 am 1991 No 36 s 6

### Default in the exercise of power to appoint arbitrator

s 8 am A2007-3 amdt 3.90

### Power to appoint new arbitrator or umpire

s 9 am A2007-3 amdt 3.91

### Appointment of umpire

s 12 am 1991 No 36 s 7; A2008-28 amdt 3.50

### How decisions are made

s 15 sub 1991 No 36 s 8

### Circumstances in which umpires may enter on arbitration

s 16 am 1991 No 36 s 9; A2008-28 amdt 3.51

### Subpoenas to attend etc

s 17 sub A2004-60 amdt 1.33  
am A2006-40 amdt 2.71

### Failure to attend before arbitrator or umpire etc

s 18 hdg sub A2004-60 amdt 1.34  
s 18 am 1991 No 36 s 10  
am A2004-60 amdts 1.35-1.40; A2008-28 amdts 3.52-3.54;  
ss renum R10 LA

### Evidence before arbitrator or umpire

s 19 am 1991 No 36 s 11

### Representation

s 20 sub 1991 No 36 s 12  
am A2006-25 amdt 2.2, amdt 2.3

**Appearance by audiovisual or audio links**

s 20A ins 1999 No 22 s 8  
am 2000 No 17 sch 1; A2003-48 amdt 2.1; [A2010-40 amdt 2.2](#)

**Effect of appointment of new arbitrator or umpire on evidence previously given and awards and determinations previously made**

s 21 am 1991 No 36 s 13

**Determinations to be made according to law or as *amiable compositeur* or *ex aequo et bono* (see UNCITRAL Arbitration Rules art 33, par 2)**

s 22 am 1991 No 36 s 14

**Interim awards**

s 23 am 1991 No 36 s 15

**Specific performance**

s 24 am 1991 No 36 s 16

**Consolidation of arbitration proceedings**

s 26 sub 1991 No 36 s 17

**Settlement of disputes otherwise than by arbitration**

s 27 sub 1991 No 36 s 17

**Award to be final**

s 28 am 1991 No 36 s 18

**Form of award**

s 29 am 1991 No 36 s 19

**Interest up to making of award**

s 31 am 1991 No 36 s 20

**Interest on debt under award**

s 32 am 1991 No 36 s 21

**Enforcement of award**

s 33 am 1991 No 36 s 22

**Costs**

s 34 am 1991 No 36 s 23; A2006-40 amdts 2.72-2.74; A2008-28 amdt 3.55

**Assessment of arbitrator's or umpire's fees or expenses**

s 35 hdg sub A2006-40 amdt 2.75  
s 35 am 1991 No 36 s 24; A2006-40 amdts 2.76-2.79

**Costs of abortive arbitration**

s 36 am 1991 No 36 s 25

**Judicial review of awards**

s 38 am 1991 No 36 s 26; A2006-40 amdt 2.80, amdt 2.81

## Endnotes

### 5 Earlier republications

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#### **Exclusion agreements not to apply in certain cases**

s 41 am 1991 No 36 s 27

#### **Delay in prosecuting claims**

s 46 am 1991 No 36 s 28

#### **Death of party**

s 52 am 1991 No 36 s 29

#### **Power to stay court proceedings**

s 53 am 1991 No 36 s 30; A2006-40 amdt 2.82

#### **Effect of Scott v Avery clauses**

s 55 am 1991 No 36 s 31

#### **Power to stay court proceedings**

s 56 om A2006-40 amdt 2.83

#### **Regulation-making power**

s 58 am 1988 No 17 sch 2; 1989 No 38 sch 1  
sub 2001 No 44 amdt 1.764

#### **Dictionary**

dict ins A2007-3 amdt 3.92  
am A2008-28 amdt 3.56  
def **arbitration agreement** reloc from s 4 A2007-3 amdt 3.88  
def **arbitrator** ins A2007-3 amdt 3.92  
def **award** reloc from s 4 A2007-3 amdt 3.88  
def **court** sub A2007-3 amdt 3.86  
reloc from s 4 A2007-3 amdt 3.88  
def **misconduct** reloc from s 4 A2007-3 amdt 3.88  
def **party** reloc from s 4 A2007-3 amdt 3.88  
def **power of appointment** ins A2007-3 amdt 3.87  
reloc from s 4 A2007-3 amdt 3.88

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Act 1991 No 36	31 March 1992

Republication No	Amendments to	Republication date
2	Act 1993 No 44	31 January 1994
3	Act 2000 No 17	1 June 2000
4	A2001-44	13 February 2002
5	A2003-48	30 April 2004
6	A2004-60	10 January 2005
7	A2006-25	1 July 2006
8	A2006-40	29 September 2006
9	A2007-3	12 April 2007
10*	A2008-28	26 August 2008

## 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

**Justice and Community Safety Legislation Amendment Act 2010 (No 3) A2010-40 sch 2 pt 2.2**

## Part 2.2 Commercial Arbitration Act 1986

### [2.2] Section 20A (1)

*omit*

section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings)

*substitute*

section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State)

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