

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Commercial Arbitration Bill 2016

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2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Commercial Arbitration Bill 2016

A Bill for

An Act for the conduct of commercial arbitration, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1A Preliminary**

2 *Note* Sections of this Act that contain a reference to the ‘Model Law’ beneath
3 the heading are substantially the same as the provisions of the
4 UNCITRAL Model Law on International Commercial Arbitration (as
5 adopted by the United Nations Commission on International Trade Law
6 on 21 June 1985 with amendments as adopted by that Commission in
7 2006) so as to be as uniform as possible with the UNCITRAL Model
8 Law.

9 Some changes have been made to those provisions of the Act based on
10 the UNCITRAL Model Law to amend or supplement the provisions in
11 their application to domestic arbitrations in the ACT or to accommodate
12 modern drafting styles and conventions (for example, provisions drafted
13 in gender neutral terms and archaisms are replaced with modern
14 alternatives).

15 Notes draw attention to substantive changes.

16 The original numbering of the ‘articles’ of the UNCITRAL Model Law
17 has been retained but converted to references to ‘sections’, and articles
18 containing more than 1 have been re-formatted into subsections.

19 There are a number of additional provisions to those based on the
20 UNCITRAL Model Law.

21 The Model Law contains provisions that are not needed in this Act—the
22 article number and heading to the article appearing in the Model Law
23 are included in this Act despite the omission of the body of the section.

24 **1A Name of Act**

25 This Act is the *Commercial Arbitration Act 2016*.

26 **1B Commencement**

27 This Act commences on a day fixed by the Minister by written
28 notice.

29 *Note 1* The naming and commencement provisions automatically commence on
30 the notification day (see [Legislation Act](#), s 75 (1)).

31 *Note 2* A single day or time may be fixed, or different days or times may be
32 fixed, for the commencement of different provisions (see [Legislation](#)
33 [Act](#), s 77 (1)).

34 *Note 3* If a provision has not commenced within 6 months beginning on the
35 notification day, it automatically commences on the first day after that
36 period (see [Legislation Act](#), s 79).

1 **1C** **Paramount object of Act**

- 2 (1) The paramount object of this Act is to facilitate the fair and final
3 resolution of commercial disputes by impartial arbitral tribunals
4 without unnecessary delay or expense.
- 5 (2) This Act aims to achieve its paramount object by—
- 6 (a) enabling parties to agree about how their commercial disputes
7 are to be resolved (subject to subsection (3) and such
8 safeguards as are necessary in the public interest); and
- 9 (b) providing arbitration procedures that enable commercial
10 disputes to be resolved in a cost effective manner, informally
11 and quickly.
- 12 (3) This Act must be interpreted, and the functions of an arbitral
13 tribunal must be exercised, so that (as far as practicable) the
14 paramount object of this Act is achieved.
- 15 (4) Subsection (3) does not affect the application of the [Legislation Act](#),
16 section 139 for the purposes of interpreting this Act.

17 **1D** **Act to bind Crown**

18 *Note* The Model Law includes a provision binding the Crown. The provision
19 is unnecessary in the ACT (see [Legislation Act](#), s 121).

20 **1E** **Dictionary**

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

22 *Note 1* The dictionary at the end of this Act defines certain terms used in this
23 Act, and includes references (*signpost definitions*) to other terms
24 defined elsewhere in this Act.

25 For example, the signpost definition '*arbitration agreement*—see
26 section 7.' means that the term 'arbitration agreement' is defined in that
27 section and the definition applies to this Act.

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

- 1 **1F Notes**
- 2 (1) A note included in this Act is explanatory and is not part of this Act.
- 3 *Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of
- 4 notes.
- 5 (2) In this section:
- 6 *note* includes material enclosed in brackets in section headings.
- 7 *Note* Some sections of this Act contain bracketed notes under their headings
- 8 (eg Model Law art 1) drawing attention to equivalent or comparable
- 9 (though not necessarily identical) provisions of the UNCITRAL Model
- 10 Law on International Commercial Arbitration.

Part 1 General Provisions

1 Scope of application

(Model Law art 1)

- (1) This Act applies to domestic commercial arbitrations.

Note The *International Arbitration Act 1974* (Cwlth) covers international commercial arbitrations and the enforcement of foreign arbitral awards.

- (2) The provisions of this Act, except section 8, section 9, section 17H, section 17I, section 17J, section 35 and section 36, apply only if the place of arbitration is in the ACT.

- (3) An arbitration is *domestic* if—

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in Australia; and

(b) the parties 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; and

(c) it is not an arbitration to which the Model Law (as given effect by the *International Arbitration Act 1974* (Cwlth)) applies.

- (4) For subsection (3)—

(a) if a party has more than 1 place of business, the place of business is that which has the closest relationship to the arbitration agreement; and

(b) if a party does not have a place of business, reference is to be made to the party's habitual residence.

- (5) This Act does not affect any other Act by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Act.

Part 1 General Provisions

Section 2

- 1 (6) Subject to subsection (5), this Act applies to arbitrations provided
2 for in any other Act as if—
3 (a) the other Act were an arbitration agreement; and
4 (b) the arbitration were pursuant to an arbitration agreement; and
5 (c) the parties to the dispute which, by virtue of the other Act, is
6 referred to arbitration were the parties to the arbitration
7 agreement;

8 except in so far as the other Act otherwise indicates or requires.

9 *Note 1* A note to the model law states that the term ‘commercial’ should be
10 given a wide interpretation so as to cover matters arising from all
11 relationships of a commercial nature, whether contractual or not.
12 Relationships of a commercial nature include, but are not limited to, the
13 following transactions: any trade transaction for the supply or exchange
14 of goods or services; distribution agreement; commercial representation
15 or agency; factoring; leasing; construction of works; consulting;
16 engineering; licensing; investment; financing; banking; insurance;
17 exploitation agreement or concession; joint venture and other forms of
18 industrial or business co-operation; carriage of goods or passengers by
19 air, sea, rail or road.

20 *Note 2* This section differs from the Model Law to the extent necessary to
21 apply art 1 as incorporated in this Act to domestic commercial
22 arbitrations. Section 40 contains provisions that also relate to the
23 application of this Act.

24 **2 Rules of interpretation**

25 (Model Law art 2)

- 26 (1) *[omitted]*

27 *Note* This section differs from the Model Law to the extent that the
28 definitions in art 2 (1) are set out in the dictionary to this Act.

- 29 (2) Where a provision of this Act, except section 28, leaves the parties
30 free to determine a certain issue, such freedom includes the right of
31 the parties to authorise a third-party, including an institution, to
32 make that determination.

- 1 (3) Where a provision of this Act refers to the fact that the parties have
2 agreed or that they may agree or in any other way refers to an
3 agreement of the parties, such agreement includes any arbitration
4 rules referred to in that agreement.
- 5 (4) Where a provision of this Act, other than section 25 (1) (a) and
6 section 32 (2) (a), refers to a claim, it also applies to a
7 counter-claim, and where it refers to a defence, it also applies to a
8 defence to such counter-claim.

9 **2A International origin and general principles**
10 (Model Law art 2A)

- 11 (1) Subject to section 1C, in the interpretation of this Act, regard is to
12 be had to the need to promote, so far as practicable, uniformity
13 between the application of this Act to domestic commercial
14 arbitrations and the application of the provisions of the Model Law
15 (as given effect by the *International Arbitration Act 1974* (Cwlth))
16 to international commercial arbitrations and the observance of good
17 faith.

18 *Note* This section differs from the Model Law. Art 2A (1) has been changed
19 as a consequence of the application of the Act to domestic (instead of
20 international) commercial arbitrations. Art 2A (2) is omitted because it
21 is covered by the provision referred to in section 1C (4). Subsections (3)
22 and (4) reflect the *International Arbitration Act 1974* (Cwlth), s 17.

- 23 (2) *[omitted]*
- 24 (3) Without limiting subsection (1), in interpreting this Act, reference
25 may be made to documents of—
- 26 (a) the United Nations Commission on International Trade Law
27 that relate to the Model Law; and
- 28 (b) the Commission's working groups for the preparation of the
29 Model Law.
- 30 (4) Subsection (3) does not affect the application of the *Legislation Act*,
31 section 141 (Non-legislative context generally) or section 142
32 (Non-legislative context—material that may be considered) for the
33 purposes of interpreting this Act.

- 1 **3 Receipt of written communications**
2 (Model Law art 3)
- 3 (1) Unless otherwise agreed by the parties—
- 4 (a) any written communication is taken to be received if—
- 5 (i) it is delivered to the addressee personally; or
- 6 (ii) it is delivered to the addressee’s place of business,
7 habitual residence or mailing address; or
- 8 (iii) if none of these can be found after making a reasonable
9 inquiry—it is delivered to the addressee’s last-known
10 place of business, habitual residence or mailing address
11 by registered letter or any other means which provides a
12 record of the attempt to deliver it; and
- 13 (b) the communication is taken to have been received on the day it
14 is delivered.
- 15 (2) The provisions of this section do not apply to communications in
16 court proceedings.
- 17 **4 Waiver of right to object**
18 (Model Law art 4)
- 19 A party who knows that any provision of this Act from which the
20 parties may derogate or any requirement under the arbitration
21 agreement has not been complied with and yet proceeds with the
22 arbitration without stating the party’s objection to such
23 non-compliance without undue delay or, if a time-limit is provided
24 for stating the party’s objection, within such period of time, is taken
25 to have waived the party’s right to object.
- 26 **5 Extent of court intervention**
27 (Model Law art 5)
- 28 In matters governed by this Act, no court must intervene except
29 where so provided by this Act.

-
- 1 **6** **Court for certain functions of arbitration assistance and**
2 **supervision**
3 (Model Law art 6)
- 4 (1) Subject to subsection (2), the functions referred to in the following
5 sections must be performed by the Supreme Court:
- 6 (a) section 11 (3) and (4);
7 (b) section 13 (4);
8 (c) section 14 (2);
9 (d) section 16 (9);
10 (e) section 17H, section 17I and section 17J;
11 (f) section 19 (6);
12 (g) section 27, section 27A, section 27B, section 27H, section 27I
13 and section 27J;
14 (h) section 33D, section 34 and section 34A.
- 15 (2) If—
- 16 (a) an arbitration agreement provides that the Magistrates Court is
17 to have jurisdiction under this Act; or
- 18 (b) the parties to an arbitration agreement have agreed, in writing,
19 that the Magistrates Court is to have jurisdiction under this Act
20 and that agreement is in force;
- 21 the functions are to be performed, in relation to that agreement, by
22 the Magistrates Court, as the case requires.
- 23 *Note* This section differs from the Model Law to the extent that it relates to
24 functions conferred on the court with respect to domestic commercial
25 arbitrations that are not referred to in the Model Law.

1 **Part 2 Arbitration agreement**

2 **7 Definition and form of *arbitration agreement***
3 (Model Law art 7)

- 4 (1) An ***arbitration agreement*** is an agreement by the parties to submit
5 to arbitration all or certain disputes which have arisen or which may
6 arise between them in respect of a defined legal relationship,
7 whether contractual or not.
- 8 (2) An arbitration agreement may be in the form of an arbitration clause
9 in a contract or in the form of a separate agreement.
- 10 (3) The arbitration agreement must be in writing.
- 11 (4) An arbitration agreement is in writing if its content is recorded in
12 any form, whether or not the arbitration agreement or contract has
13 been concluded orally, by conduct, or by other means.
- 14 (5) The requirement that an arbitration agreement be in writing is met
15 by an electronic communication if the information contained in it is
16 accessible so as to be useable for subsequent reference.
- 17 (6) Also, an arbitration agreement is in writing if it is contained in an
18 exchange of statements of claim and defence in which the existence
19 of an agreement is alleged by 1 party and not denied by the other.
- 20 (7) The reference in a contract to any document containing an
21 arbitration clause constitutes an arbitration agreement in writing,
22 provided that the reference is such as to make that clause part of the
23 contract.
- 24 (8) In this section:
- 25 ***data message*** means information generated, sent, received or stored
26 by electronic, magnetic, optical or similar means, including, but not
27 limited to, electronic data interchange (EDI), electronic mail,
28 telegram, telex or telecopy.

1 ***electronic communication*** means any communication that the
2 parties make by means of data messages.

3 *Note* This section is substantially the same as Option 1 set out in the Model
4 Law, art 7.

5 **8 Arbitration agreement and substantive claim before court**
6 (Model Law art 8)

7 (1) A court before which an action is brought in a matter which is the
8 subject of an arbitration agreement must, if a party so requests not
9 later than when submitting the party's first statement on the
10 substance of the dispute, refer the parties to arbitration unless it
11 finds that the agreement is null and void, inoperative or incapable of
12 being performed.

13 (2) Where an action referred to in subsection (1) has been brought,
14 arbitral proceedings may nevertheless be commenced or continued,
15 and an award may be made, while the issue is pending before the
16 court.

17 **9 Arbitration agreement and interim measures by court**
18 (Model Law art 9)

19 It is not incompatible with an arbitration agreement for a party to
20 request, before or during arbitral proceedings, from a court an
21 interim measure of protection and for a court to grant the measure.

1 **Part 3** **Composition of arbitral tribunal**

2 **10** **Number of arbitrators**

3 (Model Law art 10)

4 (1) The parties are free to determine the number of arbitrators.

5 (2) Failing such determination, the number of arbitrators is to be 1.

6 *Note* Subsection (2) differs from the Model Law, art 10 (2), which provides
7 for 3 arbitrators if the parties do not determine the number of arbitrators.

8 **11** **Appointment of arbitrators**

9 (Model Law art 11)

10 (1) *[omitted]*

11 *Note* The Model Law, art 11 (1) (which provides that no person is precluded
12 by nationality from acting as an arbitrator unless otherwise agreed by
13 the parties) has been omitted.

14 (2) The parties are free to agree on a procedure of appointing the
15 arbitrator or arbitrators, subject to subsections (4) and (5).

16 (3) Failing such agreement—

17 (a) in an arbitration with 3 arbitrators and 2 parties, each party is
18 to appoint 1 arbitrator, and the 2 arbitrators so appointed are to
19 appoint the third arbitrator and if a party fails to appoint the
20 arbitrator within 30 days of receipt of a request to do so from
21 the other party, or if the 2 arbitrators fail to agree on the third
22 arbitrator within 30 days of their appointment, the appointment
23 is to be made, on the request of a party, by the court; and

24 (b) in an arbitration with a sole arbitrator, if the parties are unable
25 to agree on the arbitrator, an arbitrator is to be appointed, on
26 the request of a party, by the court; and

27 (c) in an arbitration with 2, 4 or more arbitrators or with
28 3 arbitrators and more than 2 parties the appointment is to be
29 made, at the request of a party, by the court.

-
- 1 (4) Where, under an appointment procedure agreed on by the parties—
2 (a) a party fails to act as required under the procedure; or
3 (b) the parties, or 2 or more arbitrators, are unable to reach an
4 agreement expected of them under the procedure; or
5 (c) a third-party, including an institution, fails to perform any
6 function entrusted to it under the procedure;
7 any party may request the court to take the necessary measure,
8 unless the agreement on the appointment procedure provides other
9 means for securing the appointment.
- 10 (5) A decision within the limits of the court's authority on a matter
11 entrusted by subsection (3) or (4) to the court is final.
- 12 (6) The court, in appointing an arbitrator, is to have due regard to any
13 qualifications required of the arbitrator by the agreement of the
14 parties and to such considerations as are likely to secure the
15 appointment of an independent and impartial arbitrator.

16 *Note* This section (other than ss (3) (c), (5) and (6)) is substantially the same
17 as the Model Law, art 11. Subsection (3) (c) is added to cover the
18 contingency of the parties failing to agree on the procedure to appoint
19 arbitrators in certain circumstances not covered by the Model Law as
20 incorporated in this Act. It is based on the *Arbitration Act 1996* (NZ),
21 sch 1, cl 11 (6). Subsection (5) makes it clear that, although a decision
22 of the court is generally final, review of a decision of the court that is
23 not made within the limits of its powers and functions is not precluded.
24 Subsection (6) does not include the requirement in the Model Law,
25 art 11 (5) that the court take into account the advisability of appointing
26 an arbitrator of a nationality other than those of the parties in appointing
27 a sole or third arbitrator as this is not relevant in the context of domestic
28 commercial arbitrations.

- 1 **12 Grounds for challenge**
2 (Model Law art 12)
- 3 (1) When a person is approached in connection with the person's
4 possible appointment as an arbitrator, the person must disclose any
5 circumstances likely to give rise to justifiable doubts as to the
6 person's impartiality or independence.
- 7 (2) An arbitrator, from the time of the arbitrator's appointment and
8 throughout the arbitral proceedings, must without delay disclose any
9 circumstances of the kind referred to in subsection (1) to the parties
10 unless they have already been informed of them by the arbitrator.
- 11 (3) An arbitrator may be challenged only if circumstances exist that
12 give rise to justifiable doubts as to the arbitrator's impartiality or
13 independence, or if the arbitrator does not possess qualifications
14 agreed to by the parties.
- 15 (4) A party may challenge an arbitrator appointed by the party, or in
16 whose appointment the party has participated, only for reasons of
17 which the party becomes aware after the appointment has been
18 made.
- 19 (5) For the purposes of subsection (1), there are justifiable doubts as to
20 the impartiality or independence of a person approached in
21 connection with a possible appointment as arbitrator only if there is
22 a real danger of bias on the part of the person in conducting the
23 arbitration.
- 24 (6) For the purposes of subsection (3), there are justifiable doubts as to
25 the impartiality or independence of an arbitrator only if there is a
26 real danger of bias on the part of the arbitrator in conducting the
27 arbitration.
- 28 *Note* This section (other than ss (5) and (6)) is substantially the same as the
29 Model Law, art 12. Subsections (5) and (6) provide that the test for
30 whether there are justifiable doubts as to the impartiality or
31 independence of a person or arbitrator is whether there is a real danger
32 of bias.

13 Challenge procedure

(Model Law art 13)

- 1
2
3 (1) The parties are free to agree on a procedure for challenging an
4 arbitrator, subject to subsection (4).
- 5 (2) Failing such agreement, a party who intends to challenge an
6 arbitrator must, within 15 days after becoming aware of the
7 constitution of the arbitral tribunal or after becoming aware of any
8 circumstance referred to in section 12 (3), send a written statement
9 of the reasons for the challenge to the arbitral tribunal.
- 10 (3) Unless the challenged arbitrator withdraws from office or the other
11 party agrees to the challenge, the arbitral tribunal must decide on the
12 challenge.
- 13 (4) If a challenge under any procedure agreed on by the parties or under
14 the procedure of subsections (2) and (3) is not successful, the
15 challenging party may request, within 30 days after having received
16 notice of the decision rejecting the challenge, the court to decide on
17 the challenge.
- 18 (5) A decision of the court under subsection (4) that is within the limits
19 of the authority of the court is final.
- 20 (6) While a request under subsection (4) is pending, the arbitral
21 tribunal, including the challenged arbitrator, may continue the
22 arbitral proceedings and make an award.

23 *Note* This section (other than s (5)) is substantially the same as art 13 of the
24 Model Law. Subsection (5) makes it clear that, although a decision of
25 the court is generally final, review of a decision of the court that is not
26 made within the limits of its powers and functions is not precluded.

14 Failure or impossibility to act

(Model Law art 14)

- 27 (1) If an arbitrator becomes in law or in fact unable to perform the
28 arbitrator's functions or for other reasons fails to act without undue
29 delay, the arbitrator's mandate terminates if the arbitrator withdraws
30 from office or if the parties agree on the termination.
31
32

Part 3 Composition of arbitral tribunal

Section 15

1 (2) Otherwise, if a controversy remains concerning any of these
2 grounds, any party may request the court to decide on the
3 termination of the mandate.

4 (3) A decision of the court under subsection (2) that is within the limits
5 of the authority of the court is final.

6 (4) If, under this section or section 13 (3), an arbitrator withdraws from
7 office or a party agrees to the termination of the mandate of an
8 arbitrator, this does not imply acceptance of the validity of any
9 ground referred to in this section or section 12 (3).

10 *Note* This section (other than s (3)) is substantially the same as the Model
11 Law, art 14. Subsection (3) makes it clear that, although a decision of
12 the court is generally final, review of a decision of the court that is not
13 made within the limits of its powers and functions is not precluded.

14 **15 Appointment of substitute arbitrator**

15 (Model Law art 15)

16 Where the mandate of an arbitrator terminates under section 13 or
17 section 14 or because of the arbitrator's withdrawal from office for
18 any other reason or because of the revocation of the arbitrator's
19 mandate by agreement of the parties or in any other case of
20 termination of the arbitrator's mandate, a substitute arbitrator must
21 be appointed according to the rules that were applicable to the
22 appointment of the arbitrator being replaced.

Part 4 Jurisdiction of arbitral tribunal

16 Competence of arbitral tribunal to rule on its jurisdiction

(Model Law art 16)

- (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
- (2) For that purpose, an arbitration clause which forms part of a contract is to be treated as an agreement independent of the other terms of the contract.
- (3) A decision by the arbitral tribunal that the contract is null and void does not of itself entail the invalidity of the arbitration clause.

Note The Model Law provides that such a decision does not *'ipso jure'* entail the invalidity of the arbitration clause.
- (4) A plea that the arbitral tribunal does not have jurisdiction must be raised not later than the submission of the statement of defence.
- (5) A party is not precluded from raising such a plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator.
- (6) A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
- (7) The arbitral tribunal may, in the case of a plea referred to in subsection (4) or (6), admit a later plea if it considers the delay justified.
- (8) The arbitral tribunal may rule on a plea referred to in subsection (4) or (6) either as a preliminary question or in an award on the merits.
- (9) If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within 30 days after having received notice of that ruling, the court to decide the matter.
- (10) A decision of the court under subsection (9) that is within the limits of the authority of the court is final.

Part 4 Jurisdiction of arbitral tribunal

Section 16

1 (11) While a request under subsection (9) is pending, the arbitral tribunal
2 may continue the arbitral proceedings and make an award.

3 *Note* This section (other than s (10)) is substantially the same as the Model
4 Law, art 16. Subsection (10) makes it clear that, although a decision of
5 the court is generally final, review of a decision of the court that is not
6 made within the limits of its powers and functions is not precluded.

1 **Part 4A** **Interim measures**

2 **Division 1** **Interim measures**

3 **17** **Power of arbitral tribunal to order interim measures**

4 (Model Law art 17)

5 (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at
6 the request of a party, grant interim measures.

7 (2) An *interim measure* is any temporary measure, whether in the form
8 of an award or in another form, by which, at any time prior to the
9 issuance of the award by which the dispute is finally decided, the
10 arbitral tribunal orders a party to—

11 (a) maintain or restore the status quo pending determination of the
12 dispute; or

13 (b) take action that would prevent, or refrain from taking action
14 that is likely to cause, current or imminent harm or prejudice to
15 the arbitral process itself; or

16 (c) provide a means of preserving assets out of which a subsequent
17 award may be satisfied; or

18 (d) preserve evidence that may be relevant and material to the
19 resolution of the dispute.

20 (3) Without limiting subsection (2), the arbitral tribunal may make
21 orders with respect to any of the following:

22 (a) security for costs;

23 (b) discovery of documents and interrogatories;

24 (c) giving of evidence by affidavit;

25 (d) the inspection of any property which is or forms part of the
26 subject-matter of the dispute;

27 (e) the taking of photographs of any property which is or forms
28 part of the subject-matter of the dispute;

1 (f) samples to be taken from, or any observation to be made of or
2 experiment conducted on, any property which is or forms part
3 of the subject-matter of the dispute;

4 (g) dividing, recording and strictly enforcing the time allocated for
5 a hearing between the parties (a *stop clock* arbitration).

6 *Note* Subsections (1) and (2) are substantially the same as the Model Law,
7 art 17. There is no equivalent s (3) in the Model Law.

8 **17A Conditions for granting interim measures**

9 (Model Law art 17A)

10 (1) The party requesting an interim measure under section 17 (2) (a), (b)
11 or (c) must satisfy the arbitral tribunal that—

12 (a) harm not adequately reparable by an award of damages is
13 likely to result if the measure is not ordered, and that harm
14 substantially outweighs the harm that is likely to result to the
15 party against whom the measure is directed if the measure is
16 granted; and

17 (b) there is a reasonable possibility that the requesting party will
18 succeed on the merits of the claim.

19 (2) The determination on the possibility referred to in subsection (1) (b)
20 does not affect the discretion of the arbitral tribunal in making any
21 subsequent determination.

22 (3) With regard to a request for an interim measure under
23 section 17 (2) (d), the requirements in subsection (1) (a) and (b) and
24 subsection (2) apply only to the extent the arbitral tribunal considers
25 appropriate.

1 **Division 2 Preliminary orders**

2 **17B Applications for preliminary orders and conditions for**
3 **granting preliminary orders**

4 (Model Law art 17B)

5 *[omitted]*

6 *Note* The Model Law, art 17B, which provides for ex parte requests for
7 interim measures together with applications for preliminary orders
8 directing parties not to frustrate the interim measures, has been omitted.

9 **17C Specific regime for preliminary orders**

10 (Model Law art 17C)

11 *[omitted]*

12 *Note* The Model Law, art 17C, which contains safeguards for the party
13 against whom a preliminary order is directed under art 17B, is omitted
14 as a consequence of the omission of art 17B.

15 **Division 3 Provisions applicable to interim**
16 **measures**

17 **17D Modification, suspension, termination**

18 (Model Law art 17D)

19 The arbitral tribunal may modify, suspend or terminate an interim
20 measure it has granted, on application of any party or, in exceptional
21 circumstances and on prior notice to the parties, on the arbitral
22 tribunal's own initiative.

23 *Note* This section is substantially the same as the Model Law, art 17D but
24 contains no reference to preliminary orders as a consequence of this Act
25 not including an equivalent of the Model Law, art 17B and art 17C.

26 **17E Provision of security**

27 (Model Law art 17E)

28 (1) The arbitral tribunal may require the party requesting an interim
29 measure to provide appropriate security in connection with the
30 measure.

1 (2) *[omitted]*

2 *Note* Subsection (1) is the same as the Model Law, art 17E (1). Art 17E (2) is
3 omitted as a consequence of this Act not including equivalents to the
4 Model Law, art 17B and art 17C.

5 **17F Disclosure**
6 (Model Law art 17F)

7 (1) The arbitral tribunal may require any party promptly to disclose any
8 material change in the circumstances on the basis of which the
9 measure was requested or granted.

10 (2) *[omitted]*

11 *Note* Subsection (1) is the same as the Model Law, art 17F (1). Art 17F (2) is
12 omitted as a consequence of this Act not including equivalents to the
13 Model Law, art 17B and art 17C.

14 **17G Costs and damages**
15 (Model Law art 17G)

16 (1) The party requesting an interim measure is liable for any costs and
17 damages caused by the measure to any party if the arbitral tribunal
18 later determines that, in the circumstances, the measure should not
19 have been granted.

20 (2) The arbitral tribunal may award such costs and damages at any point
21 during the proceedings.

22 *Note* This section is substantially the same as the Model Law, art 17G but the
23 reference to applications for preliminary orders is omitted as a
24 consequence of this Act not including equivalents to the Model Law,
25 art 17B and art 17C.

1 **Division 4** **Recognition and enforcement of**
2 **interim measures**

3 **17H** **Recognition and enforcement**
4 (Model Law art 17H)

- 5 (1) An interim measure issued by an arbitral tribunal under the law of
6 the Territory is to be recognised as binding and, unless otherwise
7 provided by the arbitral tribunal, enforced on application to the
8 court, subject to the provisions of section 17I.
- 9 (2) An interim measure issued by an arbitral tribunal under the law of a
10 State or another Territory is to be recognised as binding in the ACT
11 and, unless otherwise provided by the arbitral tribunal, enforced on
12 application to the court, irrespective of the State or other Territory in
13 which it was issued, subject to the provisions of section 17I.
- 14 (3) The party who is seeking or has obtained recognition or
15 enforcement of an interim measure must promptly inform the court
16 of any termination, suspension or modification of that interim
17 measure.
- 18 (4) The court may, if it considers it proper, order the requesting party to
19 provide appropriate security if the arbitral tribunal has not already
20 made a determination with respect to security or where such a
21 decision is necessary to protect the rights of third parties.

22 *Note* This section differs from the Model Law, art 17H to the extent
23 necessary to apply art 17H as incorporated in this Act in the context of
24 domestic commercial arbitrations.

25 **17I** **Grounds for refusing recognition or enforcement**
26 (Model Law art 17I)

- 27 (1) Recognition or enforcement of an interim measure may be refused
28 only—
- 29 (a) at the request of the party against whom it is invoked if the
30 court is satisfied that—
- 31 (i) such a refusal is warranted on the grounds set out in
32 section 36 (1) (a) (i) to (iv); or

- 1 (ii) the arbitral tribunal's decision with respect to the
2 provision of security in connection with the interim
3 measure issued by the arbitral tribunal has not been
4 complied with; or
- 5 (iii) the interim measure has been terminated or suspended by
6 the arbitral tribunal or, where so empowered, by the court
7 of the State or other Territory in which the arbitration
8 takes place or under the law of which that interim
9 measure was granted; or
- 10 (b) if the court finds that—
- 11 (i) the interim measure is incompatible with the powers
12 conferred on the court unless the court decides to
13 reformulate the interim measure to the extent necessary to
14 adapt it to its own powers and procedures for the purposes
15 of enforcing that interim measure and without modifying
16 its substance; or
- 17 (ii) any of the grounds set out in section 36 (1) (b) (i) or (ii)
18 apply to the recognition and enforcement of the interim
19 measure.
- 20 (2) Any determination made by the court on any ground in
21 subsection (1) is effective only for the purposes of the application to
22 recognise and enforce the interim measure.
- 23 (3) The court must not, in making a determination with respect to the
24 recognition or enforcement sought, undertake a review of the
25 substance of the interim measure.
- 26 *Note* This section is substantially the same as the Model Law, art 17I but has
27 been modified to the extent necessary to apply art 17I as incorporated in
28 this Act in the context of domestic commercial arbitrations.

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

2 **17J** **Court-ordered interim measures**
3 (Model Law art 17J)

4 (1) The court has the same power of issuing an interim measure in
5 relation to arbitration proceedings as it has in relation to proceedings
6 in courts.

7 (2) The court is to exercise the power in accordance with its own
8 procedures taking into account the specific features of a domestic
9 commercial arbitration.

10 *Note* This section is substantially the same as the Model Law, art 17J but has
11 been modified to the extent necessary to apply art 17J as incorporated in
12 this Act in the context of domestic commercial arbitrations.

1 **Part 5 Conduct of arbitral proceedings**

2 **18 Equal treatment of parties**
3 (Model Law art 18)

4 The parties must be treated with equality and each party must be
5 given a reasonable opportunity of presenting the party's case.

6 *Note* This section differs from the Model Law to the extent that it requires a
7 party to be given a 'reasonable', instead of 'full', opportunity of
8 presenting the party's case.

9 **19 Determination of rules of procedure**
10 (Model Law art 19)

11 (1) Subject to the provisions of this Act, the parties are free to agree on
12 the procedure to be followed by the arbitral tribunal in conducting
13 the proceedings.

14 (2) Failing such agreement, the arbitral tribunal may, subject to the
15 provisions of this Act, conduct the arbitration in such manner as it
16 considers appropriate.

17 (3) The power conferred on the arbitral tribunal includes the power to
18 determine the admissibility, relevance, materiality and weight of any
19 evidence.

20 (4) The power conferred on the tribunal also includes the power to
21 make orders or give directions for the examination of a party or
22 witness on oath or affirmation.

23 (5) For the purposes of the exercise of the power referred to in
24 subsection (4), the arbitral tribunal may administer any necessary
25 oath or take any necessary affirmation.

26 (6) An order made or direction given by an arbitral tribunal in the
27 course of arbitral proceedings is, by leave of the court, enforceable
28 in the same manner as if it were an order of the court and, where
29 leave is so given, judgment may be entered in terms of the order or
30 direction.

-
- 1 **20** **Place of arbitration**
2 (Model Law art 20)
- 3 (1) The parties are free to agree on the place of arbitration.
- 4 (2) Failing such agreement, the place of arbitration is to be determined
5 by the arbitral tribunal having regard to the circumstances of the
6 case, including the convenience of the parties.
- 7 (3) Despite subsection (1), the arbitral tribunal may, unless otherwise
8 agreed by the parties, meet at any place (whether or not in the ACT)
9 it considers appropriate for consultation among its members, for
10 hearing witnesses, experts or the parties, or for inspection of goods,
11 other property or documents.
- 12 **21** **Commencement of arbitral proceedings**
13 (Model Law art 21)
- 14 Unless otherwise agreed by the parties, the arbitral proceedings in
15 respect of a particular dispute commence on the date on which a
16 request for that dispute to be referred to arbitration is received by
17 the respondent.
- 18 **22** **Language**
19 (Model Law art 22)
- 20 (1) The parties are free to agree on the language or languages to be used
21 in the arbitral proceedings.
- 22 (2) Failing agreement as referred to in subsection (1), the arbitral
23 tribunal is to determine the language or languages to be used in the
24 proceedings.
- 25 (3) This agreement or determination, unless otherwise specified in the
26 agreement or determination, is to apply to any written statement by
27 a party, any hearing and any award, decision or other
28 communication by the arbitral tribunal.
- 29 (4) The arbitral tribunal may order that any documentary evidence is to
30 be accompanied by a translation into the language or languages
31 agreed on by the parties or determined by the arbitral tribunal.

- 1 **23 Statements of claim and defence**
2 (Model Law art 23)
- 3 (1) Subject to any contrary agreement of the parties or a direction of the
4 arbitral tribunal, within the period of time agreed by the parties or
5 determined by the arbitral tribunal, the claimant must state the facts
6 supporting his or her claim, the points at issue and the relief or
7 remedy sought, and the respondent must state the respondent's
8 defence in respect of these particulars, unless the parties have
9 otherwise agreed as to the required elements of such statements.
- 10 (2) The parties may submit with their statements all documents they
11 consider to be relevant or may add a reference to the documents or
12 other evidence they will submit.
- 13 (3) Unless otherwise agreed by the parties, either party may amend or
14 supplement the party's claim or defence during the course of the
15 arbitral proceedings, unless the arbitral tribunal considers it
16 inappropriate to allow such amendment having regard to the delay
17 in making it.
- 18 (4) Subsection (1) does not require a statement by a claimant or
19 respondent to be in a particular form.
- 20 **24 Hearings and written proceedings**
21 (Model Law art 24)
- 22 (1) Subject to any contrary agreement by the parties, the arbitral
23 tribunal is to decide whether to hold oral hearings for the
24 presentation of evidence or for oral argument, or whether the
25 proceedings are to be conducted on the basis of documents and other
26 materials.
- 27 (2) However, unless the parties have agreed that no hearings are to be
28 held, the arbitral tribunal must hold such hearings at an appropriate
29 stage of the proceedings, if so requested by a party.
- 30 (3) The parties must be given sufficient advance notice of any hearing
31 and of any meeting of the arbitral tribunal for the purposes of
32 inspection of goods, other property or documents.

1 (4) All statements, documents or other information supplied to the
2 arbitral tribunal by 1 party must be communicated to the other party.

3 (5) Also, any expert report or evidentiary document on which the
4 arbitral tribunal may rely in making its decision must be
5 communicated to the parties.

6 **24A Representation**

7 (1) The parties may appear or act in person, or may be represented by
8 another person of their choice, in any oral hearings under section 24.

9 (2) A person who is not an Australian legal practitioner does not
10 commit an offence under, or breach the provisions of, the *Legal*
11 *Profession Act 2006* or any other Act merely by representing a party
12 in arbitral proceedings in the ACT.

13 *Note* There is no equivalent of this section in the Model Law.

14 **24B General duties of parties**

15 (1) The parties must do all things necessary for the proper and
16 expeditious conduct of the arbitral proceedings.

17 (2) Without limitation, the parties must without undue delay—

18 (a) comply with any order or direction of the arbitral tribunal with
19 respect to any procedural, evidentiary or other matter; and

20 (b) take any necessary steps to obtain a decision (if required) of
21 the court with respect to any function conferred on the court
22 under section 6.

23 (3) A party must not wilfully do, or cause to be done, any act to delay or
24 prevent an award being made.

25 *Note* There is no equivalent of this section in the Model Law.

- 1 **25** **Default of a party**
2 (Model Law art 25)
- 3 (1) Unless otherwise agreed by the parties, without showing sufficient
4 cause—
- 5 (a) if the claimant fails to communicate the claimant’s statement
6 of claim in accordance with section 23 (1)—the arbitral
7 tribunal may terminate the proceedings; or
- 8 (b) if the respondent fails to communicate the respondent’s
9 statement of defence in accordance with section 23 (1)—the
10 arbitral tribunal may continue the proceedings without treating
11 such failure in itself as an admission of the claimant’s
12 allegations; or
- 13 (c) if any party fails to appear at a hearing or to produce
14 documentary evidence—the arbitral tribunal may continue the
15 proceedings and make the award on the evidence before it.
- 16 (2) Unless otherwise agreed by the parties, if a party fails to do any
17 other thing necessary for the proper and expeditious conduct of the
18 arbitration the arbitral tribunal may—
- 19 (a) if satisfied that there has been inordinate and inexcusable delay
20 on the part of the claimant in pursuing the claim—make an
21 award dismissing the claim or may give directions (with or
22 without conditions) for the speedy determination of the claim;
23 or
- 24 (b) if without sufficient cause a party fails to comply with any
25 order or direction of the arbitral tribunal—make an order
26 requiring the party to comply with the terms of the earlier order
27 or direction within the period specified by the arbitral tribunal
28 (a *peremptory order*).
- 29 (3) If a party fails to comply with a peremptory order, the arbitral
30 tribunal may do any of the following:
- 31 (a) direct that the party in default is not to be entitled to rely on
32 any allegation or material which was the subject matter of the
33 peremptory order;

- 1 (b) draw such adverse inferences from the failure to comply as the
2 circumstances justify;
- 3 (c) proceed to an award on the basis of any materials that have
4 been properly provided to the arbitral tribunal;
- 5 (d) without limiting section 33B (4), in making an award give any
6 direction or order that it thinks fit as to the payment of the
7 costs of the arbitration incurred in consequence of the
8 non-compliance.

9 *Note* Subsection (1) is substantially the same as the Model Law, art 25. There
10 are no equivalents to the other provisions of the section in the Model
11 Law.

12 **26 Expert appointed by arbitral tribunal**

13 (Model Law art 26)

- 14 (1) Unless otherwise agreed by the parties, the arbitral tribunal may—
- 15 (a) appoint 1 or more experts to report to it on specific issues to be
16 determined by the arbitral tribunal; and
- 17 (b) require a party to give the expert any relevant information or to
18 produce, or to provide access to, any relevant documents,
19 goods or other property for the expert's inspection.
- 20 (2) Unless otherwise agreed by the parties, if a party so requests or if
21 the arbitral tribunal considers it necessary, the expert must, after
22 delivery of the expert's written or oral report, participate in a
23 hearing where the parties have the opportunity to put questions to
24 the expert and present expert witnesses in order to testify on the
25 points at issue.

26 **27 Court assistance in taking evidence**

27 (Model Law art 27)

- 28 (1) The arbitral tribunal or a party with the approval of the arbitral
29 tribunal may request from the court assistance in taking evidence.
- 30 (2) The court may execute the request within its competence and
31 subject to and in accordance with rules of court.

1 **27A Parties may obtain subpoenas**

- 2 (1) The court may, on the application of any party, and subject to and in
3 accordance with rules of court, issue a subpoena requiring a
4 person—
- 5 (a) to attend for examination before the arbitral tribunal; or
6 (b) to produce to the arbitral tribunal the documents specified in
7 the subpoena; or
8 (c) to do both of those things.
- 9 (2) A party may only make an application to the court under
10 subsection (1) with the permission of the arbitral tribunal.
- 11 (3) A person must not be compelled under any subpoena issued in
12 accordance with subsection (1) to answer any question or produce
13 any document that the person could not be compelled to answer or
14 produce in a proceeding before the court.

15 *Note* There is no equivalent to this section in the Model Law.

16 **27B Refusal or failure to attend before arbitral tribunal or to**
17 **produce document**

- 18 (1) For this section, a person is a *person in default* in relation to
19 proceedings before an arbitral tribunal under an arbitration
20 agreement if the person fails to—
- 21 (a) attend before the arbitral tribunal for examination when
22 required under a subpoena or by the arbitral tribunal to do so;
23 or
24 (b) produce a document that the person is required under a
25 subpoena or by the arbitral tribunal to produce; or
26 (c) when appearing as a witness before the arbitral tribunal—
- 27 (i) take an oath or to make an affirmation or affidavit when
28 required by the arbitral tribunal to do so; or
29 (ii) answer a question that the witness is required by the
30 arbitral tribunal to answer; or

- 1 (d) do any other thing which the arbitral tribunal may require.
- 2 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).
- 3 (2) Unless otherwise agreed by the parties, the court may, on the
4 application of a party or the arbitral tribunal, order a person in
5 default to do any or all of the following:
- 6 (a) attend the court to be examined as a witness;
- 7 (b) produce the relevant document to the court;
- 8 (c) do the relevant thing.
- 9 (3) A party may only make an application to the court under
10 subsection (2) with the permission of the arbitral tribunal.
- 11 (4) The court must not make an order under subsection (2) in relation to
12 a person who is not a party to the arbitral proceedings unless—
- 13 (a) before the order is made, the person is given an opportunity to
14 make representations to the court; and
- 15 (b) the court is satisfied that it is reasonable in all the
16 circumstances to make the order.
- 17 (5) A person must not be compelled under an order made under
18 subsection (2) to answer any question or produce any document
19 which the person could not be compelled to answer or produce in a
20 proceeding before the court.
- 21 (6) If the court makes an order under subsection (2), it may in addition
22 make orders for the transmission to the arbitral tribunal of any of the
23 following:
- 24 (a) a record of any evidence given under the order;
- 25 (b) any document produced under the order or a copy of any such
26 document;
- 27 (c) particulars of any thing done under the order.

1 (7) Any evidence, document or thing transmitted under subsection (6) is
2 taken to have been given, produced or done (as the case requires) in
3 the course of the arbitral proceedings.

4 *Note* There is no equivalent to this section in the Model Law.

5 **27C Consolidation of arbitral proceedings**

6 (1) Unless otherwise agreed by the parties, a party to arbitral
7 proceedings may apply to the arbitral tribunal for an order under this
8 section in relation to those proceedings and other arbitral
9 proceedings (whether before that tribunal or any other tribunal) on
10 the ground that—

11 (a) a common question of law or fact arises in all those
12 proceedings; or

13 (b) the rights to relief claimed in all those proceedings are in
14 respect of, or arise out of, the same transaction or series of
15 transactions; or

16 (c) for some other reason specified in the application, it is
17 desirable that an order be made under this section.

18 (2) In this section, 2 or more arbitral proceedings that are the subject of
19 an application under subsection (1) are called the
20 *related proceedings*.

21 (3) The following orders may be made under this section in relation to
22 the related proceedings:

23 (a) that the proceedings be consolidated on terms specified in the
24 order;

25 (b) that the proceedings be heard at the same time or in a sequence
26 specified in the order;

27 (c) that any of the proceedings be stayed pending the
28 determination of any of the other proceedings.

-
- 1 (4) If all the related proceedings are being conducted by the same
2 tribunal, the tribunal may make any order under this section that it
3 thinks fit in relation to those proceedings and, if an order is made,
4 the proceedings must be dealt with in accordance with the order.
- 5 (5) If 2 or more arbitral tribunals are conducting the related
6 proceedings—
- 7 (a) the tribunal that received the application must communicate the
8 substance of the application to the other tribunals concerned;
9 and
- 10 (b) the tribunals must, as soon as practicable, deliberate jointly on
11 the application.
- 12 (6) If the tribunals agree, after deliberation on the application, that a
13 particular order under this section should be made in relation to the
14 related proceedings—
- 15 (a) the tribunals are to jointly make the order; and
- 16 (b) the related proceedings are to be dealt with in accordance with
17 the order; and
- 18 (c) if the order is that the related proceedings be consolidated—the
19 arbitrator or arbitrators for the consolidated proceedings are to
20 be appointed, in accordance with section 10 and section 11,
21 from the members of the tribunals.
- 22 (7) If the tribunals are unable to make an order under subsection (6), the
23 related proceedings are to proceed as if no application has been
24 made under subsection (1).
- 25 (8) Before making an order under this section, the arbitral tribunal or
26 tribunals concerned must take into account whether any party
27 would, or might suffer substantial hardship if the order were made.
- 28 (9) This section does not prevent the parties to related proceedings from
29 agreeing to consolidate them and taking necessary steps to effect
30 that consolidation.

31 *Note* There is no equivalent to this section in the Model Law.

- 1 **27D Power of arbitrator to act as mediator, conciliator or other**
2 **non-arbitral intermediary**
- 3 (1) An arbitrator may act as a mediator in proceedings relating to a
4 dispute between the parties to an arbitration agreement (*mediation*
5 *proceedings*) if—
- 6 (a) the arbitration agreement provides for the arbitrator to act as
7 mediator in mediation proceedings (whether before or after
8 proceeding to arbitration, and whether or not continuing with
9 the arbitration); or
- 10 (b) each party has consented in writing to the arbitrator so acting.
- 11 (2) An arbitrator acting as a mediator—
- 12 (a) may communicate with the parties collectively or separately;
13 and
- 14 (b) must treat information obtained by the arbitrator from a party
15 with whom he or she communicates separately as confidential,
16 unless that party otherwise agrees or unless the provisions of
17 the arbitration agreement relating to mediation proceedings
18 otherwise provide.
- 19 (3) Mediation proceedings in relation to a dispute terminate if—
- 20 (a) the parties to the dispute agree to terminate the proceedings; or
- 21 (b) any party to the dispute withdraws consent to the arbitrator
22 acting as mediator in the proceedings; or
- 23 (c) the arbitrator terminates the proceedings.
- 24 (4) An arbitrator who has acted as mediator in mediation proceedings
25 that are terminated may not conduct subsequent arbitration
26 proceedings in relation to the dispute without the written consent of
27 all the parties to the arbitration given on or after the termination of
28 the mediation proceedings.

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- 1 (5) If the parties consent under subsection (4), no objection may be
2 taken to the conduct of subsequent arbitration proceedings by the
3 arbitrator solely on the ground that he or she has acted previously as
4 a mediator in accordance with this section.
- 5 (6) If the parties do not consent under subsection (4), the arbitrator's
6 mandate is taken to have been terminated under section 14 and a
7 substitute arbitrator is to be appointed in accordance with section 15.
- 8 (7) If confidential information is obtained from a party during
9 mediation proceedings as referred to in subsection (2) (b) and the
10 mediation proceedings terminate, the arbitrator must, before
11 conducting subsequent arbitration proceedings in relation to the
12 dispute, disclose to all other parties to the arbitration proceedings so
13 much of the information as the arbitrator considers material to the
14 arbitration proceedings.
- 15 (8) In this section, a reference to a *mediator* includes a reference to a
16 conciliator or other non-arbitral intermediary between parties.

17 *Note* There is no equivalent to this section in the Model Law.

18 **27E Disclosure of confidential information**

- 19 (1) The provisions of this section apply in arbitral proceedings unless
20 otherwise agreed by the parties.
- 21 (2) The parties must not disclose confidential information in relation to
22 the arbitral proceedings unless—
- 23 (a) the disclosure is allowed under section 27F; or
- 24 (b) the disclosure is allowed under an order made under
25 section 27G and no order is in force under section 27H
26 prohibiting that disclosure; or
- 27 (c) the disclosure is allowed under an order made under
28 section 27I.
- 29 (3) An arbitral tribunal must not disclose confidential information in
30 relation to the arbitral proceedings unless—
- 31 (a) the disclosure is allowed under section 27F; or

1 (b) the disclosure is allowed under an order made under section
2 27G and no order is in force under section 27H prohibiting that
3 disclosure; or

4 (c) the disclosure is allowed under an order made under
5 section 27I.

6 *Note* There is no equivalent to this section in the Model Law.

7 **27F Circumstances in which confidential information may be**
8 **disclosed**

9 (1) This section sets out the circumstances in which confidential
10 information in relation to arbitral proceedings may be disclosed
11 by—

12 (a) a party; or

13 (b) an arbitral tribunal.

14 (2) The information may be disclosed with the consent of all the parties
15 to the arbitral proceedings.

16 (3) The information may be disclosed to a professional or other adviser
17 of any of the parties.

18 (4) The information may be disclosed if it is necessary to ensure that a
19 party has a reasonable opportunity to present the party's case and
20 the disclosure is no more than reasonable for that purpose.

21 (5) The information may be disclosed if it is necessary for the
22 establishment or protection of a party's legal rights in relation to a
23 third-party and the disclosure is no more than reasonable for that
24 purpose.

25 (6) The information may be disclosed if it is necessary for the purpose
26 of enforcing an arbitral award and the disclosure is no more than
27 reasonable for that purpose.

28 (7) The information may be disclosed if it is necessary for this Act and
29 the disclosure is no more than reasonable for that purpose.

-
- 1 (8) The information may be disclosed if the disclosure is in accordance
2 with an order made or a subpoena issued by a court.
- 3 (9) The information may be disclosed if the disclosure is authorised or
4 required by a relevant law or required by a competent regulatory
5 body, and the person making the disclosure gives written details of
6 the disclosure (including an explanation of the reasons for the
7 disclosure) to—
- 8 (a) if the person is a party—the other parties and the arbitral
9 tribunal; and
- 10 (b) if the arbitral tribunal is making the disclosure—all the parties.
- 11 (10) In this section:
- 12 *relevant law* means—
- 13 (a) a law of the Territory (other than this Act); and
- 14 (b) a law of the Commonwealth; and
- 15 (c) a law of a State or another Territory.
- 16 *Note* There is no equivalent to this section in the Model Law.

17 **27G** **Arbitral tribunal may allow disclosure of confidential**
18 **information in certain circumstances**

- 19 (1) An arbitral tribunal may make an order allowing a party to arbitral
20 proceedings to disclose confidential information in relation to the
21 proceedings in circumstances other than those mentioned in
22 section 27F.
- 23 (2) An order under subsection (1) may only be made at the request of
24 1 of the parties and after giving each of the parties the opportunity to
25 be heard.
- 26 *Note* There is no equivalent to this section in the Model Law.

- 1 **27H Court may prohibit disclosure of confidential information**
2 **in certain circumstances**
- 3 (1) The court may make an order prohibiting a party from disclosing
4 confidential information in relation to the arbitral proceedings if the
5 court is satisfied, in the circumstances of the particular case, that—
- 6 (a) the public interest in preserving the confidentiality of arbitral
7 proceedings is not outweighed by other considerations that
8 render it desirable in the public interest for the confidential
9 information to be disclosed; and
- 10 (b) the disclosure is no more than reasonable for that purpose.
- 11 (2) An order under subsection (1) may only be made on the application
12 of a party to the arbitral proceedings and after giving each of the
13 parties to the arbitral proceedings the opportunity to be heard.
- 14 (3) A party may only apply for an order under subsection (1) if the
15 arbitral tribunal has made an order under section 27G (1) allowing
16 disclosure of the information.
- 17 (4) The court may order that the confidential information not be
18 disclosed pending the outcome of the application under
19 subsection (2).
- 20 (5) An order of the court under this section that is made within the
21 limits of the authority of the court is final.
- 22 *Note* There is no equivalent to this section in the Model Law.

- 1 **27I Court may allow disclosure of confidential information in**
2 **certain circumstances**
- 3 (1) The court may make an order allowing a party to disclose
4 confidential information in relation to the arbitral proceedings in
5 circumstances other than those mentioned in section 27F if the court
6 is satisfied, in the circumstances of the particular case, that—
- 7 (a) the public interest in preserving the confidentiality of arbitral
8 proceedings is outweighed by other considerations that render
9 it desirable in the public interest for the confidential
10 information to be disclosed; and
- 11 (b) the disclosure is no more than reasonable for that purpose.
- 12 (2) An order under subsection (1) may only be made on the application
13 of a person who is or was a party to the arbitral proceedings and
14 after giving each person who is or was a party to the arbitral
15 proceedings the opportunity to be heard.
- 16 (3) A party to arbitral proceedings may only apply for an order under
17 subsection (1) if—
- 18 (a) the mandate of the arbitral tribunal has been terminated under
19 section 32; or
- 20 (b) a request by the party to the arbitral tribunal to make an order
21 under section 27G has been refused.
- 22 (4) An order of the court under this section that is made within the
23 limits of the authority of the court is final.

24 *Note* There is no equivalent to this section in the Model Law.

25 **27J Determination of preliminary point of law by court**

- 26 (1) Unless otherwise agreed by the parties, on an application to the
27 court made by any of the parties to an arbitration agreement the
28 court has jurisdiction to determine any question of law arising in the
29 course of the arbitration.

Part 5 Conduct of arbitral proceedings

Section 27J

1 (2) An application under this section may be made by a party only with
2 the consent of—

3 (a) an arbitrator who has entered on the reference; or

4 (b) all the other parties;

5 and with the leave of the court.

6 *Note* There is no equivalent to this section in the Model Law.

1 **Part 6** **Making of award and termination** 2 **of proceedings**

3 **28 Rules applicable to substance of dispute**

4 (Model Law art 28)

- 5 (1) The arbitral tribunal must decide the dispute in accordance with
6 such rules of law as are chosen by the parties as applicable to the
7 substance of the dispute.
- 8 (2) Any designation of the law or legal system of a given State or
9 Territory must be construed, unless otherwise expressed, as directly
10 referring to the substantive law of that State or Territory and not to
11 its conflict of laws rules.
- 12 (3) Failing any designation by the parties, the arbitral tribunal must
13 apply the law determined by the conflict of laws rules which it
14 considers applicable.
- 15 (4) The arbitral tribunal must decide the dispute, if the parties so agree,
16 in accordance with such other considerations as are agreed to by the
17 parties.
- 18 (5) In all cases, the arbitral tribunal must decide in accordance with the
19 terms of the contract and must take into account the usages of the
20 trade applicable to the transaction.

21 *Note* This section (other than s (4)) is substantially the same as the Model
22 Law, art 28.

23 **29 Decision-making by panel of arbitrators**

24 (Model Law art 29)

- 25 (1) In arbitral proceedings with more than 1 arbitrator, any decision of
26 the arbitral tribunal must be made, unless otherwise agreed by the
27 parties, by a majority of all its members.
- 28 (2) However, questions of procedure may be decided by a presiding
29 arbitrator, if so authorised by the parties or all members of the
30 arbitral tribunal.

- 1 **30 Settlement**
2 (Model Law art 30)
- 3 (1) If, during arbitral proceedings, the parties settle the dispute, the
4 arbitral tribunal must terminate the proceedings and, if requested by
5 the parties and not objected to by the arbitral tribunal, record the
6 settlement in the form of an arbitral award on agreed terms.
- 7 (2) An award on agreed terms is to be made in accordance with
8 section 31 and must state that it is an award.
- 9 (3) Such an award has the same status and effect as any other award on
10 the merits of the case.
- 11 **31 Form and contents of award**
12 (Model Law art 31)
- 13 (1) The award must be made in writing and must be signed by the
14 arbitrator or arbitrators.
- 15 (2) In arbitral proceedings with more than 1 arbitrator, the signatures of
16 the majority of all members of the arbitral tribunal suffices,
17 provided that the reason for any omitted signature is stated.
- 18 (3) The award must state the reasons upon which it is based, unless the
19 parties have agreed that no reasons are to be given or the award is an
20 award on agreed terms under section 30.
- 21 (4) The award must state its date and the place of arbitration as
22 determined in accordance with section 20.
- 23 (5) The award is taken to have been made at the place stated in the
24 award in accordance with subsection (4).
- 25 (6) After the award is made, a copy signed by the arbitrators in
26 accordance with subsection (1) must be delivered to each party.

32 Termination of proceedings

(Model Law art 32)

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with subsection (2).
- (2) The arbitral tribunal is to issue an order for the termination of the arbitral proceedings when—
 - (a) the claimant withdraws his or her claim, unless the respondent objects and the arbitral tribunal recognises a legitimate interest on the respondent's part in obtaining a final settlement of the dispute; or
 - (b) the parties agree on the termination of the proceedings; or
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible; or
 - (d) the arbitral tribunal makes an award under section 25 (2) (a) dismissing the claim.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to section 33 and section 34 (4).

33 Correction and interpretation of award, and making additional award

(Model Law art 33)

- (1) Within 30 days of receipt of the award, unless another period of time has been agreed on by the parties—
 - (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature; and
 - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

Section 33A

- 1 (2) If the arbitral tribunal considers a request under subsection (1) to be
2 justified, it must make the correction or give the interpretation
3 within 30 days of receipt of the request.
- 4 (3) The interpretation forms part of the award.
- 5 (4) The arbitral tribunal may correct any error of the type referred to in
6 subsection (1) (a) on its own initiative within 30 days of the date of
7 the award.
- 8 (5) Unless otherwise agreed by the parties, a party, with notice to the
9 other party, may request, within 30 days of receipt of the award, the
10 arbitral tribunal to make an additional award as to claims presented
11 in the arbitral proceedings but omitted from the award.
- 12 (6) If the arbitral tribunal considers the request to be justified, it must
13 make the additional award within 60 days.
- 14 (7) The arbitral tribunal may extend, if necessary, the period of time
15 within which it may make a correction, interpretation or an
16 additional award under subsection (2) or (5).
- 17 (8) Section 31 applies to a correction or interpretation of the award or to
18 an additional award.

19 **33A Specific performance**

20 Unless otherwise agreed by the parties, the arbitrator has the power
21 to make an award ordering specific performance of any contract if
22 the court would have power to order specific performance of that
23 contract.

24 *Note* There is no equivalent to this section in the Model Law.

1 **33B Costs**

- 2 (1) Unless otherwise agreed by the parties, the costs of an arbitration
3 (including the fees and expenses of the arbitrator or arbitrators) are
4 to be in the discretion of the arbitral tribunal.
- 5 (2) Unless otherwise agreed by the parties, the arbitral tribunal may
6 direct that the costs of an arbitration, or of any part of the arbitral
7 proceedings, are to be limited to a specified amount.
- 8 (3) A direction under subsection (2) may be varied at any stage, but this
9 must be done sufficiently in advance of the incurring of costs to
10 which it relates, or the taking of any steps in the proceedings which
11 may be affected by it, for the limit to be taken into account.
- 12 (4) The arbitral tribunal may, in making an award—
- 13 (a) direct to whom, by whom, and in what manner, the whole or
14 any part of the costs that it awards are to be paid; and
- 15 (b) tax or settle the amount of costs to be paid or any part of those
16 costs; and
- 17 (c) award costs to be taxed or settled as between party and party or
18 as between legal practitioner and client.
- 19 (5) Any costs of an arbitration (other than the fees or expenses of an
20 arbitrator) that are directed to be paid by an award are, to the extent
21 that they have not been taxed or settled by the arbitral tribunal, to be
22 assessed in accordance with section 33C.
- 23 (6) If no provision is made by an award with respect to the costs of the
24 arbitration, a party may, within 14 days after receiving the award,
25 apply to the arbitral tribunal for directions as to the payment of
26 those costs.
- 27 (7) The arbitral tribunal must, after hearing any party who wishes to be
28 heard, amend the award by adding to it such directions as the
29 arbitral tribunal thinks proper with respect to the payment of the
30 costs of the arbitration.

31 *Note* There is no equivalent to this section in the Model Law.

1 **33C Application of Legal Profession Act 2006**

2 For section 33B (5), the costs of an arbitration are to be assessed in
3 accordance with the *Legal Profession Act 2006*, division 3.2.7.

4 *Note* There is no equivalent to this section in the Model Law.

5 **33D Costs of abortive arbitration**

6 (1) Unless otherwise agreed in writing by the parties, if an arbitration is
7 commenced but for any reason fails, the court may, on the
8 application of a party or the arbitral tribunal made within 6 months
9 after the failure of the arbitration, make such orders in relation to the
10 costs of the arbitration as it thinks just.

11 (2) For the purposes of this section, an arbitration is taken to have failed
12 if—

13 (a) a final award is not made by the arbitral tribunal before the
14 arbitration terminates; or

15 (b) an award made is wholly set aside by the court.

16 (3) If the failed arbitration is a related proceedings (within the meaning
17 of section 27C), the court may stay proceedings on the application
18 under subsection (1) pending the determination of the other
19 arbitration proceedings to which the failed arbitration is related.

20 *Note* There is no equivalent to this section in the Model Law.

21 **33E Interest up to making of award**

22 (1) Unless otherwise agreed by the parties, where an arbitral tribunal
23 makes an award for the payment of money (whether on a claim for a
24 liquidated or an unliquidated amount), the arbitral tribunal may
25 include in the sum for which the award is made interest, at such
26 reasonable rate as the arbitral tribunal determines—

27 (a) on the whole or any part of the money; and

28 (b) for the whole or any part of the period between the date on
29 which the cause of action arose and the date on which the
30 award is made.

- 1 (2) Subsection (1) does not—
- 2 (a) authorise the awarding of interest on interest awarded under
- 3 this section; or
- 4 (b) apply in relation to any amount on which interest is payable as
- 5 of right whether because of an agreement or otherwise; or
- 6 (c) affect the damages recoverable for the dishonour of a bill of
- 7 exchange.

8 *Note* There is no equivalent to this section in the Model Law.

9 **33F Interest on debt under award**

- 10 (1) This section applies if—
- 11 (a) an arbitral tribunal makes an award for the payment of an
- 12 amount of money; and
- 13 (b) under the award, the amount is to be paid by a particular day
- 14 (the *due date*);
- 15 unless otherwise agreed by the parties.
- 16 (2) The arbitral tribunal may direct that interest, including compound
- 17 interest, is payable if the amount is not paid on or before the due
- 18 date.
- 19 (3) The arbitral tribunal may set a reasonable rate of interest.
- 20 (4) The interest is payable—
- 21 (a) from the day immediately following the due date; and
- 22 (b) on so much of the money as remains unpaid.
- 23 (5) The direction is taken to form part of the award.

24 *Note* There is no equivalent to this section in the Model Law.

1 **Part 7 Recourse against award**

2 **34 Application for setting aside as exclusive recourse**
3 **against arbitral award**

4 (Model Law art 34)

5 (1) Recourse to the court against an arbitral award may be made only by
6 an application for setting aside in accordance with subsections (2)
7 and (3) or by an appeal under section 34A.

8 *Note* The Model Law does not provide for appeals as under s 34A.

9 (2) An arbitral award may be set aside by the court only if—

10 (a) the party making the application furnishes proof that—

11 (i) a party to the arbitration agreement referred to in
12 section 7 was under some incapacity, or the arbitration
13 agreement is not valid under the law to which the parties
14 have subjected it or, failing any indication in it, under the
15 law of the Territory; or

16 (ii) the party making the application was not given proper
17 notice of the appointment of an arbitral tribunal or of the
18 arbitral proceedings or was otherwise unable to present
19 the party's case; or

20 (iii) the award deals with a dispute not contemplated by or not
21 falling within the terms of the submission to arbitration,
22 or contains decisions on matters beyond the scope of the
23 submission to arbitration, provided that, if the decisions
24 on matters submitted to arbitration can be separated from
25 those not so submitted, only that part of the award which
26 contains decisions on matters not submitted to arbitration
27 may be set aside; or

- 1 (iv) the composition of the arbitral tribunal or the arbitral
2 procedure was not in accordance with the agreement of
3 the parties, unless such agreement was in conflict with a
4 provision of this Act from which the parties cannot
5 derogate, or, failing such agreement, was not in
6 accordance with this Act; or
- 7 (b) the court finds that—
- 8 (i) the subject-matter of the dispute is not capable of
9 settlement by arbitration under the law of the Territory; or
- 10 (ii) the award is in conflict with the public policy of the
11 Territory.
- 12 (3) An application for setting aside may not be made after 3 months
13 have elapsed from the date on which the party making that
14 application had received the award or, if a request had been made
15 under section 33, from the date on which that request had been
16 disposed of by the arbitral tribunal.
- 17 (4) The court, when asked to set aside an award, may, where
18 appropriate and so requested by a party, suspend the setting aside of
19 proceedings for a period of time determined by it in order to give the
20 arbitral tribunal an opportunity to resume the arbitral proceedings or
21 to take such other action as in the arbitral tribunal's opinion will
22 eliminate the grounds for setting aside.

23 **34A Appeals against awards**

- 24 (1) An appeal lies to the court on a question of law arising out of an
25 award if—
- 26 (a) the parties agree, before the end of the appeal period referred to
27 in subsection (6), that an appeal may be made under this
28 section; and
- 29 (b) the court grants leave.
- 30 (2) An appeal under this section may be brought by any of the parties to
31 an arbitration agreement.

- 1 (3) The court must not grant leave unless it is satisfied—
- 2 (a) the determination of the question will substantially affect the
- 3 rights of 1 or more of the parties; and
- 4 (b) the question is one which the arbitral tribunal was asked to
- 5 determine; and
- 6 (c) on the basis of the findings of fact in the award—
- 7 (i) the decision of the tribunal on the question is obviously
- 8 wrong; or
- 9 (ii) the question is one of general public importance and the
- 10 decision of the tribunal is at least open to serious doubt;
- 11 and
- 12 (d) despite the agreement of the parties to resolve the matter by
- 13 arbitration, it is just and proper in all the circumstances for the
- 14 court to determine the question.
- 15 (4) An application for leave to appeal must identify the question of law
- 16 to be determined and state the grounds on which it is alleged that
- 17 leave to appeal should be granted.
- 18 (5) The court is to determine an application for leave to appeal without
- 19 a hearing unless it appears to the court that a hearing is required.
- 20 (6) An appeal may not be made under this section after 3 months have
- 21 elapsed from the date on which the party making the appeal received
- 22 the award or, if a request had been made under section 33, from the
- 23 date on which that request had been disposed of by the arbitral
- 24 tribunal (in this section referred to as the *appeal period*).
- 25 (7) On the determination of an appeal under this section the court may
- 26 by order—
- 27 (a) confirm the award; or
- 28 (b) vary the award; or

- 1 (c) remit the award, together with the court's opinion on the
2 question of law which was the subject of the appeal, to the
3 arbitrator for reconsideration or, where a new arbitrator has
4 been appointed, to that arbitrator for consideration; or
- 5 (d) set aside the award in whole or in part.
- 6 (8) The court must not exercise its power to set aside an award, in
7 whole or in part, unless it is satisfied that it would be inappropriate
8 to remit the matters in question to the arbitral tribunal for
9 reconsideration.
- 10 (9) Where the award is remitted under subsection (7) (c) the arbitrator
11 must, unless the order otherwise directs, make the award within
12 3 months after the date of the order.
- 13 (10) The court may make any leave which it grants under
14 subsection (3) (c) subject to the applicant complying with any
15 conditions it considers appropriate.
- 16 (11) Where the award of an arbitrator is varied on an appeal under this
17 section, the award as varied has effect (except for this section) as if
18 it were the award of the arbitrator.
- 19 *Note* There is no equivalent to this section in the Model Law.

1 **Part 8** **Recognition and enforcement of**
2 **awards**

3 **35** **Recognition and enforcement**
4 (Model Law art 35)

- 5 (1) An arbitral award, irrespective of the State or other Territory in
6 which it was made, is to be recognised in the ACT as binding and,
7 on application in writing to the court, is to be enforced subject to the
8 provisions of this section and section 36.
- 9 (2) The party relying on an award or applying for its enforcement must
10 supply the original award or a copy of the original award.
- 11 (3) If the award is not made in English, the court may request the party
12 to supply a translation of it into English.

13 *Note* So much of the Model Law, art 35 (2) as provides for the translation of
14 an award that is not in the official language of the enforcing State has
15 been modified.

16 **36** **Grounds for refusing recognition or enforcement**
17 (Model Law art 36)

- 18 (1) Recognition or enforcement of an arbitral award, irrespective of the
19 State or Territory in which it was made, may be refused only—
- 20 (a) at the request of the party against whom it is invoked, if that
21 party furnishes to the court proof that—
- 22 (i) a party to the arbitration agreement was under some
23 incapacity, or the arbitration agreement is not valid under
24 the law to which the parties have subjected it or, failing
25 any indication in it, under the law of the State or Territory
26 where the award was made; or
- 27 (ii) the party against whom the award is invoked was not
28 given proper notice of the appointment of an arbitrator or
29 of the arbitral proceedings or was otherwise unable to
30 present the party's case; or

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- 1 (iii) the award deals with a dispute not contemplated by or not
2 falling within the terms of the submission to arbitration,
3 or it contains decisions on matters beyond the scope of
4 the submission to arbitration, provided that, if the
5 decisions on matters submitted to arbitration can be
6 separated from those not so submitted, that part of the
7 award which contains decisions on matters submitted to
8 arbitration may be recognised and enforced; or
- 9 (iv) the composition of the arbitral tribunal or the arbitral
10 procedure was not in accordance with the agreement of
11 the parties or, failing such agreement, was not in
12 accordance with the law of the State or Territory where
13 the arbitration took place; or
- 14 (v) the award has not yet become binding on the parties or
15 has been set aside or suspended by a court of the State or
16 Territory in which, or under the law of which, that award
17 was made; or
- 18 (b) if the court finds that—
- 19 (i) the subject-matter of the dispute is not capable of
20 settlement by arbitration under the law of the Territory; or
- 21 (ii) the recognition or enforcement of the award would be
22 contrary to the public policy of the Territory.
- 23 (2) If an application for setting aside or suspension of an award has
24 been made to a court referred to in subsection (1) (a) (v), the court
25 may, if it considers it proper, adjourn its decision and may also, on
26 the application of the party claiming recognition or enforcement of
27 the award, order the party to provide appropriate security.

1 **Part 9** **Miscellaneous**

2 **37** **Death of party**

3 (1) Unless otherwise agreed by the parties, if a party to an arbitration
4 agreement dies the agreement is not discharged (either as respects
5 the deceased or any other party) and the authority of an arbitral
6 tribunal is not revoked by the death but that agreement is
7 enforceable by or against the personal representative of the
8 deceased.

9 (2) Nothing in subsection (1) affects the operation of any enactment or
10 rule of law by virtue of which a right of action is extinguished by
11 the death of a person.

12 *Note* There is no equivalent to this section in the Model Law.

13 **38** **Interpleader**

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

21 *Note* There is no equivalent to this section in the Model Law.

22 **39** **Immunity**

23 (1) An arbitrator is not liable for anything done or omitted to be done in
24 good faith in his or her capacity as arbitrator.

25 (2) An entity that appoints, or fails to appoint, a person as arbitrator is
26 not liable in relation to the appointment, failure or refusal if done in
27 good faith.

- 1 (3) In this section, a reference to an *arbitrator* includes an arbitrator
2 acting as a mediator, conciliator or other non-arbitral intermediary
3 under section 27D.

4 *Note* There is no equivalent to this section in the Model Law.

5 **40 Court rules**

- 6 (1) Rules of court may be made under the *Court Procedures Act 2004*
7 for carrying the purposes of this Act into effect and, in particular,
8 for or with respect to the following:

9 (a) applications to a court under this Act and the costs of such
10 applications;

11 (b) the payment or bringing of money into and out of a court in
12 satisfaction of claims to which arbitration agreements apply
13 and the investment of that money;

14 (c) the examination of witnesses before a court or before any other
15 person and the issue of commissions or requests for the
16 examination of witnesses outside the Territory, for an
17 arbitration;

18 (d) offers of compromise in relation to claims to which arbitration
19 agreements apply;

20 (e) any other matter or thing for or with respect to which rules are
21 by this Act authorised or required to be made by a court.

- 22 (2) Subsection (1) does not limit the rule-making powers conferred on a
23 court by any other Act.

24 *Note* There is no equivalent to this section in the Model Law.

25 **41 Regulation-making power**

26 The Executive may make regulations for this Act.

27 *Note 1* A regulation must be notified, and presented to the Legislative
28 Assembly, under the *Legislation Act*.

29 *Note 2* There is no equivalent to this section in the Model Law.

1 **Part 10** **Repeal and consequential**
2 **amendments**

3 **42** **Legislation repealed**

4 The *Commercial Arbitration Act 1986* (A1986-84) is repealed.

5 **43** **Legislation amended—sch 1**

6 This Act amends the legislation mentioned in schedule 1.

1 **Part 20** **Transitional**

2 **200** **Definitions—pt 20**

3 In this part:

4 *commencement day* means the day this Act, section 1C commences.

5 *repealed Act* means the *Commercial Arbitration Act 1986* as in
6 force immediately before the commencement day.

7 **201** **Arbitration under repealed Act**

8 (1) Subject to subsection (2)—

9 (a) this Act applies to an arbitration agreement (whether made
10 before, on or after the commencement of this Act) and to an
11 arbitration under such an agreement; and

12 (b) a reference in an arbitration agreement to the repealed Act, or a
13 provision of that Act, is to be construed as a reference to this
14 Act or the corresponding provision (if any) of this Act.

15 (2) If an arbitration was commenced before the commencement day, the
16 law governing the arbitration and the arbitration agreement is to be
17 that which would have been applicable if this Act had not been
18 enacted.

19 (3) For this section, an arbitration agreement is taken to have been
20 commenced if—

21 (a) a dispute to which the relevant agreement applies has arisen;
22 and

23 (b) the arbitral tribunal has been properly constituted.

1 **202 Transitional regulations**

- 2 (1) A regulation may prescribe transitional matters necessary or
3 convenient to be prescribed because of the enactment of this Act.
- 4 (2) A regulation may modify this part (including in relation to another
5 territory law) to make provision in relation to anything that, in the
6 Executive's opinion, is not, or is not adequately or appropriately,
7 dealt with in this part.
- 8 (3) A regulation under subsection (2) has effect despite anything
9 elsewhere in this Act or another territory law.

10 **203 Expiry—pt 20**

11 This part expires 2 years after the commencement day.

12 *Note* Transitional provisions are kept in the Act for a limited time. A
13 transitional provision is repealed on its expiry but continues to have
14 effect after its repeal (see [Legislation Act](#), s 88).

1 **Schedule 1** **Consequential amendments**

2 (see s 43)

3 **Part 1.1** **Anglican Church of Australia**
4 **Constitution Act 1961**

5 **[1.1] Section 9**

6 *substitute*

7 **9 Powers of tribunal under Constitution, ch 9**

8 (1) A tribunal mentioned in the Constitution, chapter 9 is taken to be an
9 arbitral tribunal within the meaning of the *Commercial*
10 *Arbitration Act 2016* for—

- 11 (a) securing the attendance of witnesses; and
12 (b) the production of documents; and
13 (c) the taking of evidence of a witness on oath.

14 *Note* **Oath** includes affirmation and *swear* an oath includes make an
15 affirmation (see [Legislation Act](#), dict, pt 1).

16 (2) A party to a proceeding before a tribunal mentioned in
17 subsection (1), or any person permitted by the tribunal to submit any
18 evidence to it, is taken to be a party to a reference or submission to
19 an arbitration within the meaning of the *Commercial Arbitration*
20 *Act 2016*.

1 **Part 1.2 Evidence (Miscellaneous**
2 **Provisions) Act 1991**

3 **[1.2] Section 16, definition of *territory court*, paragraph (e)**

4 *substitute*

5 (e) an arbitral tribunal conducting a proceeding under the
6 *Commercial Arbitration Act 2016*; or

7 **[1.3] New section 16 (2)**

8 *insert*

9 (2) In this section:

10 *arbitral tribunal*—see the *Commercial Arbitration Act 2016*,
11 dictionary.

12 **Part 1.3 Health Act 1993**

13 **[1.4] Section 106 (3)**

14 *omit*

15 *Commercial Arbitration Act 1986*

16 *substitute*

17 *Commercial Arbitration Act 2016*

1 **Part 1.4** **Independent Competition and**
2 **Regulatory Commission Act 1997**

3 **[1.5] Sections 31 and 40 (1)**

4 *omit*

5 *Commercial Arbitration Act 1986*

6 *substitute*

7 *Commercial Arbitration Act 2016*

8 **[1.6] Section 40 (2)**

9 *omit*

10 *Commercial Arbitration Act 1986*, section 20 (1)

11 *substitute*

12 *Commercial Arbitration Act 2016*, section 24A

13 **[1.7] Section 40 (6)**

14 *omit*

15 *Commercial Arbitration Act 1986*, section 34 (1)

16 *substitute*

17 *Commercial Arbitration Act 2016*, section 33B (1)

1 **Part 1.5 Road Transport (General)**
2 **Act 1999**

3 **[1.8] Section 90, definition of *CTP arbitrator***

4 *substitute*

5 *CTP arbitrator* means an arbitral tribunal under the *Road Transport*
6 *(Third-Party Insurance) Act 2008*, section 45.

7 **Part 1.6 Road Transport (General)**
8 **Regulation 2000**

9 **[1.9] Schedule 1, part 1.9A, item 1, column 3**

10 *omit*

11 arbitrator

12 *substitute*

13 arbitral tribunal

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

16 **[1.10] Section 45 (2)**

17 *omit*

18 *Commercial Arbitration Act 1986*

19 *substitute*

20 *Commercial Arbitration Act 2016*

1 **[1.11] Section 45 (3)**

2 *omit*

3 The arbitrator for the matter

4 *substitute*

5 The arbitral tribunal for the matter

6 **[1.12] Section 45 (5) and notes**

7 *substitute*

8 (5) The arbitral tribunal may approve a premium for a CTP policy only
9 if the premium is, in the arbitral tribunal's opinion, sufficient to
10 fully fund the present and likely future liability of the licensed
11 insurer under this Act.

12 *Note 1* Criteria for deciding whether a CTP premium will fully fund the present
13 and likely future liability under this Act of a licensed insurer are in s 43.

14 *Note 2* A decision under this section by an arbitral tribunal is a reviewable
15 decision (see the [Road Transport \(General\) Act 1999](#), pt 7 and the [Road
16 Transport \(General\) Regulation 2000](#)).

17 **[1.13] New section 45 (7)**

18 *insert*

19 (7) In this section:

20 *arbitral tribunal*—see the *Commercial Arbitration Act 2016*,
21 dictionary.

1 **Part 1.8 Utilities Act 2000**

2 **[1.14] Section 225 (3) (g)**

3 *omit*

4 *Commercial Arbitration Act 1986*

5 *substitute*

6 *Commercial Arbitration Act 2016*

7 **Part 1.9 Workers Compensation Act 1951**

8 **[1.15] Section 223 (2) (j)**

9 *omit*

10 *Commercial Arbitration Act 1986*

11 *substitute*

12 *Commercial Arbitration Act 2016*

13 **Part 1.10 Workers Compensation**
14 **Regulation 2002**

15 **[1.16] Section 49**

16 *omit*

17 *Commercial Arbitration Act 1986*

18 *substitute*

19 *Commercial Arbitration Act 2016*

Dictionary

(see s 1E)

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
- function
- oath
- person
- Supreme Court
- the Territory.

Note 3 The Model Law does not include definitions of the following terms:

- arbitration agreement
- confidential information
- disclose
- domestic commercial arbitration
- exercise
- function
- interim measure
- Model Law
- party
- the court.

arbitral tribunal means a sole arbitrator or a panel of arbitrators.

arbitration means any domestic commercial arbitration whether or not administered by a permanent arbitral institution.

arbitration agreement—see section 7 (1).

confidential information, in relation to arbitral proceedings, means information that relates to the arbitral proceedings or to an award made in those proceedings and includes the following:

- (a) the statement of claim, statement of defence and all other pleadings, submissions, statements or other information supplied to the arbitral tribunal by a party;

- 1 (b) any information supplied by a party to another party in
2 compliance with a direction of the arbitral tribunal;
- 3 (c) any evidence (whether documentary or otherwise) supplied to
4 the arbitral tribunal;
- 5 (d) any notes made by the arbitral tribunal of oral evidence or
6 submissions given before the arbitral tribunal;
- 7 (e) any transcript of oral evidence or submissions given before the
8 arbitral tribunal;
- 9 (f) any rulings of the arbitral tribunal;
- 10 (g) any award of the arbitral tribunal.
- 11 **disclose**, in relation to confidential information, includes publishing
12 or communicating or otherwise supplying the confidential
13 information.
- 14 **domestic**, in relation to an arbitration—see section 1 (3).
- 15 **interim measure**—see section 17.
- 16 **Model Law** means the UNCITRAL Model Law on International
17 Commercial Arbitration (as adopted by the United Nations
18 Commission on International Trade Law on 21 June 1985, and as
19 amended by the United Nations Commission on International Trade
20 Law on 7 July 2006).
- 21 **party** means a party to an arbitration agreement and includes—
- 22 (a) any person claiming through or under a party to the arbitration
23 agreement; and
- 24 (b) in any case where an arbitration does not involve all of the
25 parties to the arbitration agreement, those parties to the
26 arbitration agreement who are parties to the arbitration.
- 27 **the court** means, subject to section 6 (2), the Supreme Court.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 15 December 2016.

2 Notification

Notified under the [Legislation Act](#) on 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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