

CONCURRENCE COPY

ARBITRATION (CIVIL ACTIONS) BILL, 1983

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:—

District Court (Amendment) Bill, 1983;

Courts of Petty Sessions (Civil Claims) Amendment Bill, 1983;

Legal Services Commission (Amendment) Bill, 1983.

The object of this Bill is to provide for the arbitration of certain civil actions (“referred actions”) instituted in the District Court or a court of petty sessions and referred by the relevant court for determination under the proposed Act.

The Bill contains the following provisions:—

Clause 1.—Short title.

Clause 2.—Commencement.

Clause 3.—Interpretation.

Clause 4 excludes a referred action from the operation of other statutory provisions relating to arbitration.

Clause 5 provides for the nomination and appointment of barristers and solicitors to act as arbitrators under the proposed Act.

Clause 6 is an exoneration clause.

Clause 7 declares the jurisdiction of an arbitrator under the proposed Act to be part of the jurisdiction of the court by which a matter is referred to the arbitrator.

Clause 8 confers rights of appearance before an arbitrator.

Clause 9 requires an arbitrator to endeavour to settle a referred action before he proceeds to arbitrate thereon.

Clause 10 deals with the procedure before an arbitrator.

Clause 11 provides for the issue of a subpoena in a referred action on application to the court that referred the action.

Clause 12 provides a remedy for a failure by a witness to take an oath or answer a question when required so to do by an arbitrator.

Clause 13 deals with the taking of evidence by an arbitrator.

Clause 14 provides for the punishment of misbehaviour in relation to a referred matter.

Clause 15 requires an arbitrator to incorporate his findings in a referred matter in a written award and forthwith transmit the award to the court by which the matter was referred to him.

Clause 16 deals with the costs in a referred action.

Clause 17 excludes, in relation to minor referred actions, the supervisory jurisdiction of the superior courts, and rights of appeal, except where relief is sought on the ground of a lack of jurisdiction or a denial of natural justice.

Clause 18 provides a remedy for a party to a referred action (other than a minor action) who is dissatisfied with the award of an arbitrator by enabling the party to have a rehearing of the action in the court by which it was referred to the arbitrator.

Clause 19 provides for the prosecution of offences.

Clause 20 authorises the Governor to make regulations and applies to proceedings in a referred action the relevant rules of court of the court by which the action was referred to arbitration.

ARBITRATION (CIVIL ACTIONS) BILL, 1983

No. , 1983.

A BILL FOR

An Act to provide for the determination by an arbitrator of certain civil actions instituted in the District Court or a court of petty sessions.

[MR WALKER—17 *March*, 1983.]

See also District Court (Amendment) Bill, 1983; Courts of Petty Sessions (Civil Claims) Amendment Bill, 1983; Legal Services Commission (Amendment) Bill, 1983.

Arbitration (Civil Actions).

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

5 Short title.

1. This Act may be cited as the "Arbitration (Civil Actions) Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
(2) Except as provided by subsection (1), this Act shall commence
10 on such day as may be appointed by the Governor in respect thereof and as
may be notified by proclamation published in the Gazette.

Interpretation.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—
15 "arbitrator" means an arbitrator holding office under section 5;
"referred action" means an action the subject of an unrevoked reference
to an arbitrator under section 63A of the District Court Act, 1973,
or section 21H of the Courts of Petty Sessions (Civil Claims) Act,
1970;
20 "regulations" means regulations made under this Act;
"rules" means rules made under the District Court Act, 1973, or the
Courts of Petty Sessions (Civil Claims) Act, 1970, as the case
may require, including rules applied by section 20;
"this Act" includes the regulations and the rules.

Arbitration (Civil Actions).

(2) Where, under section 63A of the District Court Act, 1973, or section 21H of the Courts of Petty Sessions (Civil Claims) Act, 1970, an action is referred to arbitrators, a reference in this Act (however expressed) to an arbitrator in relation to the action includes a reference to those
5 arbitrators.

Independent operation of Act.

4. (1) The provisions of section 63 of the District Court Act, 1973, section 71 of the Courts of Petty Sessions (Civil Claims) Act, 1970, and any other Act relating to arbitration do not affect the operation of this Act
10 and this Act does not apply to arbitration pursuant to those provisions.

(2) Where an action has been referred to an arbitrator under—

(a) section 63A of the District Court Act, 1973; or

(b) section 21H of the Courts of Petty Sessions (Civil Claims) Act, 1970,

15 the provisions of the Act under which it is referred cease, except to the extent provided by this Act, to apply to or in respect of the action.

Appointment to office as arbitrator.

5. (1) The Chief Judge of the District Court may appoint suitable persons to be arbitrators to hear and determine actions to which orders under
20 section 63A of the District Court Act, 1973, apply.

(2) The Chairman of the Bench of Stipendiary Magistrates may appoint suitable persons to be arbitrators to hear and determine actions to which orders under section 21H of the Courts of Petty Sessions (Civil Claims) Act, 1970, apply.

25 (3) An appointment of an arbitrator under subsection (1) or (2) shall be made by instrument in writing signed in his official capacity by the person making the appointment.

Arbitration (Civil Actions).

(4) A person shall not be appointed under subsection (1) or (2) unless he is a barrister or solicitor nominated in the prescribed manner by a prescribed person or body of persons.

(5) The person who, or a successor in office of the person who,
5 appointed an arbitrator under subsection (1) or (2)—

(a) may, by instrument in writing signed by him in his official capacity, revoke the appointment; and

(b) shall, at the written request of the person or body who nominated the arbitrator for appointment, so revoke the appointment.

10 (6) An arbitrator may resign his office by instrument in writing delivered to the person by whom he was appointed or a successor in office of that person.

(7) The remuneration of an arbitrator shall be such as is from time to time determined by the Minister and shall be paid out of money provided
15 by Parliament.

Exoneration of arbitrator and others.

6. An action does not lie against an arbitrator, a party in a referred action or any other person on account of any proceedings taken, any publication made or any thing done under the authority of this Act, or taken, made
20 or done in good faith and purportedly under the authority of this Act, or on account of any omission made in good faith in respect of the administration of this Act.

Jurisdiction of arbitrator.

7. (1) The jurisdiction conferred on an arbitrator by this Act in relation
25 to a referred action is part of the jurisdiction of the court by which the action was referred.

(2) Subject to this Act, a tribunal other than the arbitrator to whom an action has been referred for determination pursuant to this Act has no jurisdiction in respect of any issue in dispute in the action while it is before
30 the arbitrator.

Arbitration (Civil Actions).

(3) In subsection (2), "tribunal" means any court, tribunal, board or other body, or any person, empowered by an Act or by agreement of parties to determine by litigation, arbitration, conciliation or otherwise any issue that is in dispute.

5 Appearances.

8. The provisions of—

(a) section 43 of the District Court Act, 1973; and

(b) section 11 of the Courts of Petty Sessions (Civil Claims) Act, 1970,

10 apply to and in relation to appearances before an arbitrator in proceedings on a referred action in the same way as they respectively apply to and in relation to appearances before the court by which the action was referred or before a registrar of the court.

Arbitrator to attempt conciliation.

9. (1) An arbitrator shall not make an award in a referred action until
15 he has brought, or has used his best endeavours to bring, the parties to the action to a settlement acceptable to all of them.

(2) Where a referred action is settled, whether or not pursuant to subsection (1), the arbitrator shall make an award that gives effect to the terms of settlement.

20 Procedure.

10. (1) Except to the extent that this Act and any directions given by the court when referring an action to an arbitrator otherwise provide, the procedure at an arbitration under this Act shall be determined by the arbitrator.

25 (2) Subject to the rules of evidence being complied with, an arbitrator shall act according to equity, good conscience and the substantial merits of the case without regard for technicalities or legal forms.

Arbitration (Civil Actions).

Issue of subpoenas.

11. Sections 64, 65 and 66 of the District Court Act, 1973, and sections 72 and 73 of the Courts of Petty Sessions (Civil Claims) Act, 1970, apply to and in respect of a referred action in the same way as they would apply to and in respect of the action if it had not been referred to an arbitrator and so apply as if the latter Act had been amended—

- (a) by omitting from section 72 (3) the words “in open court” and by inserting instead the words “before the arbitrator to whom the action was referred”; and
- 10 (b) by omitting from section 72 (3) (a) the words “court at which” and by inserting instead the words “arbitrator before whom”.

Refusal or failure to take oath, etc.

12. (1) Where, at the hearing of a referred action, a witness—

- 15 (a) refuses or fails to take an oath when required by the arbitrator to do so; or
- (b) refuses or fails to answer a question that he is required by the arbitrator to answer,

the arbitrator or a party to the referred action may apply to the court by which the action was referred for an order that the witness attend before the 20 court for examination.

(2) Where application is made for an order under subsection (1), the court shall, unless satisfied that there was a reasonable excuse for the refusal or failure of the witness to take the oath or answer the question, make the order applied for.

25 (3) Where the court makes an order under subsection (1) it may also order the transmission to the arbitrator of a record of any evidence given pursuant to an order under subsection (1) and any such evidence shall be deemed to have been given at the hearing before the arbitrator.

(4) Failure to comply with an order under subsection (1) shall be deemed to constitute a contempt of the court that made the order, committed in the face of the court.

Arbitration (Civil Actions).

Evidence.

13. (1) Evidence given in an action before an arbitrator pursuant to this Act shall be given and received in the same way as it would be given and received before the court by which the action was referred to the
5 arbitrator.

(2) Without prejudice to any arrangement made by a party for the recording of evidence referred to in subsection (1), that subsection shall not be construed as requiring evidence referred to therein to be recorded.

(3) An arbitrator may administer an oath or take an affidavit for
10 the purpose of proceedings on a referred action.

(4) A person who wilfully and corruptly gives false evidence before an arbitrator under this Act is guilty of perjury.

Contempt.

14. (1) A person shall not—

15 (a) wilfully insult—

(i) an arbitrator while he is hearing a referred action or proceeding to or from such a hearing; or

(ii) a person in attendance at such a hearing or proceeding to or from such a hearing;

20 (b) wilfully misbehave during the hearing of a referred action;

(c) wilfully and without lawful excuse interrupt the hearing of a referred action;

(d) assault or wilfully obstruct an arbitrator or other person during the hearing of a referred action; or

25 (e) without lawful excuse, disobey a lawful direction given to him by an arbitrator during the hearing of a referred action.

(2) An arbitrator may direct a person who contravenes subsection (1) to remove himself from the sitting of the arbitrator at which the contravention occurs and the person to whom the direction is given shall
30 forthwith comply with the direction.

Penalty: \$1,000.

Arbitration (Civil Actions).

Determination by arbitrator.

15. (1) The issues in dispute in a referred action before an arbitrator shall be determined by the arbitrator on the evidence adduced before him and the arbitrator shall record his determination of the action by an award
5 in writing signed by him which shall, to the extent provided by the rules, specify his reasons for the award and shall be forthwith transmitted by him to the court by which the action was referred to him.

(2) Subject to subsection (3), an arbitrator may not, in proceedings
10 in a referred action, make an award that could not have been made in the action if it had been heard and determined by the court by which it was referred to the arbitrator.

(3) The award of an arbitrator under this Act does not fail to have full effect, and may not be called in question, by reason only that the amount awarded exceeds the amount claimed in the action to which the
15 award relates.

Costs.

16. (1) Division 6 of Part III of the District Court Act, 1973, applies to and in respect of the costs in an action referred under section 63A of that Act in the same way as it would have applied if the action—

20 (a) had not been so referred; and

(b) had been determined in the same way as the award of the arbitrator, a reference in that Division (section 122 (4) excepted) to the court being construed as a reference to the arbitrator.

(2) An arbitrator has the same powers in relation to costs in an
25 action referred to him under section 21H of the Courts of Petty Sessions (Civil Claims) Act, 1970, as the court by which the action was so referred would have had if the hearing before the arbitrator had been a hearing before that court.

Arbitration (Civil Actions).

Judicial supervision of arbitrator.

17. (1) Where the amount claimed in a referred action, or the value of the property to which a referred action relates, does not exceed the amount prescribed for the purposes of this section, no relief or remedy lies—

- 5 (a) under section 69 of the Supreme Court Act, 1970;
 (b) by way of declaratory judgment or order;
 (c) by way of injunction;
 (d) under section 126, 127 or 128 of the District Court Act, 1973; or
10 (e) under section 69 of the Courts of Petty Sessions (Civil Claims) Act,
 1970,

in relation to proceedings under this Act on the referred action.

(2) Subsection (1) does not apply where the relief or remedy is sought on the ground of a lack of jurisdiction or a denial of natural justice.

Rehearing.

15 18. (1) Except to the extent that this section and section 17 otherwise provide, an award of an arbitrator made pursuant to this Act is final and conclusive and not liable to be called in question.

20 (2) Except in the case of a referred action where the amount claimed, or the value of the property to which the action relates, does not exceed the amount prescribed for the purposes of section 17, the court by which an action was referred to an arbitrator, or the registrar of that court, shall order a rehearing of the action if application for such an order is made by a person aggrieved by the award of the arbitrator and is so made before that award becomes enforceable as a judgment or order of the court.

25 (3) Where an order is made under subsection (2)—

- (a) the award that gave rise to the order ceases to have effect; and
(b) subject to subsection (4), the action to which the order relates shall be heard and determined in the court as if it had never been referred to an arbitrator.

Arbitration (Civil Actions).

(4) The court that hears and determines an action under this section may, in addition to making an order for the payment of costs under section 120 of the District Court Act, 1973, or the Courts of Petty Sessions (Civil Claims) Act, 1970, as the case may be, make a like order for the payment of
5 costs in respect of the hearing before the arbitrator.

Offences.

19. (1) Proceedings for an offence against this Act may—

- (a) be taken and prosecuted by any person acting with the authority in writing of the Minister; and
- 10 (b) be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

(2) In a prosecution for an offence against this Act, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority without proof of the Minister's signature.

15 (3) In proceedings for an offence against this Act, the informant may conduct his case himself, or by his counsel or attorney, or by an officer or temporary employee of the Public Service.

Regulations.

20 (20. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1) and section 161 (1) (t) of the District Court Act, 1973, the rules in force under that
25 Act that, but for this subsection, would not apply to or in respect of an arbitrator and an action referred to an arbitrator under section 63A of that Act, so apply, with such modifications as may be necessary or as the rules may prescribe, in the same way as they would apply to and in respect of the District Court and the action if the action had not been so referred.

Arbitration (Civil Actions).

(3) Without prejudice to the generality of subsection (1) and section 84 (1) (n) of the Courts of Petty Sessions (Civil Claims) Act, 1970, the rules in force under that Act that, but for this subsection, would not apply to or in respect of an arbitrator and an action referred to the arbitrator
5 under section 21H of that Act, so apply, with such modifications as may be necessary or as the rules may prescribe, in the same way as they would apply to and in respect of the court that so referred the action, and the action, if the action had not been so referred.

(4) A provision of a regulation may—

- 10 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
or
- 15 (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
or may do any combination of those things.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983





