

FIRST PRINT

ARBITRATION (CIVIL ACTIONS) AMENDMENT BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Arbitration (Civil Actions) Act 1983 so as—

- (a) to set out in greater detail the functions of arbitrators under that Act;
- (b) to make it clear that there is no appeal against the award of an arbitrator except by way of a rehearing by the referring court;
- (c) to prohibit the issue of subpoenas requiring an arbitrator to appear at a rehearing and to give or produce evidence relating to an arbitration; and
- (d) to provide for an arbitrator's award to be reinstated if a rehearing of the action is not proceeded with.

The Bill also contains amendments for the purpose of statute law revision.

Clause 1 specifies the short title of the proposed Act.

Clause 2 states that the Arbitration (Civil Actions) Act 1983 is referred to in the proposed Act as the Principal Act.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

Clause 4 declares that the Principal Act, as amended by the proposed Act, applies to actions commenced before the proposed Act commences.

Arbitration (Civil Actions) Amendment 1987

Clause 5 saves a regulation which has the effect of making an arbitrator's award final if the amount of money concerned is not more than \$1,000.

Schedule 1 (1) inserts into the Principal Act proposed section 7 (1A), (1B) and (1C) which provide that, subject to rules made under the District Court Act 1973 and the Local Courts (Civil Claims) Act 1970 and certain other exceptions, an arbitrator has the powers of the court which refers an action to the arbitrator, but may use those powers only for the purposes of arbitration.

Schedule 1 (2) and (3) (a) omit from the Principal Act an unnecessary reference to the monetary limit of an award which determines whether a rehearing of an action by the referring court may be obtained and make minor consequential amendments.

Schedule 1 (3) (b) inserts into the Principal Act proposed section 18 (3A) which prohibits the issue of subpoenas that require an arbitrator to give or produce, in a court conducting a rehearing of an action, evidence relating to arbitration proceedings.

Schedule 1 (3) (c) inserts into the Principal Act proposed section 18 (5) which has the effect of reinstating an award of an arbitrator as a judgment or order of a court where a rehearing of the action has been ordered but is subsequently discontinued or not proceeded with or the court orders that the award be reinstated.

Schedule 2 makes minor amendments to the Principal Act for the purpose of statute law revision as a consequence of terms used in the Local Courts Act 1982.

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TABLE OF PROVISIONS

1. Short title
2. Principal Act
3. Amendment of Act No. 43, 1983
4. Application of amendments
5. Saving of regulation

SCHEDULE 1—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 2—AMENDMENTS FOR THE PURPOSE OF STATUTE LAW
REVISION

**ARBITRATION (CIVIL ACTIONS) AMENDMENT BILL
1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Arbitration (Civil Actions) Act 1983 with respect to the functions of arbitrators, the bringing of appeals, the issue of subpoenas and the enforcement of awards; and for other purposes.

Arbitration (Civil Actions) Amendment 1987

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) Amendment Act 1987".

Principal Act

2. The Arbitration (Civil Actions) Act 1983 is referred to in this Act as
10 the Principal Act.

Amendment of Act No. 43, 1983

3. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Application of amendments

15 **4.** The Principal Act, as amended by this Act, applies to and in respect of an action commenced before the date of assent to this Act in the same way as that Act, as so amended, applies to and in respect of an action commenced on or after that date.

Saving of regulation

20 **5.** A regulation which, immediately before the commencement of this Act, prescribed an amount for the purposes of section 17 of the Principal Act shall, on that commencement, be deemed to prescribe an amount for the purposes of section 18 of that Act, as amended by this Act.

SCHEDULE 1

(Sec. 3)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 7 (**Jurisdiction of arbitrator**)—

5 Section 7 (1A)–(1C)—

After section 7 (1), insert:

(1A) Subject to this Act, an arbitrator has and may exercise, in relation to a referred action, all of the powers and authorities of the court by which the action was referred.

10 (1B) Subsection (1A) does not confer on an arbitrator powers or authorities of a court which are the same as, or similar to, the powers and authorities conferred by sections 12 and 14.

(1C) The powers and authorities conferred on an arbitrator shall be exercised only—

15 (a) for the purposes of determining the issues in dispute in a referred action and of making an award; and

(b) for related purposes.

(2) Section 17 (**Judicial supervision of arbitrator**)—

(a) Section 17 (1)—

20 Omit “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”, insert instead “No”.

(b) Section 17 (1)—

25 Omit “the” where lastly occurring, insert instead “a”.

(3) Section 18 (**Rehearing**)—

(a) Section 18 (2)—

Omit “section 17”, insert instead “this section”.

Arbitration (Civil Actions) Amendment 1987

SCHEDULE 1—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 18 (3A)—

After section 18 (3), insert:

5 (3A) Without affecting the generality of subsection (3), a subpoena for the giving of evidence or production of documents, at a rehearing of an action, by the arbitrator to whom the action was referred, shall not be issued if the evidence relates or the documents relate to the arbitration.

(c) Section 18 (5)—

After section 18 (4), insert:

10 (5) If, after an order is made under subsection (2) with respect to an award—

(a) the applicant for the order files a notice of discontinuance of the rehearing of the action;

(b) the applicant fails to attend the rehearing; or

15 (c) in accordance with the rules, the court orders that the award be reinstated—

(i) on being satisfied that the applicant does not intend to proceed with the rehearing; or

20 (ii) for such other reason as to the court appears sufficient,

the order under subsection (2) ceases to have effect and the award shall be deemed to be a judgment or order of the court.

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SCHEDULE 2

(Sec. 3)

AMENDMENTS FOR THE PURPOSE OF STATUTE LAW REVISION

- (1) Long title, section 19 (1) (b)—
- 5 Omit “court of petty sessions” wherever occurring, insert instead “Local Court”.
- (2) Sections 3 (1) (definitions of “referred action”, “rules”), 3 (2), 4, 5 (2), 8, 11, 16 (2), 17 (1) (e), 18 (4), 20 (3)—
- 10 Omit “Courts of Petty Sessions” wherever occurring, insert instead “Local Courts”.
- (3) Section 5 (2)—
- Omit “Chairman of the Bench of Stipendiary Magistrates”, insert instead “Chief Magistrate”.
- (4) Section 19 (1) (b)—
- 15 Omit “stipendiary magistrate”, insert instead “Magistrate”.

ARBITRATION (CIVIL ACTIONS) AMENDMENT ACT 1987
No. 28

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Principal Act
3. Amendment of Act No. 43, 1983
4. Application of amendments
5. Saving of regulation

SCHEDULE 1—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 2—AMENDMENTS FOR THE PURPOSE OF STATUTE LAW
REVISION

ARBITRATION (CIVIL ACTIONS) AMENDMENT ACT 1987 No. 28

NEW SOUTH WALES



Act No. 28, 1987

An Act to amend the Arbitration (Civil Actions) Act 1983 with respect to the functions of arbitrators, the bringing of appeals, the issue of subpoenas and the enforcement of awards; and for other purposes. [Assented to 15 May 1987]

Arbitration (Civil Actions) Amendment 1987

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:

Short title

1. This Act may be cited as the "Arbitration (Civil Actions) Amendment Act 1987".

Principal Act

2. The Arbitration (Civil Actions) Act 1983 is referred to in this Act as the Principal Act.

Amendment of Act No. 43, 1983

3. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Application of amendments

4. The Principal Act, as amended by this Act, applies to and in respect of an action commenced before the date of assent to this Act in the same way as that Act, as so amended, applies to and in respect of an action commenced on or after that date.

Saving of regulation

5. A regulation which, immediately before the commencement of this Act, prescribed an amount for the purposes of section 17 of the Principal Act shall, on that commencement, be deemed to prescribe an amount for the purposes of section 18 of that Act, as amended by this Act.

SCHEDULE 1

(Sec. 3)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 7 (**Jurisdiction of arbitrator**)—

Section 7 (1A)–(1C)—

After section 7 (1), insert:

(1A) Subject to this Act, an arbitrator has and may exercise, in relation to a referred action, all of the powers and authorities of the court by which the action was referred.

(1B) Subsection (1A) does not confer on an arbitrator powers or authorities of a court which are the same as, or similar to, the powers and authorities conferred by sections 12 and 14.

(1C) The powers and authorities conferred on an arbitrator shall be exercised only—

(a) for the purposes of determining the issues in dispute in a referred action and of making an award; and

(b) for related purposes.

(2) Section 17 (**Judicial supervision of arbitrator**)—

(a) Section 17 (1)—

Omit “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”, insert instead “No”.

(b) Section 17 (1)—

Omit “the” where lastly occurring, insert instead “a”.

(3) Section 18 (**Rehearing**)—

(a) Section 18 (2)—

Omit “section 17”, insert instead “this section”.

Arbitration (Civil Actions) Amendment 1987

SCHEDULE 1—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 18 (3A)—

After section 18 (3), insert:

(3A) Without affecting the generality of subsection (3), a subpoena for the giving of evidence or production of documents, at a rehearing of an action, by the arbitrator to whom the action was referred, shall not be issued if the evidence relates or the documents relate to the arbitration.

(c) Section 18 (5)—

After section 18 (4), insert:

(5) If, after an order is made under subsection (2) with respect to an award—

- (a) the applicant for the order files a notice of discontinuance of the rehearing of the action;
- (b) the applicant fails to attend the rehearing; or
- (c) in accordance with the rules, the court orders that the award be reinstated—
 - (i) on being satisfied that the applicant does not intend to proceed with the rehearing; or
 - (ii) for such other reason as to the court appears sufficient,

the order under subsection (2) ceases to have effect and the award shall be deemed to be a judgment or order of the court.

Arbitration (Civil Actions) Amendment 1987

SCHEDULE 2

(Sec. 3)

AMENDMENTS FOR THE PURPOSE OF STATUTE LAW REVISION

(1) Long title, section 19 (1) (b)—

Omit “court of petty sessions” wherever occurring, insert instead “Local Court”.

(2) Sections 3 (1) (definitions of “referred action”, “rules”), 3 (2), 4, 5 (2), 8, 11, 16 (2), 17 (1) (e), 18 (4), 20 (3)—

Omit “Courts of Petty Sessions” wherever occurring, insert instead “Local Courts”.

(3) Section 5 (2)—

Omit “Chairman of the Bench of Stipendiary Magistrates”, insert instead “Chief Magistrate”.

(4) Section 19 (1) (b)—

Omit “stipendiary magistrate”, insert instead “Magistrate”.

