

# Arbitration (Civil Actions) Act 1983 No 43

[1983-43]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by Sch 4 to the [Civil Procedure Act 2005 No 28](#) with effect from 15.8.2005.

### Authorisation

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# Arbitration (Civil Actions) Act 1983 No 43



New South Wales

An Act to provide for the determination by an arbitrator of certain civil actions instituted in the Supreme Court, District Court or a Local Court.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Arbitration (Civil Actions) Act 1983*.

### 2 Commencement

- (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 on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**action** includes proceedings.

**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 76B of the *Supreme Court Act 1970*, section 63A of the *District Court Act 1973* or section 21H of the *Local Courts (Civil Claims) Act 1970*.

**regulations** means regulations made under this Act.

**rules** means rules made under the *Supreme Court Act 1970*, the *District Court Act 1973* or the *Local Courts (Civil Claims) Act 1970*, as the case may require, including rules applied by section 20.

**this Act** includes the regulations and the rules.

- (2) Where under section 76B of the *Supreme Court Act 1970*, section 63A of the *District*

*Court Act 1973* or section 21H of the *Local Courts (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 arbitrators.

#### **4 Independent operation of Act**

- (1) The provisions of any rules made under section 124 (2) of the *Supreme Court Act 1970* and of section 63 of the *District Court Act 1973*, section 71 of the *Local Courts (Civil Claims) Act 1970* and any other Act relating to arbitration do not affect the operation of this Act 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 76B of the *Supreme Court Act 1970*,
  - (b) section 63A of the *District Court Act 1973*, or
  - (c) section 21H of the *Local Courts (Civil Claims) Act 1970*,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.

## **Part 2 Arbitration**

### **5 Appointment to office as arbitrator**

- (1) The Chief Justice may appoint suitable persons to be arbitrators to hear and determine actions to which orders under section 76B of the *Supreme Court Act 1970* apply.
- (2) The Chief Judge of the District Court may appoint suitable persons to be arbitrators to hear and determine actions to which orders under section 63A of the *District Court Act 1973* apply.
- (3) The Chief Magistrate may appoint suitable persons to be arbitrators to hear and determine actions to which orders under section 21H of the *Local Courts (Civil Claims) Act 1970* apply.
- (4) An appointment of an arbitrator under this section shall be made by instrument in writing signed in the person's official capacity by the person making the appointment.
- (5) A person shall not be appointed under this section unless the person is a barrister or solicitor nominated in the prescribed manner by a prescribed person or body of persons.
- (6) The person who, or a successor in office of the person who, appointed an arbitrator under this section:

- (a) may, by instrument in writing signed by the person in the person's 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.
- (7) An arbitrator may resign the arbitrator's office by instrument in writing delivered to the person by whom the arbitrator was appointed or a successor in office of that person.
- (8) 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 by Parliament.

## **6 Exoneration of arbitrator and others**

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 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.

## **7 Jurisdiction of arbitrator**

- (1) The jurisdiction conferred on an arbitrator by this Act in relation to a referred action is part of the jurisdiction of the court by which the action was referred.
- (1A) Subject to this Act, but without limiting the specific powers and authorities of an arbitrator under 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 or any other power in respect of contempt.
- (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) 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 the arbitrator.
- (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.

## 8 Appearances

- (1) In relation to appearances before an arbitrator in proceedings on a referred action under section 76B of the *Supreme Court Act 1970*, a party to the proceedings has the same rights as to:
  - (a) appearance by a barrister or solicitor, or otherwise, and
  - (b) examination and cross-examination of witnesses,as the party would have in relation to appearances before the Supreme Court.
- (2) The provisions of:
  - (a) section 43 of the *District Court Act 1973*, and
  - (b) section 11 of the *Local Courts (Civil Claims) Act 1970*,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.

## 9 Arbitrator to attempt conciliation

- (1) An arbitrator shall not make an award in a referred action until the arbitrator has brought, or has used his or her 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.

## 10 Procedure

- (1) Except to the extent of 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.
- (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.

## 11 Issue of subpoenas

- (1) The Supreme Court has the same powers in respect of a referred action under section 76B of the *Supreme Court Act 1970* as the Court would have in respect of the action if it had not been referred to an arbitrator, for and with respect to:
  - (a) ordering persons to attend as witnesses at proceedings or to attend and produce at proceedings any documents, and

(b) enforcing compliance with any such orders.

- (2) Sections 64, 65 and 66 of the *District Court Act 1973* and sections 72 and 73 of the *Local Courts (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
- (b) by omitting from section 72 (3) (a) the words “court at which” and by inserting instead the words “arbitrator before whom”.

## **12 Refusal or failure to take oath etc**

- (1) Where, at the hearing of a referred action, a witness:
- (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 the witness 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 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.
- (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.

## **13 Evidence**

- (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 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 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.

#### **14 Contempt**

- (1) A person shall not:

(a) wilfully insult:

(i) an arbitrator while the arbitrator 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,

(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

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

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

Maximum penalty: 10 penalty units.

#### **15 Determination by arbitrator**

- (1) The issues in dispute in a referred action before an arbitrator shall be determined by the arbitrator on the evidence adduced before the arbitrator and the arbitrator shall record the arbitrator's determination of the action by an award in writing signed by the arbitrator which shall, to the extent provided by the rules, specify the arbitrator's reasons for the award and shall be forthwith transmitted by the arbitrator to the court by which the action was referred to the arbitrator.
- (2) Subject to subsection (3), an arbitrator may not, in proceedings 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 award relates.

## 16 Costs

- (1) An arbitrator has the same powers in relation to costs in an action referred to the arbitrator under section 76B of the *Supreme Court Act 1970* as the Supreme Court would have had if the hearing before the arbitrator had been a hearing before the Court.
- (2) Division 9A of Part 3 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:
  - (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 148B (2) excepted) to the court being construed as a reference to the arbitrator.
- (3) An arbitrator has the same powers in relation to costs in an action referred to the arbitrator under section 21H of the *Local Courts (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.

### 16A Finality of award

Except to the extent that section 17 and Part 3 otherwise provide, an award of an arbitrator made under this Act is final and conclusive and not liable to be called in question.

## 17 Judicial supervision of arbitrator

- (1) No relief or remedy lies:
  - (a) under section 69 or 101 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
  - (e) under section 69 of the *Local Courts (Civil Claims) Act 1970*,in relation to proceedings under this Act on a 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.

## Part 3 Rehearings

## **18 Application for rehearing**

- (1) A person aggrieved by an award of an arbitrator may apply for a rehearing of the action concerned.
- (2) The applicant may (but need not) in the application request that the rehearing be a full or a limited rehearing.

### **18A Order for rehearing**

- (1) The court by which an action was referred to an arbitrator, or the registrar of that court, must order a rehearing of the action if an application for a rehearing of the action is made before the award becomes enforceable as a judgment or order of the court.
- (2) An order for rehearing cannot be made if the amount claimed in the action, or the value of the property to which the action relates, does not exceed the amount prescribed by the regulations for the purposes of this section.
- (3) An order for rehearing need not be made if it appears to the court or registrar that the applicant failed to attend a hearing before an arbitrator on the action and the applicant fails to satisfy the court or registrar that there was good reason for the failure to attend the hearing.
- (4) The court or registrar may in an order for rehearing direct that the rehearing be a full or a limited rehearing as the court or registrar thinks appropriate. In the absence of such a direction, the rehearing is to be a full rehearing. This subsection has effect regardless of whether the applicant requested that the rehearing be a full or a limited rehearing or made no such request.
- (5) In making an order for a limited rehearing, the court or registrar is to specify in the order the aspects that are to be the subject of the rehearing. The aspects may be described by reference to specific issues in dispute, specific parties to the dispute, or otherwise.
- (6) The court or registrar may at any time before or during the rehearing make an order amending an order for rehearing.

### **18B Rehearing**

- (1) If an order is made for a full rehearing, the award ceases to have effect and the action is to be heard and determined in the court concerned as if it had never been referred to an arbitrator.
- (2) If an order is made for a limited rehearing:
  - (a) the award is suspended and the aspects ordered to be dealt with at the limited rehearing are to be heard and determined in the court concerned as if they had

not been dealt with in the arbitration, and

- (b) the court may reinstate the award with such modifications (if any) as the court thinks appropriate after the rehearing.

### **18C Costs at rehearing**

- (1) The court that hears and determines an action on a full rehearing may, in addition to making an order for the payment of costs under the *Supreme Court Act 1970*, the *District Court Act 1973* or the *Local Courts (Civil Claims) Act 1970*, make a like order for the payment of costs in respect of the hearing before the arbitrator.
- (2) The court that hears and determines any aspects of an action on a limited rehearing may make such an order for the payment of costs under the relevant Act as it thinks fit as if those aspects constituted an action and may, in addition, make a like order for the payment of costs in respect of the hearing before the arbitrator involving those aspects.

### **18D Discontinuance of rehearing**

- (1) If a rehearing is discontinued, the order for rehearing ceases to have effect and the award is taken to be a judgment or order of the court concerned.
- (2) A rehearing is discontinued for the purposes of this section if:
  - (a) the applicant for the order for rehearing files a notice for the discontinuance of the rehearing of the action and no person (other than the applicant or a person who consented to the discontinuance) applies for such an order within the prescribed period after the filing of the notice, or
  - (b) the applicant fails to attend the rehearing or related proceedings before a registrar and no person present at the rehearing or related proceedings requests that the rehearing proceed, or
  - (c) the court orders (in accordance with the rules) that the award be reinstated, for the reason that the court is satisfied that the applicant does not intend to proceed with the rehearing or for such other reason as appears sufficient to the court.
- (3) If a rehearing is discontinued under subsection (2) (b), the order for rehearing may, subject to and in accordance with the rules, be reinstated by the court concerned on application made in accordance with the rules within 7 days after the discontinuance.

### **18E Subpoena at rehearing against arbitrator**

A subpoena for the giving of evidence or production of documents at the rehearing of an action is not to be issued against the arbitrator to whom the action was referred if the evidence or documents relate to the arbitration.

## Part 4 Miscellaneous

### 19 Offences

- (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
  - (b) be disposed of summarily before a Local Court.
- (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.
- (3) In proceedings for an offence against this Act, the informant may conduct the informant's case alone, or by the informant's counsel or attorney, or by an officer or temporary employee of the Public Service.

### 20 Regulations

- (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.
- (1A) Without prejudice to the generality of subsection (1) and section 124 of the *Supreme Court 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 under section 76B 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 Supreme Court and the action if the action had not been so referred.
- (2) Without prejudice to the generality of subsection (1) and section 161 of the *District Court Act 1973*, 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 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.
- (3) Without prejudice to the generality of subsection (1) and section 84 of the *Local Courts (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 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:

- (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
  - (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.

## **21 Savings and transitional provisions**

Schedule 1 has effect.

### **Schedule 1 Savings and transitional provisions**

(Section 21)

## **Part 1 General**

### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following:

*Courts Legislation Amendment Act 1998*, Schedule 1

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Courts Legislation Amendment Act 1998**

### **2 Application of amendments to existing actions**

(1) The amendments made to this Act by the *Courts Legislation Amendment Act 1998* extend to actions referred to arbitration before the commencement of those amendments. This subclause has effect subject to the following provisions of this

clause.

- (2) Those amendments do not apply to an action in respect of which an order for rehearing was made under section 18 before the commencement of those amendments.
- (3) Those amendments do not apply to an action in respect of which an application for rehearing was pending under section 18 immediately before the commencement of those amendments, unless the applicant requests that the application be treated as having been made after that commencement.