

ARBITRATION ORDINANCE 1951.⁽¹⁾

No. 46 of 1951.

An Ordinance relating to Arbitration.

BE it ordained by the Administrator of the Government of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Papua and New Guinea Act 1949-1950*, as follows:—

PART I.—PRELIMINARY.

- Short title. **1.** This Ordinance may be cited as the *Arbitration Ordinance 1951.*⁽¹⁾
- Commencement. **2.** This Ordinance shall come into operation on a date to be fixed by the Administrator by notice⁽¹⁾ in the *Gazette*.
- Repeal. **3.** The Ordinances specified in the First Schedule to this Ordinance are repealed.
- Parts. **4.** This Ordinance is divided into Parts, as follows:—
 Part I.—Preliminary (Sections 1-5).
 Part II.—References by Consent out of Court (Sections 6-16).
 Part III.—References under Order of Court (Sections 17-19).
 Part IV.—General (Sections 20-28).
- Definitions. **5.** In this Ordinance, unless the contrary intention appears—
 “ Rules of Court ” means rules made as provided in this Ordinance;
 “ submission ” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not;
 “ the Court ” means the Supreme Court and includes a Judge.

(1) Particulars of this Ordinance are as follows:—

Date on which made by Cwith. Administrator in Council.	Date on which notified in <i>Cwith. Gaz.</i>	Date on which took effect.
13.11.1951	13.11.1951	22.11.1951 (<i>Papua and N.G. Govt. Gaz.</i> of 22.11.1951)

PART II.—REFERENCES BY CONSENT OUT OF COURT.

6. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court, and shall have the same effect in all respects as if it had been made an order of Court. Effect of submission.

7. Unless a contrary intention is expressed therein, a submission shall be deemed to include the provisions set forth in the Second Schedule to this Ordinance, so far as they are applicable to the references under the submission. Provisions implied in submission.

8.—(1.) If a party to a submission, or a person claiming through or under him, commences legal proceedings in any Court against another party to the submission or a person claiming through or under him, in respect of a matter agreed to be referred, any party to those legal proceedings may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to that Court to stay the proceedings. Power to stay proceedings where there is submission.

(2.) If the Court to which application is made under the last preceding sub-section is satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, it may make an order staying the proceedings.

9.—(1.) In any of the following cases—

(a) where a submission provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;

(b) where an appointed arbitrator refuses to act, is incapable of acting or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy;

(c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, and do not appoint him; or

(d) where an appointed umpire or third arbitrator refuses to act, is incapable of acting or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

any party may serve on the other parties, or the arbitrators, as the case may be, a written notice to appoint an arbitrator, umpire or third arbitrator.

Power for the Court in certain cases to appoint an arbitrator, umpire or third arbitrator.

PART A : ARBITRATION—

(2.) If the appointment is not made within fourteen clear days after the service of the notice, the Court may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Power for parties in certain cases to supply vacancy.

10.—(1.) Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

- (a) if either of the appointed arbitrators refuses to act, is incapable of acting or dies, the party who appointed him may appoint a new arbitrator in his place; and
- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for fourteen clear days after the other party, having appointed his arbitrator, has served on the party making default notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.

(2.) The Court may, if it thinks fit, set aside an appointment made in pursuance of this section.

Powers of arbitrator.

11. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

- (a) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court;
- (b) to correct in an award a clerical mistake or error arising from an accidental slip or omission; and
- (c) to administer oaths to, or take the affirmations of, the parties and witnesses appearing.

Witnesses may be summoned by *subpœna*.

12. A party to a submission may sue out a writ of *subpœna ad testificandum* or a writ of *subpœna duces tecum*, but no person shall be compelled under any such writ to produce a document which he could not be compelled to produce on the trial of an action.

Power to enlarge time for making award.

13. The time for making an award may from time to time be enlarged by order of the Court, whether the time for making the award has expired or not.

Power to remit award.

14.—(1.) In all cases of reference to arbitration the Court may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2.) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

15.—(1.) Where an arbitrator or umpire has misconducted himself, the Court may remove him. Power to set aside award.

(2.) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

16.—(1.) An award on a submission may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect. Enforcing award.

(2.) No writ of attachment shall be issued to enforce payment of any money, costs or expenses under any such award, but writs of *feri facias* or *capias ad satisfaciendum*, and such other writs as are necessary, shall be issued by order of the Court, and every such order shall have the force and effect of a judgment of the Court.

PART III.—REFERENCES UNDER ORDER OF COURT.

17. In a cause or matter (other than a criminal proceeding by the Crown)— Power to refer in certain cases.

- (a) if all the parties interested, who are not under disability, consent;
- (b) if the cause or matter requires a prolonged examination of documents or a scientific or local investigation which cannot, in the opinion of the Court, conveniently be conducted by the Court through its other ordinary officers; or
- (c) if the question in dispute consists wholly or in part of matters of account,

the Court may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before an arbitrator agreed on by the parties, or before a referee appointed by the Court for the purpose.

18.—(1.) In all cases of reference under an order of the Court in a cause or matter, the referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner as is prescribed by rules of Court and, subject thereto, as the Court directs. Powers and remunerations of referees and arbitrators.

(2.) The report or award of a referee or arbitrator on a reference referred to in the last preceding sub-section shall, unless set aside by the Court, be equivalent to the verdict of the Court.

(3.) The remuneration to be paid to a referee or arbitrator to whom a matter is referred under order of the Court shall be determined by the Court.

PART A : ARBITRATION—

Court to have powers as in references by consent.

19. The Court shall, as to references under order of the Court, have all the powers which are by this Ordinance conferred on the Court as to references by consent out of Court.

PART IV.—GENERAL.

Power to compel attendance of witness, and to order *habeas corpus* to issue.

20.—(1.) The Court may order that a writ of *subpœna ad testificandum* or *subpœna duces tecum* shall issue to compel the attendance before a referee, or before an arbitrator or umpire, of a witness wherever he may be within the jurisdiction.

(2.) The Court may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before a referee, or before an arbitrator or umpire.

Witnesses entitled to expenses.

21. Every person whose attendance is required as a witness shall be entitled to the like conduct money and payment of expenses and for loss of time as for and upon attendance at a trial of an action in the Court.

Statement of case pending arbitration.

— 22. A referee, arbitrator or umpire may, at any stage of the proceedings under a reference, and shall, if so directed by the Court, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference, and any opinion given shall be subject to appeal.

Chief Judge may make general rules and orders.

23. The Chief Judge of the Court may, from time to time, make general rules and orders⁽²⁾ for carrying the purposes of this Ordinance into effect.

Costs.

24. An order made under this Ordinance may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

Penalty for perjury.

25. A person who wilfully and corruptly gives false evidence before a referee, arbitrator or umpire is guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted and punished accordingly.

Administration to be bound.

26.—(1.) Subject to the next succeeding sub-section, the application of this Ordinance shall extend to any arbitration to which the Administration or a servant of the Administration is a party.

(2.) Nothing in this Ordinance shall empower the Court to order any proceedings to which the Administration, or a servant of the Administration, is a party, or a question or issue in any such proceedings, to be tried before an arbitrator or referee without the consent of the Administrator, or shall affect the law as to costs payable by the Administration.

Application of Ordinance to references under statutory powers.

— 27. This Ordinance shall, except in so far as this Ordinance is inconsistent with the enactment regulating the arbitration, or with

(2) No general rules or orders have been published in Papua and N.G. *Govt. Gaz.* before 1.1.1952.

any rules or procedure authorized or recognized by that enactment, apply to every arbitration under any enactment passed or adopted before or after the commencement of this Ordinance as if the arbitration were pursuant to a submission.

28. This Ordinance shall not affect an arbitration pending at the commencement of this Ordinance, but shall apply to an arbitration commenced after the commencement of this Ordinance under an agreement or order made before the commencement of this Ordinance. Pending arbitrations.

THE SCHEDULES.

FIRST SCHEDULE.

ORDINANCE OF THE TERRITORY OF PAPUA.

Arbitration Ordinance, 1912.(3)

ORDINANCE OF THE TERRITORY OF NEW GUINEA.

Arbitration Ordinance 1924.(4)

Section 3.

SECOND SCHEDULE.

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

Section 7.

(a) If no other mode of reference is provided, the reference shall be to a single arbitrator.

(b) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

(c) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

(d) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to a party to the submission or to the umpire a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(e) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire, by any writing signed by him, may from time to time enlarge the time for making his award.

(f) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objections, submit to be examined by the arbitrators or umpire, on oath, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required, or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.

(g) The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath.

(h) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

(i) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom, and in what manner, those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

(3) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. I., on pp. 147-153.

(4) Printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. I., on pp. 91-96.