

ARBITRATION ORDINANCE 1924.⁽¹⁾

No. 41 of 1924.

An Ordinance Relating to Arbitration.

BE it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Arbitration Ordinance 1924.*⁽¹⁾ Short title.
2. This Ordinance shall commence on a date to be fixed by the Administrator by notice published in the *New Guinea Gazette.*⁽¹⁾ Commencement.
3. This Ordinance is divided into Parts, as follows:— Parts.
 - Part I.—Preliminary.
 - Part II.—References by Consent out of Court.
 - Part III.—References under Order of Court.
 - Part IV.—General.
4. In this Ordinance, unless the contrary intention appears— Interpretation.

“Rules of Court” means rules made as provided in this Ordinance; N.S.W., 29 of 1902, s. 3.

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not; Q., 31 Vic. No. 11, s. 1.

“the Administration” means the administration of the Territory by the Commonwealth;

“the Court” means the Central Court⁽²⁾ and includes a Judge thereof.

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

Date on which made by Governor-General in Council.	Date on which notified in Commonwealth Gazette.	Date on which took effect.
17.12.1924	18.12.1924	23.3.1925 (<i>N.G. Gaz.</i> of 16.3.1925)

(2) See Section 7A of the *Judiciary Ordinance 1921-1938*.

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PART II.—REFERENCES BY CONSENT OUT OF COURT.

Effect of
submission.
N.S.W., 29 of
1902, s. 4.
Q., 31 Vic. No.
11, ss. 2, 4, 8.

5. 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.

Provisions
implied in
submission.
N.S.W., *Ib.* s. 5.

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

Power to stay
proceedings
where there
is submission.
N.S.W., *Ib.* s. 6.
Q., *Ib.*, s. 9.

7.—(1.) If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the submission or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such 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.

(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.

Power for the
Court in certain
cases to
appoint an
arbitrator,
umpire, or
third
arbitrator.
N.S.W., *Ib.* s. 7.
Q., *Ib.* s. 16.

8.—(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, or 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, or 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.

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(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.

9.—(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—

Power for parties in certain cases to supply vacancy.

N.S.W., 29 of 1902, s. 8.
Q., 31 Vic. No. 11, s. 17.

(a) if either of the appointed arbitrators refuses to act, or 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 any appointment made in pursuance of this section.

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

Powers of arbitrator.
N.S.W., *Ib.* s. 9.
Q., *Ib.* s. 12.

(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 any clerical mistake or error arising from any accidental slip or omission; and

(c) to administer oaths to, or take the affirmations of, the parties and witnesses appearing.

S.A., 510 of 1891, s. 6 (c).

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

Witnesses may be summoned by *subpoena*.
N.S.W., *Ib.* s. 10.
Q., *Ib.* s. 5.

12. 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 enlarge time for making award.
N.S.W., *Ib.* s. 11.
Q., *Ib.* s. 19.

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Power to remit
award.

N.S.W., 29 of
1902, s. 12.
Q., 31 Vic.
No. 11, s. 21.

13.—(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.

Power to set
aside award.

N.S.W., *Ib.*
s. 13.
Q., *Ib.* s. 3.

14.—(1.) Where an arbitrator or umpire has misconducted himself, the Court may remove him.

(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.

Enforcing
award.

N.S.W., *Ib.*
s. 14.
Q., *Ib.* s. 2.

15.—(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.

(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.

Power to refer
in certain cases.

N.S.W., *Ib.*
s. 15.
Q., *Ib.* s. 10.

16. In any cause or matter (other than a criminal proceeding by the Crown)—

(a) if all the parties interested, who are not under disability, consent; or

(b) if the cause or matter requires any prolonged examination of documents or any 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.

Powers and
remunerations
of referees and
arbitrators.

N.S.W., *Ib.*
s. 16.
Q., *Ib.* s. 10.

17.—(1.) In all cases of reference under an order of the Court in any 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.

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(2.) The report or award of any referee or arbitrator on any such reference shall, unless set aside by the Court, be equivalent to the verdict of the Court.

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

18. 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.

Court to have powers as in references by consent.
N.S.W., 29 of 1902, s. 17.

PART IV.—GENERAL.

19.—(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 any arbitrator or umpire, of a witness wherever he may be within the jurisdiction.

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

(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 any arbitrator or umpire.

N.S.W., *Ib.* s. 18.
Q., 31 Vic. No. 11, s. 5.

20. 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.

Witnesses entitled to expenses.

21. Any 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.

Statement of case pending arbitration.
N.S.W., *Ib.* s. 19.
Q., *Ib.* s. 12.

22. The Chief Judge of the Court may, from time to time, make general rules and orders⁽³⁾ for carrying the purposes of this Ordinance into effect.

Judge may make general rules and orders.
N.S.W., *Ib.* s. 20.

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

Costs.
N.S.W., *Ib.* s. 24.

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

Penalty for perjury.
N.S.W., *Ib.* s. 25.

25. The application of this Ordinance shall extend to any arbitration to which the Administration or any servant of the Administration is a party:

Administration to be bound.
N.S.W., *Ib.* s. 26.
Imp. 52 & 53 Vict. c. 49, s. 23.

(3) No rules or orders have been published in *N.G. Gaz.*

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Provided that nothing in this Ordinance shall empower the Court to order any proceedings to which the Administration, or any servant of the Administration, is a party, or any question or issue in any such proceedings, to be tried before any 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.

N.S.W., 29 of 1902, s. 27.

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

Pending arbitrations.

Imp. 52 & 53 Vict. c. 9, s. 25.

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

Section 6.

THE SCHEDULE.

Provisions to be Implied in Submissions.

(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 any 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, 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.