

ARBITRATION ORDINANCE, 1912. ⁽¹⁾

No. 49 of 1912.

An Ordinance to amend the Law relating to Arbitration.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Arbitration Ordinance*, Short title.
1912. ⁽¹⁾

It shall commence on a day to be fixed by the Lieutenant-Governor by a proclamation published in the *Gazette*. ⁽¹⁾ Commencement.

2. The enactment mentioned in the First Schedule is to the extent therein expressed hereby repealed. Repeal.
First Schedule.

3. In this Ordinance unless the context or subject-matter otherwise indicates or requires— Interpretation.
N.S.W. No. 29 of 1902, s. 3.
Q. 31 Vic. No. 11, s. 1.

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

“Judge” means a Judge of the Central Court. ⁽²⁾

“Rules of Court” means rules made as hereinafter provided.

“Submission” means a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not.

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References by consent out of court.

4. A submission unless a contrary intention is expressed therein shall be irrevocable except by leave of the Court or a Judge and shall have the same effect in all respects as if it had been made an order of Court. Effect of submission.
N.S.W. *ib.* s. 4.
Compare Q. *ib.* ss. 2, 4, 8.

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

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
16.7.1912	(a)	23.12.1912 (Papua Govt. Gaz. of 23.12.1912)

(a) No notice of non-disallowance has been published in Papua Govt. Gaz.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

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Provisions implied in submission.
N.S.W. No. 29 of 1902, s. 5.
Second Schedule.

5. A submission unless a contrary intention is expressed therein shall be deemed to include the provisions set forth in the Second Schedule to this Ordinance so far as they are applicable to the reference under the submission.

Power to stay proceedings where there is submission.
N.S.W. *Id.* s. 6.
Q. 31 Vic.
No. 11, s. 9.

6. 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; and that Court or a Judge if 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 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. *Id.* s. 7.
Q. *Id.* s. 16.

7. 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) If 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;
- (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 the other parties or the arbitrators as the case may be with a written notice to appoint an arbitrator umpire or third arbitrator.

If the appointment is not made within fourteen clear days after the service of the notice the Court or a Judge 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.

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8. 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.

(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.

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

(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 the party making default with 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:

Provided that the Court or Judge may set aside any appointment made in pursuance of this section.

9. 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.

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

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

10. Any 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 any document which he could not be compelled to produce on the trial of an action: Provided that every person whose attendance is so required shall be entitled to the like conduct money and payment for expenses as upon a trial in the Court.

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

11. The time for making an award may from time to time be enlarged by order of the Court or a Judge 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.

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

Power to remit award.
N.S.W. *Ib.* s. 12.
Q. *Ib.* s. 21.

(2.) Where an award is remitted the arbitrators or umpire shall

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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. No. 29
1902, s. 13.
Q. 31 Vic.
No. 11, s. 3.

13.—(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.
Cf. Q. *Ib.* s. 2.

14. An award on a submission may by leave of the Court or a Judge be enforced in the same manner as a judgment or order to the same effect.

Writs of *f. fa.*
and *ca. sa.*
may be issued.

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

References under order of court.

Power to
refer in
certain cases.
N.S.W. *Ib.* s. 15.
Q. *Ib.* s. 10.

15. 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 or Judge 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 or a Judge 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 or a Judge for the purpose.

Powers and
remunerations
of referees and
arbitrators.
N.S.W. *Ib.* s. 16.
Cf. Q. *Ib.* s. 10.

16.—(1.) In all cases of reference under an order of the Court or a Judge 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 may be prescribed by rules of Court and subject thereto as the Court or Judge may direct.

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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 or a Judge 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 or a Judge shall be determined by the Court or a Judge.

17. The Court or a Judge shall as to references under order of the Court or a Judge have all the powers which are by this Ordinance conferred on the Court or a Judge as to references by consent out of Court.

Court to have powers as in references by consent.

N.S.W. No. 29 of 1902, s. 17.

General.

18.—(1.) The Court or a Judge may order that a writ of *sub-pœna 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.

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

(2.) The Court or a Judge 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.

19. Any referee arbitrator or umpire may at any stage of the proceedings under a reference and shall if so directed by the Court or a Judge state in the form of a special case for the opinion of the Court or of a Judge thereof 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.
Cf. Q. *Ib.* s. 12.

20. The Chief Judicial Officer⁽³⁾ may from time to time make general rules and orders⁽⁴⁾ for carrying the purposes of this Ordinance into effect.

Judge may make general rules and orders.

N.S.W. *Ib.* s. 20.

21. 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.

22. 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.

(3) See Section 4 of the *Central Court Ordinance, 1925.*

(4) No general rules or orders have been published in *Papua Govt. Gaz.*

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Government to be bound.
N.S.W. No. 29 of 1902, s. 26.
Imp. 52 & 53
Vict. c. 49, s. 23.

23. This Ordinance shall apply to any arbitration to which the Government of the Territory is a party.

But nothing in this Ordinance shall empower the Court or a Judge to order any proceedings to which His Majesty 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 Lieutenant-Governor⁽²⁾ or shall affect the law as to costs payable by the Crown.

Application of Ordinance to references under statutory powers.
N.S.W. *Ib.* s. 27.

24. This Ordinance shall 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 except in so far as this Ordinance is inconsistent with the enactment regulating the arbitration or with any rules or procedure authorised or recognised by that enactment.

Saving for pending arbitrations.
Imp. *Ib.* s. 25.

25. 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.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Reference to Enactment.	Title or Short Title.	Extent of Repeal.
31 Vic. No. 11 (Queensland Adopted)	“ <i>Interdict Act of 1867</i> ”	The preamble, and sections two to twenty-one, both inclusive.

Section 5.

SECOND 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.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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(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, 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.