



ANNO DECIMO

GEORGII V REGIS.

A.D. 1919.

No. 1389.

An Act to further amend the Harbors Act, 1913, and for other purposes.

[*Assented to, November 20th, 1919.*]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited alone as the "Harbors Act Further Amendment Act, 1919." Short titles.

(2) The Harbors Acts, 1913 to 1918, and this Act may be cited together as the "Harbors Acts, 1913 to 1919."

(3) The Harbors Act, 1913, is hereinafter referred to as "the principal Act."

2. This Act is incorporated with the principal Act and the Acts incorporated with that Act, and those Acts and this Act shall be read as one Act. Incorporation with other Acts.

3. In this Act "the Judge" means the Judge of the Supreme Court nominated by the Governor as one of the arbitrators with reference to the particular case, and includes any Judge nominated in substitution of such Judge. Interpretation.

4. (1) If in any case the three arbitrators nominated or appointed under Part I. of the principal Act fail to make, within such time as the Judge fixes for the purpose, a unanimous award, or a unanimous decision or direction as to any matter or question arising in or connected Provision for cases where award of arbitrators not unanimous.

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connected with the arbitration and upon which the said arbitrators have power to make a decision or direction, then a majority of the arbitrators, or, failing agreement by a majority of the arbitrators, within such time as the Judge fixes for the purpose, the Judge shall have power to make the award or decision or direction and to exercise all the powers and authorities in that behalf vested in the three arbitrators by the principal Act.

(2) In any case provided for by subsection (3) of section 17 of the principal Act the Judge and the appointed arbitrator shall have all the powers and authorities which the Judge and two other arbitrators if appointed would have had, and if in any such case the Judge and the appointed arbitrator fail to make, within such time as the Judge fixes for the purpose, a unanimous award, or a unanimous decision or direction as to any matter or question arising in or connected with the arbitration and upon which they have power to make a decision or direction, then the Judge shall have power to make the award or decision or direction and to exercise all the powers and authorities in that behalf vested in the Judge and the appointed arbitrator by the principal Act or this Act.

Questions of law
to be decided
by the Judge.

5. Any question of law arising in or connected with an arbitration under Part I. of the principal Act (including any question as to whether a question is or is not a question of law) shall be decided by the Judge alone, subject, however, to the provisions of section 7 of this Act.

Provision for cases
where arbitrator or
Judge dies or resigns,
or becomes incapable
to act.

6. (1) Whenever and so often as, before the award is made in any case and the matters referred are finally determined, any arbitrator appointed by either party dies, or resigns, or is removed under the provisions of section 18 of the principal Act, or becomes incapable or refuses to act, or for a period of seven days after notice in writing by or on behalf of either party or such further time as the Judge fixes for the purpose, fails to act or to proceed in the arbitration, the party by whom such arbitrator was appointed may appoint in writing some other person to act in the place of such arbitrator.

(2) Whenever and so often as, before the award is made in any case and the matters referred are finally determined, the Judge dies, or resigns, or becomes incapable to act, the Governor may nominate another Judge of the Supreme Court to act in the place of the first-mentioned Judge.

(3) Every arbitrator or Judge substituted under the provisions of this section shall have the same powers and authorities as were vested in the former arbitrator or Judge at the time of his death, resignation, removal, becoming incapable, refusal, or failure as aforesaid.

(4) If, when any such death, resignation, removal, incapacity, refusal, or failure as mentioned in subsection (1) of this section occurs, the party by whom the arbitrator who has died, or resigned,

or

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or been removed, or become incapable of acting, or has refused or failed to act or to proceed, fails to appoint in writing some other person to act in the place of such arbitrator within twenty-one days after notice in writing from the other party requiring him to make such appointment, or within such further time as the Judge fixes for the purpose, the Judge and the remaining arbitrator shall proceed with the arbitration. In that case the arbitration proceedings shall not be recommenced, but, without prejudice to anything theretofore done or omitted, the proceedings shall continue as if the arbitrator who has died, or resigned, or been removed, or become incapable of acting, or has refused or failed to act or to proceed, had not been appointed, and the provisions of subsection (2) of section 4 of this Act shall apply *mutatis mutandis*.

7. (1) Subsection (1) of section 18 of the principal Act is repealed, and in lieu thereof the following provisions of this section are enacted:—

Repeal of subsection
(1) of section 18 :
Other provisions
substituted : Special
case on points of law.

(2) Subject as provided by this section, the award or any decision or direction of the arbitrators, or of a majority of them, or of the Judge, in or in connection with an arbitration under Part I. of the principal Act, in a case where they respectively have power to make the award or a decision or direction, shall be final and not subject to any appeal: Provided that where an award has been improperly procured the Supreme Court may, on application by either party, set such award aside: Provided further that:—

(a) at any stage of the proceedings, the Judge may, and on the application of either party shall, state, in the form of a special case for the opinion of the Supreme Court, any question of law arising in or connected with the arbitration:

(b) the award may be stated, as to the whole or part thereof in the form of a special case for the opinion of the Supreme Court.

(3) In any of the cases provided for by subsection (2) of this section the Supreme Court shall have power, from time to time, to remit the special case or the award, as the case may be, for amendment or further statement; and the said Court shall hear and determine the question or questions of law stated in the special case or award and shall have power to make such order as it deems proper, either remitting the special case with its opinion thereon or finally disposing of the matter, as the case may require; and when the special case is so remitted the arbitrators shall give effect to the order of the said Court.

8. (1) Subsection (4) of section 18 of the principal Act is repealed and in lieu thereof the following provisions of this section are enacted:—

Repeal of subsection
(4) of section 18 :
Other provisions sub-
stituted : Costs.

(2) The arbitrators may make such award and directions as to the costs of the arbitration as they deem just, including, if they think

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think proper, a direction for the taxation of any costs by the Master of the Supreme Court, in which case the said Master shall tax such costs accordingly; and the said Court, when dealing with any special case or award or with any application to set an award aside or by a subsequent order, or the said Court or a Judge thereof, when dealing with an application under subsection (2) or subsection (3) of section 18 of the principal Act or by a subsequent order, may make such order and directions as it or he thinks just as to the costs of such special case or award or application.

What provisions of the Arbitration Act (No. 510 of 1891) to apply.

9. (1) The following provisions of the Arbitration Act, 1891, namely—subdivisions (a) and (c) of section 6, sections 19 and 22, and paragraphs (f) and (g) of the First Schedule, but no other provisions of that Act, shall, *mutatis mutandis*, apply to every arbitration under Part I. of the principal Act.

(2) For the purposes of the said section 19, the Supreme Court shall be deemed to be the Court having jurisdiction.

Amendment of section 30—
Rules of Court.

10. The reference in section 30 of the principal Act to appeals shall be read as referring to special cases, and awards in the form of special cases, stated under section 7 of this Act, and the reference in the said section 30 to applications to the Supreme Court shall be read as including applications to the said Court under the said section 7.

Power for the Judge to enlarge the times for certain purposes.

11. Whenever by this Act the Judge is empowered to fix a time for any purpose, the Judge shall have power to allow further time for such purpose from time to time, and to do so notwithstanding that the time originally fixed for such purpose, or any further time allowed by the Judge for that purpose, may have expired.

Act to be retrospective.

12. This Act shall apply in every case notwithstanding that the Judge and the arbitrators, or any of them, have been appointed before the passing of this Act.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

H. L. GALWAY, Governor.