

No. 6200.

ARBITRATION ACT 1958.

An Act to consolidate the Law relating to Arbitration.

[30th September, 1958.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *Arbitration Act 1958*, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

Short title and commencement.

2. (1) The Act mentioned in the First Schedule to this Act to the extent thereby expressed to be repealed is hereby repealed.

Repeal. First Schedule.

(2) Except as in this Act expressly or by necessary implication provided—

- (a) all persons things and circumstances appointed or created by or under the repealed Act or existing or continuing under that Act immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if the first mentioned Act had not been repealed;

(b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any rule order proceeding application reference submission determination decision award appointment notice liability or right made effected issued granted given presented passed fixed accrued incurred or acquired or existing or continuing by or under the repealed Act before the commencement of this Act.

Interpretation.
No. 3637 s. 3.

3. In this Act unless inconsistent with the context or subject-matter—

“Submission.”

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

“Court.”

“Court” means the Supreme Court.

“Judge.”

“Judge” means a Judge of the Supreme Court.

“Rules of Court.”

“Rules of Court” means the Rules of the Supreme Court made by the proper authority under the *Supreme Court Act 1958* or any corresponding previous enactment.

References by Consent out of Court.

Submission to be irrevocable, and to have effect as an order of Court.
No. 3637 s. 4.

4. (1) 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 the Court.

Provisions implied in submissions.
Second Schedule.

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

Power to stay proceedings where there is a submission.
No. 3637 s. 5.

5. 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 thereof 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.

6. 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—

Power for the Court in certain cases to appoint an arbitrator, umpire, or third arbitrator.
No. 3637 s. 6.

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 seven 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.

7. 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 or is incapable of acting or dies the party who appointed him may appoint a new arbitrator in his place;
- (b) if on such a reference one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator,

Power for party in certain cases to supply vacancy.
No. 3637 s. 7.

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 a Judge may set aside any appointment made in pursuance of this section.

Powers of arbitrators.
No. 3637 s. 8.

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

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

Witnesses may be summoned by subpoena.
No. 3637 s. 9.

9. 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.

Power to enlarge time for making award.
No. 3637 s. 10.

10. 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 remit award.
No. 3637 s. 11.

11. (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.

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

Power to remove arbitrator.
No. 3637 s. 12.
Power to set aside award.

12. (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 an award has been improperly procured, the Court may set the award aside.

Enforcing award.
No. 3637 s. 13.

13. 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.

References under Order of Court.

14. (1) Subject to Rules of Court and to any right to have particular cases tried by a jury, the Court or a Judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any special referee.

Reference for
inquiry and
report.
No. 3637 s. 14.

(2) The report of a special referee may be adopted wholly or partially by the Court or a Judge, and if so adopted may be enforced as a judgment or order to the same effect.

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

Reference for
trial.
No. 3637 s. 15.

(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 a Court or a Judge conveniently be made before a jury or 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 a special referee or arbitrator respectively agreed on by the parties or without such agreement before a special referee or officer of the Court.

16. (1) In all cases of reference to a special referee or arbitrator under an order of the Court or a Judge in any cause or matter, the special 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 a Judge may direct.

Powers and
remuneration
of referees and
arbitrators.
No. 3637 s. 16.

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

(3) The remuneration to be paid to any special 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 who shall also determine by whom and in what proportions the remuneration shall be paid.

Court to have powers as in references by consent.

No. 3637 s. 17.

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 Act conferred on the Court or a Judge as to references by consent out of Court.

General.

Witnesses entitled to expenses.

No. 3637 s. 18.

18. 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 Supreme Court.

Statement of case pending arbitration.

No. 3637 s. 19.

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 any question of law arising in the course of the reference.

Costs.

No. 3637 s. 20.

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

Exercise of powers by masters and other officers.

No. 3637 s. 21.

21. Provision may from time to time be made by Rules of Court for conferring on any master or other officer of the Supreme Court all or any of the jurisdiction conferred by this Act on the Court or a Judge.

Penalty for perjury.

No. 3637 s. 22.

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

Application of Act to references under statutory powers.

No. 3637 s. 23.

23. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorized or recognised by that Act.

SCHEDULES.

FIRST SCHEDULE.

Section 2.

Number of Act.	Title of Act.	Extent of Repeal.
3637 ..	Arbitration Act 1928	The whole.

SECOND SCHEDULE.

Section 4.

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 date 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 upon the reference in lieu of the arbitrators.

(e) The umpire shall make his award in writing 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 objection submit to be examined by the arbitrators or umpire, on oath or affirmation, 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 or affirmation.

(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, such costs (including the charges of the umpire, if any, and of the arbitrators) may on the application of any party interested be taxed by the Taxing Master of the Supreme Court.