



THE LAW REFORM COMMISSION  
OF WESTERN AUSTRALIA

Project No 18

**Review Of The Arbitration Act**

**WORKING PAPER**

**OCTOBER 1971**

## INTRODUCTION

The Law Reform Committee has been asked to consider the law relating to the settlement of disputes by commercial arbitration with a view to preparing a revised *Arbitration Act*.

The Committee has now completed its first consideration of the matter and issues this working paper. The paper does not necessarily represent the final views of the Committee.

Comments and criticisms are invited. The Committee requests that they be submitted by the 24th December 1971.

Copies of the paper are being forwarded to -

The Chief Justice and Judges of the Supreme Court

The Judges of the District Court

The Law Society

The Magistrates Institute

The Law School

The Crown Law Department

The Public Works Department

The State Government Insurance Office

The Fire and Accident Underwriters Association

The Australian Insurance Association

The organisations which attended meetings of the sub-committee

Other Law Reform Commissions and Committees with which this Committee is in correspondence.

A notice has been inserted in *The West Australian* stating that persons interested will on application be sent copies of the paper.

The research material on which this paper is based is at the offices of the Committee and may be made available on request.

## **TERMS OF REFERENCE**

1. “To consider the law relating to settlements of disputes by commercial arbitration with a view to preparing a revised *Arbitration Act*”.

## **PRESENT LAW IN WESTERN AUSTRALIA**

2. The law in Western Australia is contained in the *Arbitration Act 1895-1970* which is basically a reproduction of the English *Arbitration Act 1889*.

## **THE LAW ELSEWHERE**

3. The law in England is contained in the *Arbitration Act 1950*, which is substantially a consolidation of the *Arbitration Act of 1899* and three amending Acts.
4. With the exception of Queensland (the *Interdict Act of 1867 (Q)* being derived from much earlier English legislation), the legislation in other Australian States is also based on the English Act of 1889, though some States have also made certain amendments.
5. Many States of the United States of America have adopted the *Uniform Arbitration Act* drafted by the National Conference of Commissioners on Uniform State Laws. The California Law Revision Commission has proposed certain amendments to the Californian legislation, which was enacted in 1927.

## **MOVEMENT FOR REFORM**

6. At the Western Australian Law Society’s Summer School in 1969, Mr. H. E. Zelling, Q.C. (now Mr. Justice Zelling) drew attention to a number of aspects of the present arbitral procedures which he regarded as unsatisfactory. He emphasised that the time was ripe for change. It was apparent from the discussion which followed that many members of the legal and business communities shared Mr. Justice Zelling’s views.
7. The South Australian Law Reform Committee, whose chairman is Mr. Justice Zelling, and the Queensland Law Reform Commission have produced reports recommending that the arbitration legislation of their States be brought up to date (see the 5th Report of the South

Australian Law Reform Committee and the Report of the Queensland Law Reform Commission (Q.L.R. C. 4)).

### **COMMITTEE'S PROVISIONAL VIEWS**

8. At the request of the Western Australian Law Reform Committee, a sub-committee consisting of the Hon. Mr. Justice Burt, Mr. J. L. Toohey, Q.C. and Mr. B. W. Rowland (who is also a member of the Committee) has considered the matter and made concrete proposals for reform. In addition to its own discussions, the sub-committee met representatives of legal, business and commercial groups to ascertain their views.

9. The proposals of the sub-committee have been accepted by the Committee. Because of the technical nature of the subject, the proposals are in the form of a draft bill to amend and consolidate the *Arbitration Act*. The draft bill is attached to this paper. It is emphasised however that, as with all the Committee's working papers, the proposals are at this stage tentative only. They will be reviewed in the light of the comments received.

10. Under existing law a party to an agreement to refer a dispute to arbitration may, notwithstanding that agreement, bring an action in respect of that dispute and any provision in the agreement to the contrary would be void as attempting to oust the jurisdiction of the court (*Russell on Arbitration*, 18th ed., p.137). However the other party may apply to the court for an order staying the proceedings, and the court "if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the [agreement]" may make the order (s.6 of the *Arbitration Act* (W.A.)).

11. The policy of the court is generally to grant a stay except in special cases. Grounds which the court has taken into account in refusing to stay the court action are -

- (1) doubt as to the validity of the reference to arbitration;
- (2) delay in applying for a stay;
- (3) relief claimed beyond the arbitrator's powers (in some cases);

- (4) where charges of a personal character are made;
- (5) where the principal question is one of law;
- (6) interest, misconduct or bias on the part of the arbitrator;
- (7) where arbitration is appropriate for a minor part only of the dispute.

12. Clause 8 (1) or the attached draft bill gives express statutory recognition to the common law right referred to in paragraph 10 above to bring an action notwithstanding an agreement to arbitrate. The clause then goes further by providing in subclause (3) that the court is not to stay the action unless it is satisfied that “by reason of expense, delay, the nature of the questions in issue, or any other circumstance, justice would be better served by the dispute being determined by arbitration”. In other words the party applying for a stay of the action must in effect show good cause why the court is not the appropriate tribunal to determine the dispute.

13. The proposal that the court is not to stay the action unless satisfied that the justice of the case demands it, is based on the following grounds -

- (1) From what was said at its meetings with representatives of interested organisations, the sub-committee formed the view that, notwithstanding some reservations about court procedures, most persons would prefer their disputes to be settled by the court rather than by arbitration. This is so particularly where the matter is not simply one of assessment of value, but involves questions of law, fact or credibility of witnesses. Some representatives pointed out that an arbitration clause is often included in a contract, not because the parties have brought their minds to the question whether arbitration is the best method of determining any dispute that might arise, but because they have merely followed a precedent. Agreements to arbitrate are often included in some “standard form” contracts, to which a customer or client has no real choice but to subscribe.

- (2) The time taken in court proceedings is usually no longer than in arbitration proceedings. The court has ample power to ensure that a dilatory party is penalised.
- (3) The expense is, if anything, less in court proceedings - for one thing, the parties do not pay for the services of the judge.
- (4) By and large, members of the community have more confidence in a judge whose training and qualifications fit him to try disputes, than in an arbitrator.
- (5) By the time the judge has heard sufficient to enable him to decide whether or not to grant a stay, it would be simpler and quicker to allow him to complete the hearing rather than for the proceedings to start afresh before an arbitrator.

14. Clause 8(4) of the draft bill deals with the case where arbitration proceedings are commenced against a party to an agreement to arbitrate. If that party does not wish the dispute to be determined by arbitration, the subclause enables him to apply to the appropriate court for an order staying the arbitration proceedings. If the arbitration proceedings are stayed, the party who commenced them may of course instead bring an action in the court under clause 8(1).

15. Clause 8(5) is taken from s.24(1) of the English *Arbitration Act 1950*. One reason for staying arbitration proceedings under subclause (4) is that the arbitrator may not be impartial. Subclause (5) ensures that the question of an arbitrator's impartiality can be decided on its merits, without any question of estoppel arising.

16. Clause 9 of the draft bill is ancillary to clause 8. It is derived from s.25(4) of the English *Arbitration Act 1950*, and makes void any clause of the *Scott v Avery* type in an arbitration agreement. A *Scott v Avery* clause provides that there is no right of action under the agreement except upon an award of an arbitrator. In effect it ousts the jurisdiction of the court in the first instance (see *Scott v Avery* (1856) 5 H.L.Cas. 811, followed by the Full Court of Western Australia in the recent case of *Fryer v Plucis* (1967) W.A.R.161) The English provision, although apparently effective in countering a *Scott v Avery* clause, seems unnecessarily cumbersome.

It seems preferable to make such a clause void absolutely. If the court grants a stay of proceedings, the agreement to arbitrate would have full effect and the presence of a *Scott v Avery* clause would add nothing to its effectiveness.

The Western Australian *Hire Purchase Act 1959* has a somewhat similar provision applicable to contracts of insurance in hire purchase agreements (see s.22(2)).

17. The following is a reference to other important changes proposed. They are not dependent on clauses 8 and 9 and could be introduced whether or not the Committee's proposals discussed above are accepted.

- (a) **Power to extend time - Clause 10** - This is derived from s.27 of the English *Arbitration Act*. It empowers the court to extend the time within which a party must commence proceedings under the agreement, if otherwise undue hardship would be caused.
- (b) **Arbitrator to give written reasons - Clause 23** - It seems a basic requirement of justice that a judicial tribunal should give reasons for its decision. Accordingly this clause requires the arbitrator to give written reasons for his award unless the parties, after the dispute has arisen, agree otherwise. The giving of reasons would also facilitate the exercise of the Supreme Court's supervisory powers over the arbitration.
- (c) **Costs of the arbitration proceedings - Clause 25(3)** - This is derived from s.18(3) of the English *Arbitration Act* and makes void any agreement that the parties shall bear their own costs, unless such an agreement is entered into after the dispute has arisen. A provision in an arbitration agreement requiring each party to bear his own costs could inhibit a party from taking proceedings, notwithstanding that he has a genuine cause of action.

18. This paragraph and the next following make brief reference to incidental matters in respect to which express provision is made in the draft bill. The clauses concerned are largely self-explanatory and, in the main, are aimed at improving the machinery and procedures of arbitration.

- (a) Agreement to arbitrate and authority of arbitrator not affected by death of a party - Cl. 12
- (b) An uneven number of arbitrators may decide by majority vote - Cl. 13(b)
- (c) Procedures for issue and service of writs of subpoena are prescribed - Cl. 18(2), (3) & (4)
- (d) Parties must not obstruct arbitration proceedings - Cl. 20
- (e) Unless otherwise agreed arbitrator may make an interim award and order specific performance - Cl. 24(a) & (h)
- (f) Unless award otherwise directs the sum directed to be paid carries interest - Cl. 27

19. The Supreme Court is given the following express powers -

- (a) To direct the issue in interpleader proceedings to be determined in accordance with the arbitration agreement - Cl. 11
- (b) To order an umpire to enter on a reference - Cl.14(3)
- (c) To order security for costs, discovery of documents, etc. - Cl. 19 (see *R. J. Davies Ltd. v C. R. Heath Earthmoving Co. Ltd.* [1965] W.A.R.189).
- (d) To remove a dilatory arbitrator and appoint a fresh arbitrator - Cl. 22(3) & 33
- (e) To extend time to apply for an amendment to an award to provide for costs - Cl. 25(4)
- (f) To make certain orders in case of a dispute about an arbitrator's fees - Cl. 26
- (g) To correct obvious mistakes in an award - Cl. 31

- (h) To give the arbitrator directions for the correction of jurisdictional errors - Cl. 32(2)
  
- (i) On an application to set aside an award, to order money payable under the award to be secured - Cl. 32(4).

**A BILL**

**FOR**

AN ACT to amend and consolidate the law relating to arbitration.

BE IT enacted etc. ...

**PART I – PRELIMINARY**

- Short title. 1. This Act may be cited as the *Arbitration Act 197-*.
- Commencement. 2. This Act shall come into operation six months after it is assented to.
- Application of Act. 3. (1) *The Arbitration Act 1995-1970* is hereby repealed.
- (2) Any agreement to arbitrate in force at the coming into operation of this Act shall have effect subject to this Act, but any reference to arbitration entered on prior to the coming into operation of this Act may be continued and completed under the *Arbitration Act 1895-1970* as if this Act had not been passed.
- U.K. 31  
W.A. 25 (3) With the exception of the provisions specified in subsection (4) of this section, this Act shall apply to every arbitration under any other Act, whether passed before or after the commencement of this Act, as if the arbitration were pursuant to an agreement to arbitrate, except insofar as this Act is inconsistent with that other Act or with any rules or procedure authorised or recognised thereby.
- (4) The provisions referred to in subsection (3) of this section are section eight, section nine, section ten, section eleven, subsection (1) of section twelve, subsection (3) of section twenty-five and section thirty-three.
- Arrangement of Act. 4. This Act is arranged as follows -
- PART I - PRELIMINARY, ss. 1-6
  - PART II - GENERAL PROVISIONS AS TO ARBITRATION, ss.7-12
  - PART III - ARBITRATORS AND UMPIRES, ss. 13-16
  - PART IV - CONDUCT OF PROCEEDINGS, ss. 17-21
  - PART V - AWARDS, ss. 22-27

PART VI - SPECIAL CASES, POWERS OF COURT IN  
RELATION TO AWARDS, ss. 28-34.

Interpretation 5. In this Act, unless the contrary intention appears -

“Action” includes a matter or proceeding in a court.

“Agreement to arbitrate” means an agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not.

“Court” means the Supreme Court and includes a Judge thereof.

“Party” includes a personal representative or assign of a party.

Act to bind  
Crown.  
W.A.24 6. This Act binds the Crown.

**PART II - GENERAL PROVISIONS AS TO ARBITRATION**

Revocation.  
U.K.1  
W.A. 3 7. The authority of an arbitrator or umpire appointed by or by virtue of an agreement to arbitrate shall, unless a contrary intention is expressed therein or unless otherwise agreed by all parties concerned, be irrevocable except by leave of the court.

Party may  
commence  
action.  
U.K.4 (1) & 24  
W.A. 6 8. (1) Notwithstanding anything to the contrary contained in an agreement to arbitrate, any party thereto may commence proceedings in a court having jurisdiction to hear and determine those proceedings against any other party to that agreement in respect of any matter agreed to be so referred.

(2) Any other party to the agreement to arbitrate may -

(a) where the proceedings have been commenced in the Supreme Court or District Court, after entering an appearance and before delivering any pleadings;

(b) where the proceedings have been commenced in a Local Court or a Warden’s Court, after giving or lodging a notice of defence and before the hearing of the proceedings.

apply to the court in which the proceedings have been commenced to stay those proceedings.

(3) No stay of proceedings in a court shall be granted unless the court is satisfied that by reason of expense, delay, the nature of the questions in issue, or any other circumstance, justice would be better

served by the dispute being determined by arbitration.

(4) Any party to an agreement to arbitrate may, if proceedings by way of arbitration are commenced against him and before taking any step in the arbitration, apply to any court in which the dispute could be determined for an order staying those proceedings and that court shall by order and subject to such conditions (if any) as the court may think fit to impose, stay those proceedings unless it is satisfied that by reason of expense, delay, the nature of the questions in issue, or any other circumstance, justice would be better served by the dispute being determined by arbitration.

(5) Where a party to an agreement to arbitrate makes an application to stay arbitration proceedings upon the ground that the arbitrator so named or designated is not or may not be impartial, it shall not be a ground for refusing the application that the party at the time when he made the agreement knew or ought to have known that the arbitrator, by reason of his relation towards any other party to the agreement or by reason of his connection with the subject referred, might not be capable of impartiality.

Agreement requiring arbitration before court action to be void.  
U. K. 25(4)

9. A provision in an agreement that no action may be brought with respect to any matter to which the agreement applies, unless the matter has been referred to arbitration or unless an award pursuant to the reference has been obtained, is void.

Power to extend time.  
U .K. 27

10. Where an agreement to refer future disputes to arbitration provides that the right to take arbitration proceedings or any proceedings in a court in relation to a dispute to which the agreement applies shall be barred unless some step is taken within a time fixed by the agreement and a dispute arises to which the agreement applies, the court, if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused and notwithstanding that the time so fixed has expired, may on such terms (if any) as it thinks fit, but without prejudice to the provisions of any enactment limiting the time for the commencement of arbitration proceedings or proceedings in a court as the case may be, extend the time for such period as it thinks fit.

Interpleader  
U.K.5

11. Where relief by way of interpleader is granted and it appears to the court in which the proceedings are pending that the claims in question are matters to which an agreement to arbitrate, to which the claimants are parties, applies, the court may if it is satisfied that by reason of expense, delay, the nature of the questions in issue or any other circumstance, justice would be better served thereby, direct the issue between the claimants to be determined in accordance with the agreement to arbitrate.

Death of a party  
U.K.2

12. (1) An agreement to arbitrate shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the personal

representative of the deceased.

(2) The authority of an arbitrator shall not be revoked by the death of any party.

(3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

### PART III - ARBITRATORS AND UMPIRES

Presumption  
as to  
arbitrators.  
U.K. 6 & 9(2)  
W.A. Sched.(1)

13. Unless a contrary intention is expressed therein every agreement to arbitrate shall -

- (a) if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator;
- (b) where the reference is to an uneven number of arbitrators, be deemed to include a provision that the arbitrators may act by a majority decision.

Umpires.  
U.K. 8  
W.A.  
Sched. (2)

14. (1) Unless a contrary intention is expressed therein every agreement to arbitrate shall, where the reference is to an even number of arbitrators, be deemed to include a provision that the arbitrators shall appoint an umpire immediately after they themselves are appointed.

(2) Unless a contrary intention is expressed therein every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to include a provision that, if the arbitrators have delivered to any party to the agreement 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.

(3) At any time after the appointment of an umpire, however appointed, the court may, on the application of any party to the reference and notwithstanding anything to the contrary in the agreement to arbitrate, order that the umpire shall enter upon the reference in lieu of the arbitrators and as if he were a sole arbitrator.

Filling of  
vacancy by  
parties.  
U.K. 7  
W.A. 8

15. Where an agreement to arbitrate provides that the reference shall be to two or more arbitrators, then, unless a contrary intention is expressed therein -

- (a) if any of the nominated or appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who nominated or appointed him as the case may be may appoint a new arbitrator in his place: provided that, where the arbitrator to be replaced had entered on the reference, no appointment by way of substitution shall be made except by leave of the court and subject to such terms and directions as

the court may impose;

- (b) if on such a reference a party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after any other party has served the party making default with notice to make the appointment, the other party or parties as the case may be may appoint his or their arbitrators to be the only arbitrator or arbitrators in the reference, and any award shall be binding on all parties: provided that the court may set aside any appointment made pursuant to this paragraph.

Power of court  
to appoint an  
arbitrator or  
umpire.  
U.K.10  
W.A.7

16. In any of the following cases -

- (a) where an agreement to arbitrate 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 single arbitrator refuses to act, or is incapable of acting, or dies, and the agreement to arbitrate does not show that it was intended that the vacancy should not be filled and the parties do not fill the vacancy;
- (c) where the parties or the arbitrators or any other person may appoint an umpire or an additional arbitrator and no appointment is made, or where an even number of arbitrators are required to appoint an umpire and do not appoint him;
- (d) where an appointed umpire or an appointed additional arbitrator refuses to act, or is incapable of acting, or dies, and the agreement to arbitrate does not show that it was intended that the vacancy should not be filled, and the parties or arbitrators do not fill the vacancy;
- (e) where in any other case it is necessary to appoint, either originally or by way of substitution, an arbitrator or arbitrators, or an umpire, and any difficulty arises in connection with such appointment,

any party may serve the other party or parties or the arbitrators or other person, as the case may be, with a written notice to appoint or concur in appointing an arbitrator or umpire or additional arbitrator, and if the appointment is not made within seven clear days after the service of the notice the court may, on application by the party who gave the notice, appoint an arbitrator or umpire or additional arbitrator who shall have the like power to act in the reference and make an award as if he had been appointed in accordance with the terms of the agreement to arbitrate.

**PART IV - CONDUCT OF PROCEEDINGS**

Power of arbitrator & umpire to examine under oath.  
U.K.12  
W.A.9(a) & Sched. (6) & (7)

17. (1) Unless a contrary intention is expressed therein every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to a reference and all persons claiming through them respectively shall, if required to do so by another party to the reference and subject to any legal objection, submit to be examined before the arbitrator or umpire on oath or affirmation in relation to the matters in dispute and shall, subject as aforesaid, produce before the arbitrator or umpire all documents within their possession or power which may be required or called for.

(2) Unless a contrary intention is expressed therein every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to contain a provision that the witnesses called on a reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.

(3) An arbitrator or umpire shall, unless a contrary intention is expressed in the agreement to arbitrate, have power to administer oaths to or take the affirmations of the parties to and witnesses called on a reference under the agreement.

(4) No person shall be compelled in any arbitration to answer any question he would not be compelled to answer at the trial of an action.

Party may obtain a writ of subpoena or habeas corpus.  
U.K. 12  
W.A.10 & 20

18. (1) Any party to a reference under an agreement to arbitrate may sue out in aid of that reference a writ of subpoena ad testificandum or a writ of subpoena duces tecum, and no order of the court for the issue of such a writ shall be necessary; 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.

(2) Such a writ of subpoena -

- (a) shall be issued in accordance with the practice and forms of the court, with such variations as circumstances may require;
- (b) continues to have effect until the disposal of proceedings at which the attendance of the witness is required;
- (c) must be served personally, unless the court otherwise directs.

(3) No person to whom a writ of subpoena is directed under the provisions of this section shall be liable to any penalty for failure to obey the writ unless it is served on him not less than four days or such other period as the court may fix before the day on which his attendance is

required.

(4) Every person whose attendance is required pursuant to a writ of subpoena issued in accordance with this section shall be entitled to the like conduct money or payment of expenses as upon a trial in the court.

(5) The court may order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an arbitrator or umpire.

Power of  
court to  
make orders.  
U.K.12

19. The court shall have for the purpose of and in relation to a reference the power of making orders in respect of -

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) the giving of evidence by affidavit;
- (d) examination on oath of any witness before an officer of the court or any other person and the issue of a commission or request for the examination of a witness out of the jurisdiction;
- (e) the preservation, interim custody or sale of any goods which are the subject matter of the reference;
- (f) securing the amount in dispute in the reference;
- (g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of these purposes any persons to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence;
- (h) interim injunctions or the appointment of a receiver; and
- (i) delivery of pleadings -

as it has for the purpose of and in relation to an action or matter in the court.

Duties of  
parties

20. (1) If any party to a reference who has been given reasonable notice of the hearing of such reference shall at any time neglect or refuse to attend on the hearing, it shall be lawful for the hearing on the reference to proceed ex parte and for an award thereon to be made in the same

manner as if the party had attended: provided that the court, if the defaulting party shows good and sufficient cause for not attending the hearing, may set aside or vary the award upon such terms as the court may think fit.

(2) The parties to any reference shall at all times do all things which the person conducting the arbitration may require to enable a just award to be made, and no party shall wilfully or wrongfully do or cause to be done any act to delay or prevent an award being made.

Power of arbitrator or umpire to make order not prejudiced.  
U.K.12

21. Nothing in section nineteen shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters referred to in that section.

### PART V - AWARDS

Time for making awards.  
U.K.13  
W.A.  
Sched. (3) & (5)  
W.A. 11

22. (1) Subject to subsection (2) of section thirty of this Act and anything to the contrary in the agreement to arbitrate, an arbitrator or umpire shall have power to make an award at any time.

(2) The time, if any, limited for making an award whether under this Act or otherwise may from time to time be enlarged by the agreement of the parties or by order of the court, whether that time has expired or not.

(3) The court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, and an arbitrator or umpire who is removed by the court under this subsection shall not be entitled to any remuneration in respect of his services.

For the purposes of this subsection the expression "proceeding with the reference" includes, in a case where the arbitrators are unable to reach a decision, giving notice of that fact to the parties and to the umpire.

Form of awards.

23. (1) Notwithstanding anything to the contrary contained in an agreement to arbitrate but subject to subsection (2) of this section, every such agreement shall be deemed to include a provision that the arbitrator or umpire shall -

- (a) make his award in writing; and
- (b) contemporaneously with his award furnish to the parties a written statement of his reasons for his award.

(2) The parties to an agreement to arbitrate may, at any time after a dispute has arisen thereunder and before an award is made, notify the arbitrator or umpire as the case may be in writing that they do not

require that he furnish to them a written statement of his reasons for his award.

(3) Such written statement shall, when furnished in accordance with the requirements of this section, be taken to form part of the award of the arbitrator or umpire as the case may be.

Implied provisions.

24. Unless a contrary intention is expressed therein every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to contain a provision that -

Interim awards  
U.K.14

(a) The arbitrator or umpire may, if he thinks fit, make an interim award and any reference in this Act to an award includes a reference to an interim award;

Specific performance.  
U.K. 15

(b) the arbitrator or umpire shall have the same power as the court to order specific performance of any contract;

Awards to be final.  
U.K. 16  
W.A.Sched. (8)

(c) the award to be made by the arbitrator or umpire shall be final and binding on the parties and the persons claiming under them respectively;

Power to correct slips.  
U.K. 17  
W.A.9 (c)

(d) the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Costs under an award.  
U.K. 18  
W.A.  
Sched. (9)

25. (1) Unless a contrary intention is expressed therein every agreement to arbitrate shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator 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.

(2) Any costs directed to be paid by an award shall, when the award so directs, be taxable under a scale appropriate to the Supreme Court, the District Court or the Local Court, as the arbitrator or umpire may direct, and in that event shall be taxed in the appropriate court.

(3) Any provision in an agreement to refer future disputes to arbitration, to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof, shall be void.

(4) If no provision is made by an award with respect to the costs of the reference, any party to the reference may, within fourteen days of the publication of the award or such further time as the court may direct, apply to the arbitrator or umpire for an order directing by and to

whom those costs shall be paid, and thereupon the arbitrator or umpire shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

Taxation of  
arbitrator's  
or umpire's fees.  
U.K.19  
W.A.15

26. (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the court may on an application for the purpose order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the taxing officer and that out of the money paid into court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation; and that the balance of the money (if any) shall be paid out to the applicant.

(2) An application for the purpose of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

Interest.  
U.K.20

27. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

#### **PART VI - SPECIAL CASES, POWERS OF COURT IN RELATION TO AWARDS.**

Enforcement of  
award.  
U.K.26  
W.A. 14

28. An award on an agreement to arbitrate may by leave of the court be enforced in the same manner as a judgment or order to the same effect and, where leave is so given, judgment may be entered in terms of the award.

Case stated.  
U K.21  
W.A. 9(b) & 21

29. (1) An arbitrator or umpire may, and shall if so directed by the court, state in the form of a special case for the decision of the court -

- (a) any question of law arising in the course of the reference; or
- (b) an award or any part of an award.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated or may be directed by the court to be stated notwithstanding that proceedings under the reference are still pending.

(3) A decision of the court under this section shall, for the purpose of an appeal, be deemed to be an order or judgment of the court.

- Power to remit matters & awards.  
U. K. 22  
W.A. 12
30. (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 consideration or further consideration of the arbitrator or umpire.
- (2) Where any such matter is remitted the arbitrator or umpire shall unless the order otherwise directs make his award within three months after the date of the order.
- Power to correct award.
31. The court may make an order modifying or correcting the award upon the application of any party to the agreement to arbitrate -
- (a) where there is an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award;
- (b) where an arbitrator or umpire has made an award upon a matter not submitted to him, if it is a matter not affecting the merits of the decision upon the matter submitted;
- (c) where the award is imperfect in matter of form not affecting the merits of the controversy.
- Misconduct or error of arbitrator or umpire.  
U.K.23  
W.A.13
32. (1) Where an arbitrator or umpire has been guilty of error misconduct, the court may remove him.
- (2) Where an arbitrator or umpire has committed a jurisdictional error in relation to the proceedings, the court may give him such directions as it considers will enable him to correct the error.
- (3) Where an arbitrator or umpire has been guilty of misconduct or has committed a jurisdictional error in relation to the proceedings, or where an arbitration or award has been improperly procured, the court may set the award aside.
- (4) Where an application is made to set aside an award, the court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.
- (5) In this section -
- “Jurisdictional error” includes -
- (a) any excess of power or imperfect execution of power, including a failure to comply with the requirements of section twenty-three of this Act; or
- (b) failure to make a final and definite award upon the subject matter;

“Misconduct” includes corruption, fraud, evident partiality or bias.

Power of  
court to  
appoint.  
U.K.25

33. (1) Where an arbitrator (not being a sole arbitrator) or two or more arbitrators (not being all the arbitrators) or an umpire who has not entered on the reference is or are removed by the court, the court may, on the application of any party to the agreement to arbitrate, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

(2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the court, the court may, on the application of any party to the agreement to arbitrate, either -

- (a) appoint a person to act as sole arbitrator in place of the person or persons removed; or
- (b) order that the agreement to arbitrate shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the agreement to arbitrate.

Costs.  
U.K.28  
W.A.22

34. Any order made by a court under this Act may be made on such terms as to costs or otherwise as the court thinks just. The order may direct that the costs shall be taxable under a scale appropriate to the Supreme Court, the District Court or the Local Court.

# APPENDIX

## A BILL

### FOR

AN ACT to amend and consolidate the law relating to arbitration.

BE IT enacted etc.....

#### PART 1 – PRELIMINARY

- |                     |   |
|---------------------|---|
| Short title         | 1. This Act say be cited as the Arbitration Act 197-.   |
| Commencement        | 2. This Act shall came into operation on a day to be fixed by proclamation.   |
| Application of Act  | 3. (1) The <i>Arbitration Act 1895-1970</i> is hereby repealed.<br><br>(2) Any agreement to arbitrate in force at the coming into operation of this Act shall have effect subject to this Act, but any arbitration entered on prior to the coming into operation of this Act may be continued and completed under the <i>Arbitration Act 1895-1970</i> as if this Act had not been passed.  |
| U.K. 31<br>W.A. 25  | (3) With the exception of the provisions specified in subsection (4) of this section, this Act shall apply to every arbitration under any other Act, whether passed before or after the commencement of this Act, as if the arbitration were pursuant to an agreement to arbitrate, except insofar as this Act is inconsistent with that other Act or with any rules or procedure authorised or recognised thereby.<br><br>(4) The provisions referred to in subsection (3) of this section are section eight, section nine, section ten, section eleven, subsection (1) of section twelve, subsection (3) of section twenty-four and section thirty-two. |
| Arrangement of Act. | 4. This Act is arranged as follows -<br><br>PART I - Preliminary, ss. 1 - 6<br>PART II - General Provisions as to Arbitration, ss. 7 - 12<br>PART III - Arbitrators and Umpires, ss. 13 - 16<br>PART IV - Conduct of Arbitration Proceedings, ss. 17 - 20<br>PART V - Awards, ss. 21 - 26<br>PART VI - Special Cases, Powers of Court in Relation to Awards, ss. 27 - 33.   |

- Interpretation 5. In this Act, unless the contrary intention appears -
- “Action” includes a matter or proceeding in a court.
- “Agreement to arbitrate” means an agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not.
- “Court” means the Supreme Court and includes a Judge thereof.
- “Party” includes a personal representative or assign of a party.

- Act to bind  
Crown  
W.A. 24 6. This Act binds the Crown.

## PART II - GENERAL PROVISIONS AS TO ARBITRATION

- Revocation  
U.K. 1  
W.A. 3 7. The authority of an arbitrator or umpire appointed by or by virtue of an agreement to arbitrate shall, unless a contrary intention is expressed therein or unless otherwise agreed by all parties concerned, be irrevocable except by leave of the court.

- Party may  
commence action  
U.K. 4(1) & 24  
W.A. 6 8. (1) Notwithstanding anything to the contrary contained in an agreement to arbitrate, any party thereto may commence an action in a court having jurisdiction to try the action against any other party to that agreement in respect of any matter agreed to be so referred.
- (2) The party against whom that action has been brought may -
- (a) where the action has been commenced in the Supreme Court or District Court, after entering an appearance and before delivering any pleadings;
- (b) where the action has been commenced in a Local Court or a Warden’s Court, after giving or lodging a notice of defence and before the commencement of the hearing,

apply to the court in which the action has been commenced to stay the action.

(3) The court shall not grant a stay of proceedings unless it is satisfied that by reason of expense, delay, the nature of the questions in issue, the fact that the agreement to arbitrate was specially negotiated, or any other circumstance, justice would be better served by the dispute being determined by arbitration.

(4) Any party to an agreement to arbitrate may, if proceedings by way of arbitration are commenced against him and before taking any step in the arbitration, apply to any court in which the dispute could be

determined for an order staying those proceedings and that court shall by order and subject to such conditions (if any) as the court thinks fit to impose, stay those proceedings unless it is satisfied that by reason of expense, delay, the nature of the questions in issue, the fact that the agreement to arbitrate was specially negotiated, or any other circumstance, justice would be better served by the dispute being determined by arbitration.

(5) Where a party to an agreement to arbitrate makes an application to stay arbitration proceedings or to revoke the authority of the arbitrator upon the ground that the arbitrator is not or may not be impartial, it shall not be a ground for refusing the application that the party at the time when he made the agreement knew or ought to have known that the arbitrator, by reason of his relation towards any other party to the agreement or by reason of his connection with the subject referred, might not be capable of impartiality.

Agreement  
requiring  
arbitration before  
court action is  
void  
U.K. 25(4)

9. A provision in an agreement that no action may be brought with respect to any matter to which the agreement applies, unless the matter has been referred to arbitration or unless an award pursuant to the reference has been obtained, is void.

Power to extend  
time  
U.K. 27

10. Where an agreement to refer future disputes to arbitration provides that the right to take arbitration proceedings or to bring an action shall be barred unless some step is taken within a time fixed by the agreement and a dispute arises to which the agreement applies, the court, if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused and notwithstanding that the time so fixed has expired, may on such terms (if any) as it thinks fit, but without prejudice to the provisions of any enactment limiting the time for the commencement of arbitration proceedings or an action as the case may be, extend the time for such period as it thinks fit.

Interpleader  
U.K. 5

11. Where relief by way of interpleader is granted and it appears to the court which granted the relief that the claims in question are matters to which an agreement to arbitrate, to which the claimants are parties, applies, that court may if it is satisfied that by reason of expense, delay, the nature of the questions in issue, the fact that the agreement to arbitrate was specially negotiated, or any other circumstance, justice would be better served thereby, direct the issue between the claimants to be determined in accordance with the agreement to arbitrate.

Death of a party  
U.K. 2

12. (1) An agreement to arbitrate shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the personal representative of the deceased.

(2) The authority of an arbitrator or umpire shall not be revoked by the death of any party.

(3) Nothing in this section shall affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

### PART III - ARBITRATORS AND UMPIRES

Presumption as to arbitrators and umpire  
U.K. 6 & 9(2)  
W.A. 1st Sched. (1)

13. Unless a contrary intention is expressed therein every agreement to arbitrate shall -
- (a) if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator;
  - (b) where the reference is to an uneven number of arbitrators, be deemed to include a provision that the arbitrators may act by a majority decision.

Umpires  
U.K. 8  
W.A. 1st Sched. (2)

14. (1) Unless a contrary intention is expressed therein every agreement to arbitrate shall -
- (a) where the reference is to an even number of arbitrators, be deemed to include a provision that the arbitrators shall appoint an umpire immediately after they themselves are appointed;
  - (b) where such a provision is applicable to the reference, be deemed to include a provision that, if the arbitrators have delivered to any party to the agreement 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.

(2) At any time after the appointment of an umpire, however appointed, the court may, on the application of any party to the reference and notwithstanding anything to the contrary in the agreement to arbitrate, order that the umpire shall enter upon the reference in lieu of the arbitrators and as if he were a sole arbitrator.

Filling of vacancy by parties  
U.K. 7  
W.A. 8

15. (1) Where an agreement to arbitrate provides that the reference shall be to two or more arbitrators, then, unless a contrary intention is expressed therein -
- (a) if any of the nominated or appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who nominated or appointed him may appoint a new arbitrator in his place; provided that where the arbitrator to be replaced had entered on the reference, no new arbitrator shall be appointed except by leave of the court and subject to such terms and directions as the court may impose;

- (b) if no arbitrator is appointed, either originally or by way of substitution as aforesaid, for seven clear days after any other party has served the party making default with notice to make the appointment, the other party or parties as the case may be may appoint his or their arbitrators to be the only arbitrator or arbitrators in the reference, and any award shall be binding on all parties.

(2) Except where the leave of the court was obtained to the appointment, the court may set aside any appointment made under this section.

Power of court to appoint an arbitrator or umpire  
U.K. 10  
W.A. 7

16. In any of the following cases -

- (a) where an agreement to arbitrate 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 a nominated or appointed single arbitrator refuses to act, or is incapable of acting, or dies, and the agreement to arbitrate does not show that it was intended that the vacancy should not be filled and the parties do not fill the vacancy;
- (c) where the parties or the arbitrators may appoint an umpire or an additional arbitrator and do not appoint him or where the arbitrators are required to appoint an umpire and do not appoint him;
- (d) where a nominated or appointed umpire or additional arbitrator refuses to act, or is incapable of acting, or dies, and the agreement to arbitrate does not show that it was intended that the vacancy should not be filled, and the parties or arbitrators do not fill the vacancy;
- (e) where in any other case it is necessary to appoint, either originally or by way of substitution, an arbitrator or an umpire, and any difficulty arises in connection with such appointment,

any party may serve the other parties or the arbitrators with a written notice to appoint or concur in appointing an arbitrator or umpire or additional arbitrator, and if the appointment is not made within seven clear days after the service of the notice the court may, on application by the party who gave the notice, appoint an arbitrator or umpire or additional arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed in accordance with the terms of the agreement to arbitrate.

**PART IV - CONDUCT OF ARBITRATION PROCEEDINGS**

Power of arbitrator & umpire to examine under oath  
 U.K. 12  
 W.A. 9(a) & 1st Sched. (6) & (7)

17. (1) Unless a contrary intention is expressed therein every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to include a provision that the parties to a reference and all persons claiming through them respectively shall, if required to do so by another party to the reference and subject to any legal objection, -

- (a) submit to be examined before an arbitrator or umpire on oath or affirmation in relation to the matters in dispute, and
- (b) produce before the arbitrator or umpire all documents in their possession or power which may be required or called for.

(2) Unless a contrary intention is expressed therein every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to include a provision that the witnesses called on a reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.

(3) An arbitrator or umpire shall, unless a contrary intention is expressed in the agreement to arbitrate, have power to administer oaths to or take the affirmations of the parties to and witnesses called on a reference under the agreement.

(4) No persons shall be compelled in any arbitration to answer any question he would not be compelled to answer at the trial of an action.

Party may obtain a writ of subpoena or habeas corpus  
 U.K. 12  
 W.A. 10 & 20

18. (1) Any party to a reference under an agreement to arbitrate may sue out in aid of that reference a writ of subpoena ad testificandum or a writ of subpoena duces tecum, and no order of the court for the issue of such a writ shall be necessary; 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.

- (2) A writ of subpoena issued pursuant to this section -
  - (a) shall be issued in accordance with the practice and forms of the court, with such variations as circumstances may require;
  - (b) continues to have effect until the disposal of proceedings at which the attendance of the witness is required;
  - (c) must be served personally, unless the court

otherwise directs.

(3) No person to whom a writ of subpoena is directed under the provisions of this section shall be liable to any penalty for failure to obey the writ unless it is served on him not less than four days or such other period as the court may fix before the day on which his attendance is required.

(4) Every person whose attendance is required pursuant to a writ of subpoena issued in accordance with this section shall be entitled to the like conduct money or payment of expenses as upon a trial in the court.

(5) The court shall have the same power of making orders in respect of the production of a prisoner for examination before an arbitrator or umpire as it has under s.72 of the *Prisons Act 1903* in respect of the production of a prisoner at a trial.

Power of court  
to make orders  
U.K.12

19. (1) The court shall have for the purpose of and in relation to a reference the power of making orders in respect of —

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) the giving of evidence by affidavit;
- (d) examination on oath of any witness before an officer of the court or any other person and the issue of a commission or request for the examination of a witness out of the jurisdiction;
- (e) the preservation, interim custody or sale of any goods which are the subject matter of the reference;
- (f) securing the amount in dispute in the reference;
- (g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of these purposes any persons to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence;
- (h) interim injunctions or the appointment of a receiver; and
- (i) delivery of pleadings -

as it has for the purpose of and in relation to an action in the court.

(2) Nothing in subsection (1) of this section shall prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters referred to in that subsection.

Duties of parties  
Qld. 19

20. (1) If any party to a reference who has been given reasonable notice of the hearing of such reference at any time neglects or refuses to attend on the hearing, it shall be lawful for the hearing to proceed ex parte and for an award thereon to be made in the same manner as if the party had attended: provided that the court, if the defaulting party shows good and sufficient cause for not attending the hearing, may set aside or vary the award upon such terms as the court may think fit.

(2) The parties to any reference shall do whatever the arbitrator or umpire requires to enable a just award to be made, and no party shall wilfully or wrongfully do any act to delay or prevent an award being made.

#### PART V - AWARDS

Time for making  
awards  
U.K. 13  
W.A. 11 & 1<sup>st</sup>  
Sched. (3)&(5)

21. (1) Subject to subsection (2) of section twenty-nine of this Act and anything to the contrary in the agreement to arbitrate, an arbitrator or umpire shall have power to make an award at any time.

(2) The time, if any, limited for making an award, whether under this Act or otherwise, may from time to time be enlarged by the agreement of the parties or by order of the court, whether that time has expired or not.

(3) The court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, and an arbitrator or umpire who is removed by the court under this subsection shall not be entitled to any remuneration in respect of his services.

Form of awards  
Qld. 24

For the purposes of this subsection the expression "proceeding with the reference" includes, in the case where the arbitrators are unable to reach a decision, giving notice of that fact to the parties and to the umpire.

22. (1) Notwithstanding anything to the contrary contained in an agreement to arbitrate but subject to subsection (2) of this section, every such agreement shall be deemed to include a provision that the arbitrator or umpire shall -

(a) make his award in writing; and

(b) contemporaneously with his award furnish to the parties a written statement of his reasons for his award.

(2) The parties to an agreement to arbitrate may, at any time after a dispute has arisen thereunder and before an award is made, by notification to the arbitrator or umpire in writing, dispense with either or both the requirements in subsection (1) of this section.

Implied provisions (3) A written statement shall, when furnished in accordance with the requirements of subsection (1) of this section, form part of the award of the arbitrator or umpire.

Interim awards U.K. 14 23. Unless a contrary intention is expressed therein every agreement to arbitrate shall, where such a provision is applicable to the reference, be deemed to include a provision that -

Specific performance. U.K. 15 (a) the arbitrator or umpire may, if he thinks fit, make an interim award and any reference in this Act to an award includes a reference to an interim award;

Awards to be final U.K. 16 (b) the arbitrator or umpire shall have the same power as the court to order specific performance of any contract;

W.A. 1<sup>st</sup> Sched(8) (c) the award to be made by the arbitrator or umpire shall be final and binding on the parties and the persons claiming under them respectively;

Power to correct slips U.K. 17 (d) the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Costs under an inward U.K. 16 W.A. 1<sup>st</sup> Sched. (9) 24. (1) Unless a contrary intention is expressed therein every agreement to arbitrate shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator 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.

(2) Any costs directed to be paid by an award shall, when the award so directs, be taxable under a scale appropriate to the Supreme Court, the District Court or the Local Court, as the arbitrator or umpire may direct, and in that event shall be taxed in the appropriate court.

(3) Any provision in an agreement to refer future disputes to arbitration, to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof, shall be void.

(4) If no provision is made by an award with respect to the costs of the reference, any party to the reference may, within fourteen

Taxation of  
arbitrator's or  
umpire's fees  
U.K. 19  
W.A. 15

days of the publication of the award or such further time as the court may direct, apply to the arbitrator or umpire for an order directing by and to whom those costs shall be paid, and thereupon the arbitrator or umpire shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

25. (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the court may on an application for the purpose order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the taxing officer and that out of the money paid into court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation, and that the balance of the money (if any) shall be paid out to the applicant.

(2) An application for the purpose of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

Interest  
U.K. 20

26. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award at the same rate as a judgment debt.

#### **PART VI - SPECIAL CASES, POWERS OF COURT IN RELATION TO AWARDS**

Enforcement  
of award  
U.K. 26  
W.A. 14

27. An award on an agreement to arbitrate may by leave of the court be enforced in the same manner as a judgment or order to the same effect and, where leave is so given, judgment may be entered in terms of the award.

Case stated  
U.K. 21  
W.A. 9(b) & 21

28. (1) An arbitrator or umpire may, and shall if so directed by the court, state in the form of a special case for the decision of the court -

- (a) any question of law arising in the course of the reference; or
- (b) an award or any part of an award.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated or may be directed by the court to be stated notwithstanding that

proceedings under the reference are still pending.

(3) A decision of the court under this section shall, for the purpose of an appeal, be deemed to be an order or judgment of the court.

Power to remit in matters and awards  
U.K. 22  
W.A.12

29. (1) In all cases of reference to arbitration the court may from time to time remit the matters referred or any of them, with any directions it sees fit, to the consideration or further consideration of the arbitrator or umpire.

(2) Where any such matter is remitted the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

Power to correct award  
Qld. 31

30. The court may make an order modifying or correcting the award upon the application of any party to the agreement to arbitrate -

- (a) where there is an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award;
- (b) where an arbitrator or umpire has made an award upon a matter not submitted to him, if it is a matter not affecting the merits of the decision upon the matter submitted;
- (c) where the award is imperfect in matter of form not affecting the merits of the controversy.

Misconduct or error of arbitrator or umpire  
U.K. 23  
W.A. 13

31. (1) Where an arbitrator or umpire has been guilty of misconduct, the court may remove him.

(2) Where an arbitrator or umpire has committed a jurisdictional error in relation to the proceedings, the court may give him such directions as it considers will enable him to correct the error.

(3) Where an arbitrator or umpire has been guilty of misconduct or has committed a jurisdictional error in relation to the proceedings, or where an arbitration or award has been improperly procured, the court may set the award aside.

(4) Where an application is made to set aside an award, the court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.

(5) In this section -

‘Jurisdictional error’ includes -

- (a) any excess of power or imperfect execution of power,

any error of law on the face of an award, or failure to comply with the requirements of section twenty-two of this Act; or

- (b) failure to make a final and definite award upon the subject matter;

“Misconduct” includes corruption, fraud, evident partiality or bias.

Power of court to  
appoint  
U.K. 25

32. (1) Where an arbitrator (not being a sole arbitrator) or two or more arbitrators (not being all the arbitrators) or an umpire who has not entered on the reference is or are removed by the court, the court may, on the application of any party to the agreement to arbitrate, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

(2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the court, the court may, on the application of any party to the agreement to arbitrate, either -

- (a) appoint a person to act as sole arbitrator in place of the person or persons removed; or
- (b) order that the agreement to arbitrate shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the agreement to arbitrate.

Costs  
U.K. 28  
W.A. 22

33. Any order made by a court under this Act may be made on such terms as to costs or otherwise as the court thinks just. The order may direct that the costs shall be taxable under a scale appropriate to the Supreme Court, the District Court or the Local Court.