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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1928.

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## A BILL

To amend the Arbitration Act, 1902, in certain respects.

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**1.** This Act may be cited as the "Arbitration Short title. (Amendment) Act, 1928."

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(2)

**2.**

2. The Arbitration Act, 1902, is amended by inserting next after section eight the following section :—

Amendment of  
Act No. 29, 1902  
(New s. 8A.)

8A. (1) Where a submission provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, then, unless the submission expresses a contrary intention—

Power as to  
appointment  
where  
submission  
provides  
for three  
arbitrators.

10 and 11  
Geo. V, c. 81,  
s. 16.

- (a) if one party fails to appoint an arbitrator for seven 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 the award of the arbitrator so appointed shall be binding on both parties as if he had been appointed by consent;
- (b) if after each party has appointed an arbitrator the two arbitrators appointed fail to appoint a third arbitrator within seven clear days after the service by either party of a notice upon them to make the appointment, the court or a judge may, on an application by the party who gave the notice, exercise in the place of the two arbitrators the power of appointing the third arbitrator;
- (c) if an arbitrator, appointed either by one of the parties, by the two arbitrators, or by the court or a judge, refuses to act, or is incapable of acting, or dies, a new arbitrator may be appointed in his place by the party, arbitrators, or court or judge, as the case may be:

Provided that the court or a judge may set aside any appointment of a person to act as sole arbitrator made in pursuance of this section.

3.

**3.** The Arbitration Act, 1902, is further amended by omitting section fourteen and by inserting in lieu thereof the following new section :—

Further amendment of Act No. 29, 1902. (Substituted s. 14.) Enforcing award.

14. (1) Subject to this section any party to a submission upon which an award has been made either before or after the commencement of this Act may produce the award and file it with the Prothonotary of the Supreme Court in the manner and upon payment of the fees prescribed by rules of court.

(2) From the date of filing the award shall become a record of the court and shall have the same force and effect in all respects as a judgment of the court.

The like proceedings, including proceedings in bankruptcy, may be taken upon the award or in respect thereof as if it had been such a judgment.

(3) No award shall, except by leave of the court or a judge, be filed until the time for making application to set aside, refer back, or amend the same has expired, nor, save with such leave, shall an award be filed after the expiration of twelve months from the date thereof.

(4) Notice of the filing of an award shall be served by the party filing the same upon the other party to the submission or his legal representative in manner prescribed by rules of court or by post.

(5) No execution shall be issued in respect of an award so filed unless affidavits are first filed of service of the notice of filing and setting out the amount due under the award or that it has not been complied with.

The affidavit as to the amount due under or the non-compliance with an award may be made by the person in whose favour the award was made or by some person cognizant of the facts of the case.

**4.** The Arbitration Act, 1902, is further amended—

Further amendment of Act No. 29, 1902.

(a) by inserting in subsection two of section sixteen after the word "jury" the words "and may

Sec. 16. (Report of referee, &c.)

may

may be entered as a verdict upon the report or award being filed in the office of the Prothonotary”;

- (b) by omitting subsection one of section eighteen and by inserting in lieu thereof the following new subsection :—

Sec. 18.  
(Power to enforce attendance.)

(1) The court or a judge may make any order or issue any warrant that may be necessary to compel the attendance of a witness or the production of documents by a witness before a referee, arbitrator, or umpire wherever such witness may be within the jurisdiction.

**5.** In order to give effect, so far as this State is concerned, to a protocol on arbitration clauses signed on behalf of His Majesty and of the Commonwealth of Australia, at a meeting of the Assembly of the League of Nations held on the twenty-fourth day of September, one thousand nine hundred and twenty-three, the Arbitration Act, 1902, is further amended—

Further amendment of Act No. 23, 1902, s. 6. Provisions to give effect to protocol on arbitration clauses signed at Assembly of League of Nations on 24th September, 1923, on behalf of His Majesty and of the Commonwealth.

- (a) by inserting at the end of section six the following new subsection :—

(2) Notwithstanding anything in this Act, such application may be made by any party to a submission made in pursuance of an agreement to which the protocol on arbitration clauses set out in the Third Schedule to this Act applies and which protocol was signed on behalf of His Majesty and of the Commonwealth of Australia at a meeting of the League of Nations held on the twenty-fourth day of September, one thousand nine hundred and twenty-three, and on such application that court or a judge, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, may make an order staying the proceedings.

Imp. Act, 14-15 Geo. V, c. 39.

(b)

- (b) by inserting next after the Second Schedule the following new Schedule :—

THIRD SCHEDULE.

*Protocol on Arbitration Clauses.*

The undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions :—

1. Each of the contracting States recognises the validity of an agreement whether relating to existing or future differences between parties, subject respectively to the jurisdiction of different contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any contracting State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other contracting States may be so informed.

2. The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The tribunals of the contracting parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an arbitration agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or become inoperative.

*Arbitration (Amendment).*

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5. The present protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the signatory States.

6. The present protocol shall come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present protocol may be denounced by any contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The contracting States may declare that their acceptance of the present protocol does not include any or all of the undermentioned territories; that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all signatory States. They will take effect one month after the notification by the Secretary-General to all signatory States.

The contracting States may also denounce the protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

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