

# Commercial Arbitration Bill 2012

## Explanatory Notes

### Short title

Commercial Arbitration Bill 2012.

### Objectives of the Bill

The main purposes of this Bill are to:

- (a) govern Queensland domestic commercial arbitrations in a manner consistent with the national model Bill agreed to by the former Standing Committee of Attorneys-General (SCAG) (the Model Bill);
- (b) replace the current *Commercial Arbitration Act 1990* (Qld) (the existing Act);
- (c) adopt the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the UNCITRAL Model Law), with supplemental domestic provisions for local commercial arbitration;
- (d) maintain a high level of consistency between Queensland's commercial arbitration regime and similar legislation already adopted in other Australian jurisdictions;
- (e) harmonise Queensland's domestic commercial arbitration regime with the Commonwealth *International Arbitration Act 1974* (the Commonwealth Act);
- (f) provide more accessible, cost-effective and timely processes for the fair and impartial resolution of commercial disputes through arbitration; and
- (g) ensure Queensland's adherence to world standards in commercial dispute resolution.

## **Reasons for the Bill**

The existing Act is consistent with the Uniform Commercial Arbitration Acts (Uniform Acts) previously developed by SCAG and adopted across Australia.

In response to criticism that arbitration had become too litigious, SCAG agreed to updating and modernising the Uniform Acts and ensuring they reflect international best practice and support arbitration as an efficient, cost-effective alternative to litigation.

A Model Bill for this purpose was settled in July 2011. It was based on the UNCITRAL Model Law and aligned with the Commonwealth Act to promote national consistency in regulation and conduct of international and domestic commercial arbitration. The Model Bill includes additional provisions which supplement the UNCITRAL Model Law for domestic commercial arbitration.

## **Achievement of the Objectives**

The objectives are achieved by the Bill repealing and replacing the existing Act and adopting the Model Bill.

## **Alternative Ways of Achieving Objectives**

The Bill is the only way to update and modernise Queensland's existing commercial arbitration law consistently with the Model Bill.

## **Estimated Cost for Government Implementation**

The Bill is expected to be cost neutral and have a positive costs impact through lessening court involvement in arbitrated matters.

## **Consistency with Fundamental Legislative Principles**

### Clause 5

The clause restricts the rights and liberties of individuals and corporations by limiting access to the courts in commercial arbitration matters. The limitation of court involvement is justified given that, in nominating arbitration as a dispute resolution method, parties are making a conscious decision to exclude court jurisdiction and resolve their dispute by alternate means. Parties consent to the use of this legislative framework to avoid

litigating their dispute before the courts, which is more costly and time-consuming.

Further, the Bill will permit court intervention at various stages to ensure the arbitral process is conducted in accordance with the arbitration agreement, principles of procedural fairness, relevant public policy and the law. The inclusion of clause 5 will provide parties with clarity and certainty about the extent of judicial intervention and is consistent with the proposition that awards should be final and binding. This clause forms part of the Model Bill and has been adopted unamended by all jurisdictions that have introduced the Model Bill.

#### Clause 27D

This clause allows the parties to agree to use the arbitrator as a mediator, conciliator or other non-arbitral intermediary to resolve their dispute. If this is unsuccessful, the arbitrator can continue to arbitrate, with their agreement.

The clause does not include a time limit for the parties to give their written consent for an arbitrator to continue to act and this has been raised as potentially in breach of the requirement under section 4(3)(k) of the *Legislative Standards Act 1992* that legislation be drafted in a sufficiently clear and precise way. In this regard, the clause follows the Model Bill in the interests of uniformity. However, any uncertainty would be mitigated by clause 24B which will impose a general duty on parties to do all things necessary for the proper and expeditious conduct of arbitral proceedings.

This clause could also abrogate privacy and confidentiality rights. If an arbitrator acts as a mediator, with the agreement of the parties, the arbitrator must treat information provided during the mediation as confidential, unless authorised otherwise. If the mediation proceedings are terminated, the mediating arbitrator may continue to act in the subsequent arbitration proceedings if both parties agree in writing. If this occurs, the arbitrator is required to disclose confidential information that is material to the proceedings disclosed during the mediation proceedings, prior to the arbitration continuing.

The disclosure requirement is intended to assist the parties in making informed tactical decisions about whether they should consent to the arbitration continuing. It forewarns of potential issues regarding the arbitrator's possible impartiality and bias which might flow from his or her knowledge of the confidential information. If parties were concerned about

the arbitrator's obligation to disclose confidential information obtained during the mediation they could withhold consent.

### Clause 39

The clause provides that an arbitrator is not liable for any act or omission done in good faith as arbitrator, or as mediator under clause 27D. Section 51 of the existing Act protects an arbitrator or umpire from negligence, but not fraud.

Generally, legislation conferring immunity from proceedings or prosecution should only do so with adequate justification. Judicial officers have been granted immunity from prosecution or proceedings for illegal or negligent acts when acting in that capacity.

The proposed immunity is consistent with immunity provided for conciliators and adjudicators which has been recognised as appropriate by the former Scrutiny of Legislation Committee. Further, court oversight of arbitration proceedings allows for review and correction of arbitrators' decisions in particular circumstances.

The clause also provides that an entity which appoints, or fails or refuses to appoint, an arbitrator is similarly immune in respect of that decision. In the absence of such immunity, industry bodies and other entities may be reluctant to be involved in the appointment of arbitrators for local arbitrations.

## **Consultation**

Whole of government consultation occurred in preparing the lapsed Commercial Arbitration Bill 2011. Save for two minor amendments, the Bill remains unchanged from the lapsed Bill on which the Australian Centre for International Commercial Arbitration, the Institute of Arbitrators and Mediators Australia, the Queensland Law Society, the Bar Association of Queensland and the heads of jurisdiction were previously consulted.

The Schedule has been renamed as Schedule 1. A new clause 2(5) has been added and prior references to editor's notes changed to 'notes'. This has the effect of excluding all notes but one (the Model Law note to clause 1) from forming part of the Bill.

## **Consistency with legislation of other jurisdictions**

The Bill achieves consistency with the Model Bill which has passed or been introduced in all other Australian jurisdictions, except the Australian Capital Territory.

# **Notes on Provisions**

## **Part 1A Preliminary**

Clause 1AA provides for the short title of the Act as the *Commercial Arbitration Act 2012*.

Clause 1AB provides that the Act will commence by proclamation.

Clause 1AC sets out the paramount object of the Act, which is to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense. Subclause (2) sets out how the Act aims to achieve this objective. Subclause (3) provides that the Act must be interpreted, and the functions of the arbitral tribunal must be exercised, so that as far as practicable the paramount objective of the Act is achieved. This subclause does not affect the application of section 14A of the *Acts Interpretation Act 1954* (subclause (4)).

Clause 1AD provides that the Act binds all persons.

## **Part 1 General provisions**

Clause 1 applies the Act to domestic commercial arbitrations. An arbitration is a domestic arbitration if the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in Australia and have (whether in the arbitration agreement or in any other document in writing) agreed that any dispute that has arisen or may arise between them is to be settled by arbitration. It is not

a domestic arbitration if it is an arbitration to which the UNCITRAL Model Law, as given effect by the Commonwealth Act, applies.

Subclause (5) also makes it clear that the proposed Act is not intended to affect any other Act that provides that certain disputes may not be submitted to arbitration or may only be submitted according to provisions other than those of the proposed Act. For example, a consequential amendment to section 98 of the *Domestic Building Contracts Act 2000* in Schedule 1 to the Bill will preclude the operation of the Bill to domestic building work except in nominated circumstances, as is currently the case under the existing Act and the *Domestic Building Contracts Act 2000*.

Clause 2 defines certain words and expressions used in the proposed Act. In particular, it defines the terms ‘arbitral tribunal’, ‘arbitration’, ‘confidential information’, ‘disclose’, ‘Model Law’ and ‘party’. The clause also contains provisions for interpreting referential phrases and terms in the proposed Act.

Clause 2A provides that in interpreting the proposed Act regard is to be had to promoting uniformity between the application of the proposed Act to domestic commercial arbitrations and the application of the UNCITRAL Model Law (as given effect by the Commonwealth Act) to international commercial arbitrations.

Clause 3 provides that written communications are taken to have been received by a party in stated circumstances.

Clause 4 waives the right of a party to object to non-compliance with a provision of the proposed Act or of an arbitration agreement if the party proceeds with arbitration but fails to object to that non-compliance either without undue delay or within any time-limit.

Clause 5 provides that a court is not to intervene in matters governed by the proposed Act, except as provided by the Act.

Clause 6 specifies the functions of arbitration assistance and supervision which are to be performed by the Supreme Court, or by the District Court if the parties so provide in the arbitration agreement or agree in writing, under the proposed Act. This is consistent with the approach under the existing Act.

## **Part 2                      Arbitration agreement**

Clause 7 defines the term ‘arbitration agreement’ as an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. Subclause (3) states that an arbitration agreement must be “in writing”, which has an expanded meaning under this section. An agreement may be concluded orally, by conduct or other means, provided that its content is recorded in some form, including electronic communication. An agreement will also be in writing if it is contained “in an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other”.

Clause 8 requires a court before which an action is brought in a matter that is the subject of an arbitration agreement to refer the matter to arbitration if a party so requests, in the circumstances specified in the proposed section. It also enables an arbitration to be commenced or continued while the issue is pending before the court.

Clause 9 enables a party to obtain an interim measure of protection from a court, before or during arbitral proceedings.

## **Part 3                      Composition of arbitral tribunal**

Clause 10 provides for the parties to determine the number of arbitrators. In the absence of agreement between the parties the number of arbitrators is to be one.

Clause 11 allows the parties to agree on the procedure for appointing arbitrators. It provides a default procedure with ultimate recourse to the Court if agreement cannot be reached or the agreed procedure is not followed. Pursuant to subclause (5), a decision within the limits of the Court’s authority on a matter entrusted by subsection (3) or (4) to the Court is final. This provision is accompanied by a note which provides, amongst other things, that although a decision of the Court is generally final under subclause (5), review of the decision of the Court that is not made within the limits of its power or functions is not precluded.

Clause 12 sets out the grounds on which the appointment of an arbitrator may be challenged. It obliges proposed arbitrators to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. This obligation starts when a person is approached to be an arbitrator and continues throughout the person's appointment as an arbitrator. Subclauses (5) and (6) provide that the test for whether there are justifiable doubts as to the impartiality or independence of an arbitrator is whether there is a real danger of bias. This is based on the test for bias applied by the House of Lords in *R v Gough* [1993] AC 646.

Clause 13 provides that the parties are free to agree on the procedure for challenging an arbitrator and provides a default procedure for challenging the appointment or continued appointment of an arbitrator in the absence of agreement. It also provides that if a challenge fails, a party may have recourse to the Court to determine the matter. Pursuant to subclause (5), a decision of the Court that is within the limits of the authority of the Court is final. This clause also contains a note, which is similar to that contained in clause 11 and discussed above. While the Court's challenge procedure is on foot under this section, subclause (6) provides that the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Clause 14 provides for the termination of the mandate of an arbitrator. If the arbitrator becomes in law or in fact unable to perform their functions or fails to perform without undue delay, the arbitrator's mandate terminates if the arbitrator withdraws from office or if the parties agree to termination. In specific circumstances, a party may request the Court to decide on termination of the mandate and such a decision is final, provided it is within the limits of the Court's authority. This clause also contains a note, which is similar to that contained in clause 11 and discussed above.

Clause 15 requires the appointment of a substitute arbitrator according to the appointment procedure and any other eligibility requirements that were applicable to the arbitrator being replaced.

## **Part 4                      Jurisdiction of arbitral tribunal**

Clause 16 provides that an arbitral tribunal may rule on its own jurisdiction and for that purpose, an arbitration clause which forms part of a contract is

to be treated as an agreement independent of the other terms of the contract. It also provides that any decision that the contract is null and void does not of itself entail the invalidity of the arbitration clause. The provision also enables a party to seek a ruling from the Court from a determination of the tribunal that it has jurisdiction and the Court's decision is final. This clause also contains a note, which is similar to that contained in clause 11 and discussed above.

## **Part 4A            Interim measures**

### **Division 1            Interim measures**

Clause 17 confers power on an arbitral tribunal to grant interim measures unless otherwise agreed by the parties. An interim measure is temporary, can take various forms and can be used for purposes such as the maintenance of the status quo, preservation of assets and evidence and for other purposes specified in subclause (2) and in respect of matters specified in subclause (3).

Clause 17A requires a party requesting certain interim measures to satisfy the arbitral tribunal that if the measure concerned is not ordered then harm not adequately reparable by an award of damages is likely to result and that there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

### **Division 2            Preliminary orders**

Articles 17B and 17C of the UNCITRAL Model Law are not adopted by the proposed Act but the clause numbering is retained to maintain consistency with the numbering of the UNCITRAL Model Law.

### **Division 3            Provisions applicable to interim measures**

Clause 17D enables an arbitral tribunal to modify, suspend or terminate an interim measure either on the application of any party or, in exceptional circumstances and having given prior notice, on the tribunal's own initiative.

Clause 17E enables an arbitral tribunal to require the party requesting an interim measure to provide appropriate security.

Clause 17F enables an arbitral tribunal to require any party to promptly disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

Clause 17G provides that a party who requests an interim measure is liable for any costs and damages caused by the measure to any party if the tribunal subsequently determines that it should not have granted that interim measure. The tribunal may award costs or damages at any time during the proceedings.

### **Division 4            Recognition and enforcement of interim measures**

Clause 17H provides for the recognition and enforcement of an interim measure issued by an arbitral tribunal under a law of Queensland, or an interim measure issued by an arbitral tribunal under a law of another State or Territory of Australia, in certain circumstances.

Clause 17I outlines the circumstances in which the recognition or enforcement of an interim measure may be refused.

### **Division 5            Court-ordered interim measures**

Clause 17J provides that the Court has the same power to issue an interim measure in arbitration proceedings as it has in relation to proceedings in courts. This power is to be exercised in accordance with the Court's own

procedures taking into account the specific features of a domestic commercial arbitration.

## **Part 5                      Conduct of arbitral proceedings**

Clause 18 provides that parties must be treated with equality and given a reasonable opportunity of presenting the party's case.

Clause 19 provides that the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceeding and failing such agreement, enables the arbitral tribunal to conduct the arbitration in such manner as it considers appropriate. Subclauses (3) - (5) specify the powers conferred on the arbitral tribunal, such as the power to decide on the admissibility of evidence. Subclause (6) provides for the manner of enforcement of an order or direction of an arbitral tribunal.

Clause 20 provides that the parties are free to agree on the place of arbitration and enables an arbitral tribunal to determine the place of arbitration in the absence of such agreement.

Clause 21 provides for arbitral proceedings to commence on the date that a request for the referral to arbitration is received by the respondent. The clause applies unless otherwise agreed by the parties.

Clause 22 provides that the parties are free to agree on the language or languages to be used in arbitral proceedings. Failing such agreement, the arbitral tribunal is to determine the language or languages to be used. Unless otherwise stated, the agreement or determination applies to written statements and any hearing, award, decision or other communication by the arbitral tribunal. The proposed section also enables an arbitral tribunal to make an order for documentary evidence to be accompanied by an appropriate translation.

Clause 23 sets out requirements with respect to statements of claim and defence.

Clause 24 sets out the procedure for the conduct of the arbitral proceedings. Subject to a contrary agreement by the parties, the arbitral tribunal is enabled to decide whether to hold an oral hearing or to make a decision on the basis of documents and other materials. The discretion to make a decision on the papers is limited in so far as the arbitral tribunal must hold

an oral hearing if requested by a party, provided the parties have not agreed beforehand that no hearings are to be held. Parties must be given sufficient advance notice of any hearing and of any a meeting of the arbitral tribunal for the purpose of inspection of goods, other property or documents. The clause also provides that statements, documents and other information supplied to the arbitral tribunal by one party must be supplied to the other party and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision is to be communicated to the parties.

Clause 24A enables a party to appear in person or be represented by any person of their choice in oral hearings of the tribunal.

Clause 24B imposes a duty on the parties to do all things necessary for the proper and expeditious conduct of arbitral proceedings.

Clause 25 outlines the powers of an arbitral tribunal in the event of a party's failure to communicate a statement of claim or a statement of defence or to appear at a hearing or produce documentary evidence. The clause applies unless the parties otherwise agree or the failing party shows sufficient cause. The provision also outlines the arbitral tribunal's powers where a party fails to do any other thing necessary for the proper and expeditious conduct of the arbitration or fails to comply with a preemptory order.

Clause 26 empowers an arbitral tribunal, unless otherwise agreed by the parties, to appoint experts to report on specific issues determined by the tribunal, and if necessary to appear at a hearing for the purpose of examination. It also empowers the arbitral tribunal, unless otherwise agreed by the parties, to require a party to give information or to provide access to any relevant documents, goods or other property for the expert's inspection.

Clause 27 enables the arbitral tribunal or a party with the approval of the arbitral tribunal to request the Court's assistance in taking evidence.

Clause 27A enables the Court to issue a subpoena requiring a person to attend for examination before the arbitral tribunal, or to produce documents, on the application of a party made with the consent of the arbitral tribunal. A person must not be compelled under the subpoena to answer a question or produce a document the person could not be compelled to answer or produce in a proceeding before the Court. The clause is based on section 17 of the existing Act.

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Clause 27B outlines how the refusal or failure to attend before the arbitral tribunal or produce a document is to be dealt with. The clause is based on section 18 of the existing Act.

Subclause (1) outlines when a person is in default for the purposes of this section and includes a person's default in relation to attendance before the tribunal, production of documents and appearance as a witness. Unless otherwise agreed by the parties and on application to the Court by the arbitral tribunal or a party with the permission of the arbitral tribunal, the Court may order a person in default, including a non-party in specified circumstances, to comply with a subpoena or a requirement of the arbitral tribunal. Subclause (5) provides a person must not be compelled under the order to answer a question or produce a document the person could not be compelled to answer to produce in proceedings before the Court.

Under this clause, the Court may also make consequential orders as to the transmission of evidence or documents to the arbitral tribunal.

Clause 27C enables the consolidation of certain arbitral proceedings. The clause applies unless otherwise agreed by the parties. The clause is based on section 26 of the existing Act

Clause 27D provides that an arbitrator can act as mediator in the proceedings if the parties agree. It also outlines the circumstances in which mediation can be terminated. This includes where any party withdraws their consent to the mediation. It also prohibits an arbitrator who has acted in mediation proceedings that have terminated from conducting the subsequent arbitration, unless the written consent of all the parties to the arbitration has been obtained on or after the termination of the mediation proceedings. The clause also specifies how confidential information obtained from a party during mediation proceedings that the arbitrator considers material to the arbitration proceedings is to be treated.

Clause 27E provides for the protection of confidential information. The clause applies unless otherwise agreed by the parties. It prohibits the disclosure of confidential information by either the parties or the tribunal, except as allowed by proposed sections 27F–27I. The provisions are adapted (with modifications) from similar provisions of the *Arbitration Act 1996* of New Zealand.

Clause 27F states the general circumstances in which confidential information can be disclosed by a party or the arbitral tribunal. These circumstances include where all the parties have consented, it is necessary for the establishment or protection of the legal rights of a party, disclosure

is required by subpoena or a court order or where disclosure is authorised or required by another relevant law (including a law of the Commonwealth or of another State or Territory) or for the purposes of enforcing an arbitral award.

Clause 27G allows an arbitral tribunal to authorise the disclosure of confidential information in circumstances other than those mentioned in proposed section 27F at the request of a party after giving each party the opportunity to be heard.

Clause 27H outlines the circumstances in which the Court may make an order prohibiting the disclosure of confidential information on the application of a party and after giving all parties an opportunity to be heard. It requires consideration of whether or not the public interest would be served by disclosure or non-disclosure and whether disclosure is more than reasonable for the purpose. A party may only apply for an order under this section if the arbitral tribunal has made an order allowing disclosure under proposed section 27G. The Court may make an order preventing the disclosure of confidential information until such time as an application under this section is made.

Clause 27I outlines the circumstances in which the Court may make an order allowing the disclosure of confidential information on the application of a party and after giving all parties an opportunity to be heard. It requires consideration of whether or not the public interest would be served by disclosure or non-disclosure and whether disclosure is more than reasonable for the purpose. The provision also sets out when an application for an order under this clause can be made.

Clause 27J enables a party to make an application to the Court, in specified circumstances, and confers jurisdiction on the Court, to determine a question of law that arises in the course of arbitration, unless otherwise agreed.

## **Part 6                      Making of award and termination of proceedings**

Clause 28 enables the parties to choose the substantive law to be applied to the particular facts of the matter in dispute. It makes it clear that an arbitral tribunal is to make a determination in accordance with the terms of the

contract, taking into account the usages of the trade applicable to the transaction.

Clause 29 provides that in arbitral proceedings with more than one arbitrator, any decision of the tribunal must be made by a majority of its members unless otherwise agreed by the parties. The clause also provides that questions of procedure may be determined by a presiding arbitrator if authorised by the parties or all members of the tribunal.

Clause 30 provides for the recording of a settlement between the parties in the form of an award.

Clause 31 prescribes the form and content of an award.

Clause 32 describes the circumstances in which arbitral proceedings are terminated.

Clause 33 enables the correction or interpretation of a provision of the award, or the making of an additional award as to the claims presented in the arbitral proceedings but omitted from the award. It provides that any interpretation of the tribunal forms part of the award. The requirements about the form and content of an award in clause 31 apply to the correction or interpretation of the award, or the additional award.

Clause 33A enables an arbitrator to make an order for specific performance of a contract in circumstances where the Court would have power to order specific performance of that contract, unless otherwise agreed by the parties.

Clause 33B allows the arbitral tribunal (unless otherwise agreed by the parties) to determine costs (including the fees and expenses of the arbitrator or arbitrators) at its discretion and to direct that they be limited to a specified amount.

Clause 33C applies Division 7 (Costs assessment) of Part 3.4 (Costs disclosure and assessment) of the *Legal Profession Act 2007* to the assessment of costs by the Court under proposed section 33B.

Clause 33D enables the Court, to make orders with respect to the costs of an abortive arbitration. It is based on section 36 of the existing Act.

Clause 33E provides for the imposition of interest in an award for payment of money for the period before the making of the award by the arbitral tribunal, unless otherwise agreed by the parties.

Clause 33F provides for the imposition of interest on the debt under an award by the arbitral tribunal unless otherwise agreed by the parties.

## **Part 7                      Recourse against award**

Clause 34 states that recourse to the Court against an arbitral award may be made only by an application for setting aside under this section or by an appeal under section 34A. This clause articulates the criteria to be applied by the Court. In particular, it requires the Court to find either that the subject matter of the dispute is not capable of settlement by arbitration under a law of Queensland, or that the award is in conflict with public policy.

Clause 34A enables an appeal to the Court on a question of law, if the parties have agreed prior to the expiry of the appeal period that such appeals may be made and the Court grants leave. Subclause (3) outlines the criteria which the Court must be satisfied of before granting leave. The clause also outlines the orders the Court can make.

## **Part 8                      Recognition and enforcement of awards**

Clause 35 establishes a framework for the recognition and enforcement of arbitral awards.

Clause 36 enables the Court to refuse to recognise an arbitral award on specified grounds.

## **Part 9                      Miscellaneous**

Clause 37 outlines the effect that the death of a party has on an arbitration agreement. It is based on section 52 of the existing Act.

Clause 38 makes provision for relief by way of interpleader. It is based on section 54 of the existing Act.

Clause 39 confers immunity on an arbitrator for anything done or omitted to be done in good faith in his or her capacity as arbitrator. It also confers

immunity on an entity that appoints, or fails to appoint, a person as arbitrator if done in good faith.

Clause 40 enables the making of regulations.

The Model Bill contains an additional clause dealing with Court Rules – clause 40. This clause has not been included in the Bill as (a) the *Supreme Court of Queensland Act 1991* provides an extensive framework for the making of rules of court in civil proceedings otherwise known as the *Uniform Civil Procedure Rules 1999* and (b) in 1995, the *Statute Law Revision (No 2) Act 1995* removed a similar provision from the existing Act given the existence of the rule making power in the *Supreme Court of Queensland Act 1991* and at that time, the *District Courts Act 1967*.

## **Part 10                    Repeal and transitional provision**

### **Division 1                Repeal**

Clause 41 repeals the existing Act.

### **Division 2                Transitional provision**

Clause 42 deals with transitional arrangements. The clause provides that: the provisions of this Act apply to an arbitration agreement (whether made before or after the commencement of the Act) and to an arbitration under such an agreement; and a reference in an arbitration agreement to the existing Act, or a provision of that Act, should be construed as a reference to the new Act or to the corresponding provision (if any) of the new Act. If, however, an arbitration was started before the commencement of these provisions, the law governing the arbitration and the arbitration agreement is to be that which would have been applicable if these provisions had not been enacted. The clause outlines, in subclause (3), when an arbitration is taken to have been started.

## **Part 11**                      **Consequential amendments**

Clause 43 provides for a schedule of minor and consequential amendments.

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