Commercial Arbitration Bill 2011

Explanatory Notes

Short title

Commercial Arbitration Bill 2011.

Objectives of the Bill

The main purpose of this Bill is to:

(a) replace the *Commercial Arbitration Act 1990* (Qld), which currently governs domestic commercial arbitrations in Queensland, with a Bill consistent with the national model Bill agreed to by the Standing Committee of Attorneys-General (SCAG) (the model Bill);

(b) adopt the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the UNCITRAL Model Law), supplemented by provisions relevant to the domestic commercial arbitration setting;

(c) make Queensland's commercial arbitration law as consistent as possible with the new commercial arbitration legislation already enacted in other Australian jurisdictions and help align the domestic commercial arbitration regime with the Commonwealth's *International Arbitration Act 1974*;

(d) create an environment which encourages better use of the domestic commercial arbitration regime to ensure that businesses have better access to processes for the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense; and

(e) ensure Queensland is recognised as a jurisdiction which meets world standards for facilitating the resolution of commercial disputes.

Reasons for the Bill

The existing commercial arbitration legislation in Queensland - the *Commercial Arbitration Act 1990* - was developed under the auspices of

SCAG and is one of a series of substantially uniform laws across Australia that are commonly referred to as the Uniform Commercial Arbitration Acts.

In April 2009, SCAG agreed to develop new uniform commercial arbitration legislation. This decision was based on the widespread view across jurisdictions that: (a) arbitrations in Australia have become too litigious with proceedings increasingly resembling those of a court; and (b) there is a need to modernise and update the Uniform Commercial Arbitration Acts to ensure that arbitration provides an efficient and cost effective alternative to litigation which is consistent with international best practice.

The model Bill is based on the UNCITRAL Model Law and aligns with the *International Arbitration Act 1974* (Cwlth) (Commonwealth Act). The decision of SCAG to base the model Bill on these two frameworks aimed to achieve national consistency in the regulation and conduct of both international and domestic commercial arbitration.

As the UNCITRAL Model Law did not provide a complete solution to the regulation of domestic commercial arbitration in Australia, the model Bill also contains provisions dealing with localised issues.

In May 2010, SCAG agreed to implement the model Bill and in July 2011, all aspects of the Bill were settled.

Achievement of the Objectives

The Bill achieves its objectives by repealing the *Commercial Arbitration Act 1990* and replacing it with a Bill that is consistent with the model Bill developed by SCAG.

Alternative Ways of Achieving Objectives

Government action in the form of amending legislation is the only means of updating and modernising the existing law governing commercial arbitration in Queensland in a way that is consistent with the model Bill.

Estimated Cost for Government Implementation

The proposed reform is expected to have a cost neutral, if not positive, impact on costs to Government. The Bill has the potential to positively impact on the workload of Queensland Courts.

Consistency with Fundamental Legislative Principles

The Bill is raises two fundamental legislative principles issues.

The first issue concerns the abrogation of the rights and liberties from any source and concerns privacy and confidentiality.

Clause 27D of the Bill permits parties to seek settlement of their dispute utilising mediation, conciliation or another dispute resolution method and avail themselves of the use of the arbitrator as the mediator, conciliator or other non-arbitral intermediary. If the non-arbitral dispute resolution method fails, parties can agree to the arbitrator continuing to act as an arbitrator. If this occurs, subclause (7) allows the arbitrator to reveal any confidential information gained in private mediation sessions if the arbitrator considers the information to be material to the arbitration proceedings. The ability of an arbitrator to reveal confidential information can be said to affect an individual's or corporation's right to, and expectation of, privacy and confidentiality.

This requirement forms part of the model Bill settled by SCAG. Under this clause, an arbitrator who conducted the mediation proceedings can only preside over subsequent arbitration proceedings with the consent of the parties. If parties were concerned about the arbitrator's obligation to disclose confidential information obtained during the mediation they could withhold consent. The requirement to disclose confidential information ensures parties are able to make informed decisions about continuing the arbitration in light of potential issues around impartiality and bias which may arise from the arbitrator's awareness of confidential information obtained during the mediation.

Secondly, clause 39 seeks to confer immunity on arbitrators for anything done or omitted to be done in good faith in his or her capacity as arbitrator. It confers similar immunity on an entity which in good faith appoints, or fails to appoint, a person as arbitrator. While it is the general position that legislation should not confer immunity from proceeding or prosecution without adequate justification, it has been accepted as appropriate for judges, magistrates and other people acting judicially to be granted such immunity on the basis of illegal or negligent action when performing their roles. The former Scrutiny of Legislation Committee recognised the appropriateness of conferring such immunity on people exercising similar roles to arbitrators, such as conciliators and adjudicators and the *Commercial Arbitration Act 1990*, which this Bill replaces, currently confers immunity on arbitrators for negligent acts (but not fraud). Further, the actions of arbitrators are

subject to court oversight in specified circumstances providing a mechanism for the review and correction of their decisions.

Consultation

The Queensland Law Society, the Bar Association of Queensland, the heads of jurisdiction, the Institute of Arbitrators and Mediators Australian (IAMA) and the Australian Centre for International Commercial Arbitration (ACICA) were consulted during the development and drafting of the Bill. Whole of government consultation was also undertaken.

Consistency with legislation of other jurisdictions

The Bill is drafted so as to be consistent with the national model legislation developed by SCAG. All Australian jurisdictions, with the exception of Queensland and the Australian Capital Territory have either passed, or introduced, legislation consistent with the national model.

Notes on Provisions

Part 1A Preliminary

Clause 1AA provides for the short title of the Act as the *Commercial Arbitration Act 2011*.

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 as that Act covers the field with respect to international commercial arbitrations.

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* (DBC Act) in the Schedule to the Bill will preclude the operation of the proposed Act to domestic building work except in nominated circumstances, as is currently the case under the *Commercial Arbitration Act 1990* and DBC Act.

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. One of the Model Bill's subclauses – subclause (5) – has not been included in the Bill given the existence of section 14(4) of the *Acts Interpretation Act 1954*. A provision of this nature is not included in the UNCITRAL Model Law.

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 specified 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 *Commercial Arbitration Act 1990.*

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 an editorial note which provides, amongst other things, that although a decision of a 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 a 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 an editorial 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 an editorial 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 an editorial 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 subclauses (2) and (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 that 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 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. The clause applies unless otherwise agreed by the parties and is subject to directions of the arbitral tribunal.

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 clauses 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 peremptory 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 *Commercial Arbitration Act 1990*.

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 *Commercial Arbitration Act 1990*.

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 *Commercial Arbitration Act 1990*.

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 11 (Costs assessment) of Part 3.2 (Costs disclosure and assessment) of the *Legal Profession Act 2007* to the assessment of costs by a Court exercising jurisdiction 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 *Commercial Arbitration Act 1990*.

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. Section 19 of the Commonwealth Act declares that, for the purposes of the application of the UNCITRAL Model Law by that Act, an award is in conflict with public policy if the making of the award was induced or affected by fraud or corruption or a breach of the rules of natural justice occurred in connection with the making of the award.

Clause 34A enables an appeal to the Court on a question of law, if the parties have agreed prior to the commencement of arbitration that such appeals may be made and the Court grants leave. The subclause (3) outlines the criteria which the court must be satisfied of before granting

leave. The clause also outlines the procedure to apply to applications for leave and 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. With the exception of subclause (1)(a)(v), these grounds are consistent with those which apply when a Court is considering setting aside awards under clause 34.

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 *Commercial Arbitration Act 1990*.

Clause 38 makes provision for relief by way of interpleader. It is based on section 54 of the *Commercial Arbitration Act 1990*.

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.

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 the court in civil proceedings otherwise known as the *Uniform Civil Procedure Rule 1999* and (b) in 1995, the *Statute Law Revision (No 2) Act 1995* removed a similar provision from the *Commercial Arbitration Act 1990* 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 *Commercial Arbitration Act 1990*.

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 *Commercial Arbitration Act 1990*, 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.