
Commercial Arbitration Act 1984 No 160

Current version for 6 July 2009 to date (accessed 5 July 2010 at 14:52)

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27 Settlement of disputes otherwise than by arbitration

(1) Parties to an arbitration agreement:

- (a) may seek settlement of a dispute between them by mediation, conciliation or similar means, or
- (b) may authorise an arbitrator or umpire to act as a mediator, conciliator or other non-arbital intermediary between them (whether or not involving a conference to be conducted by the arbitrator or umpire), whether before or after proceeding to arbitration, and whether or not continuing with the arbitration.

(2) Where:

- (a) an arbitrator or umpire acts as a mediator, conciliator or intermediary (with or without a conference) under subsection (1), and
 - (b) that action fails to produce a settlement of the dispute acceptable to the parties to the dispute, no objection shall be taken to the conduct by the arbitrator or umpire of the subsequent arbitration proceedings solely on the ground that the arbitrator or umpire had previously taken that action in relation to the dispute.
- (3) Unless the parties otherwise agree in writing, an arbitrator or umpire is bound by the rules of natural justice when seeking a settlement under subsection (1).
- (4) Nothing in subsection (3) affects the application of the rules of natural justice to an arbitrator or umpire in other circumstances.
- (5) The time appointed by or under this Act or fixed by an arbitration agreement or by an order under section 48 for doing any act or taking any proceeding in or in relation to an arbitration is not affected by any action taken by an arbitrator or umpire under subsection (1).
- (6) Nothing in subsection (5) shall be construed as preventing the making of an application to the Court for the making of an order under section 48.

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Commercial Arbitration Act 2010 No 61

Current version for 28 June 2010 to date (accessed 5 July 2010 at 15:22)

Status information



Status information

Currency of version

Current version for 28 June 2010 to date (accessed 5 July 2010 at 15:22).

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

None of the provisions displayed in this version of the legislation have commenced. See [Historical notes](#)

Note:

Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987](#) No 15 once the amendments have taken effect.

Authorisation: This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW Legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 28 June 2010.

- (c) for some other reason specified in the application, it is desirable that an order be made under this section.
- (2) In this section, 2 or more arbitral proceedings that are the subject of an application under subsection (1) are called the *related proceedings*.
- (3) The following orders may be made under this section in relation to the related proceedings:
 - (a) that the proceedings be consolidated on terms specified in the order,
 - (b) that the proceedings be heard at the same time or in a sequence specified in the order,
 - (c) that any of the proceedings be stayed pending the determination of any of the other proceedings.
- (4) If all the related proceedings are being conducted by the same tribunal, the tribunal may make any order under this section that it thinks fit in relation to those proceedings and, if an order is made, the proceedings must be dealt with in accordance with the order.
- (5) If 2 or more arbitral tribunals are conducting the related proceedings:
 - (a) the tribunal that received the application must communicate the substance of the application to the other tribunals concerned, and
 - (b) the tribunals must, as soon as practicable, deliberate jointly on the application.If the tribunals agree, after deliberation on the application, that a particular order under this section should be made in relation to the related proceedings:
 - (a) the tribunals are to jointly make the order, and
 - (b) the related proceedings are to be dealt with in accordance with the order, and
 - (c) if the order is that the related proceedings be consolidated—the arbitrator or arbitrators for the purposes of the consolidated proceedings are to be appointed, in accordance with sections 10 and 11, from the members of the tribunals.
- (7) If the tribunals are unable to make an order under subsection (5), the related proceedings are to proceed as if no application has been made under subsection (1).
- (8) Before making an order under this section, the arbitral tribunal or tribunals concerned must take into account whether any party would or might suffer substantial hardship if the order were made.
- (9) This section does not prevent the parties to related proceedings from agreeing to consolidate them and taking such steps as are necessary to effect that consolidation.

Note. There is no equivalent to this section in the Model Law.

27D Power of arbitrator to act as mediator, conciliator or other non-arbitral intermediary

- (1) An arbitrator may act as a mediator in proceedings relating to a dispute between the parties to an arbitration agreement (*mediation proceedings*) if:
 - (a) the arbitration agreement provides for the arbitrator to act as mediator in mediation proceedings (whether before or after proceeding to arbitration, and whether or not continuing with the arbitration), or
 - (b) each party has consented in writing to the arbitrator so acting.
- (2) An arbitrator acting as a mediator:
 - (a) may communicate with the parties collectively or separately, and
 - (b) must treat information obtained by the arbitrator from a party with whom he or she communicates separately as confidential, unless that party otherwise agrees

or unless the provisions of the arbitration agreement relating to mediation proceedings otherwise provide.

- (3) Mediation proceedings in relation to a dispute terminate if:
 - (a) the parties to the dispute agree to terminate the proceedings, or
 - (b) any party to the dispute withdraws consent to the arbitrator acting as mediator in the proceedings, or
 - (c) the arbitrator terminates the proceedings.
- (4) An arbitrator who has acted as mediator in mediation proceedings that are terminated may not conduct subsequent arbitration proceedings in relation to the dispute without the written consent of all the parties to the arbitration given on or after the termination of the mediation proceedings.
- (5) If the parties consent under subsection (4), no objection may be taken to the conduct of subsequent arbitration proceedings by the arbitrator solely on the ground that he or she has acted previously as a mediator in accordance with this section.
- (6) If the parties do not consent under subsection (4), the arbitrator's mandate is taken to have been terminated under section 14 and a substitute arbitrator is to be appointed in accordance with section 15.
- (7) If confidential information is obtained from a party during mediation proceedings as referred to in subsection (2) (b) and the mediation proceedings terminate, the arbitrator must, before conducting subsequent arbitration proceedings in relation to the dispute, disclose to all other parties to the arbitration proceedings so much of the information as the arbitrator considers material to the arbitration proceedings.
- (8) In this section, a reference to a *mediator* includes a reference to a conciliator or other non-arbital intermediary between parties.

Note. There is no equivalent of this section in the Model Law.

27E Disclosure of confidential information

- (1) The provisions of this section apply in arbitral proceedings unless otherwise agreed by the parties.
- (2) The parties must not disclose confidential information in relation to the arbitral proceedings unless:
 - (a) the disclosure is allowed under section 27F, or
 - (b) the disclosure is allowed under an order made under section 27G and no order is in force under section 27H prohibiting that disclosure, or
 - (c) the disclosure is allowed under an order made under section 27I.
- (3) An arbitral tribunal must not disclose confidential information in relation to the arbitral proceedings unless:
 - (a) the disclosure is allowed under section 27F, or
 - (b) the disclosure is allowed under an order made under section 27G and no order is in force under section 27H prohibiting that disclosure, or
 - (c) the disclosure is allowed under an order made under section 27I.

Note. There is no equivalent to this section in the Model Law.