

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 46.

Arbitration.

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), there was no gazetted indication, where the administration of this Chapter was vested. It seems likely, therefore, that under the Constitution, Section 148(2), the Prime Minister was politically responsible.

This Chapter does not refer to "the Minister", "the Departmental Head" or "the Department".

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 46.

Arbitration Act.

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SCHEDULE.—Provisions to be Implied in Submissions.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 46

Arbitration Act.

Being an Act relating to arbitration.

PART I.—PRELIMINARY.

1. Interpretation.

In this Act, unless the contrary intention appears—

“the Court” means the National Court, and includes a Judge of that Court;

“the Rules” means rules made under Section 19;

“submission” means a written agreement to submit present or future differences to arbitration, whether or not an arbitrator is named in the submission.

PART II.—REFERENCE BY CONSENT OUT OF COURT.

2. Effect of submission.

Unless a contrary intention is expressed in the submission, a submission is irrevocable, except by leave of the Court, and has the same effect in all respects as if it had been made an order of the Court.

3. Provisions implied in submission.

Unless a contrary intention is expressed in the submission, a submission shall be deemed to include the provisions in the Schedule so far as they are applicable to the references under the submission.

4. Power to stay proceedings where there is submission.

(1) If a party to a submission, or a person claiming through or under him, commences legal proceedings in any court against another party to the submission, or a person claiming through or under him, in respect of a matter agreed to be referred, any party to the proceedings may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings.

(2) If the court to which application is made under Subsection (1) is satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary for the proper conduct of the arbitration, it may make an order staying the proceedings.

5. Power for the Court in certain cases to appoint an arbitrator, umpire or third arbitrator.

(1) A party may serve on the other parties, or the arbitrators, as the case requires, a written notice to appoint an arbitrator, umpire or third arbitrator where—

(a) a submission provides that the reference shall be to a single arbitrator and all the parties do not concur in the appointment of an arbitrator; or

- (b) an appointed arbitrator refuses to act, is incapable of acting or dies, and the submission does not show that the vacancy is not to be supplied and the parties do not supply the vacancy; or
- (c) the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him; or
- (d) an appointed umpire or third arbitrator refuses to act, is incapable of acting or dies, and the submission does not show that the vacancy is not to be supplied and the parties do not supply the vacancy.

(2) If the appointment under Subsection (1) is not made within 14 clear days after the service of the notice, the Court may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator, who has the same powers to act in the reference and make an award as if he had been appointed by consent of all parties.

6. Power for parties in certain cases to supply vacancy.

(1) Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

- (a) if either of the appointed arbitrators refuses to act, is incapable of acting or dies, the party who appointed him may appoint a new arbitrator in his place; and
- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution, for 14 clear days after the other party, having appointed his arbitrator, has served on the party making default 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 his award is binding on both parties as if he had been appointed by consent.

(2) The Court may, if it thinks fit, set aside an appointment made under this section.

7. Powers of arbitrator.

Unless the submission expresses a contrary intention, the arbitrators or umpire acting under a submission have power—

- (a) to state an award as to the whole or part of the submission in the form of a special case for the opinion of the Court; and
- (b) to correct a clerical mistake or error arising from an accidental slip or omission in an award; and
- (c) to administer oaths to, or take the affirmations of, the parties and witnesses appearing.

8. Witnesses may be summoned by subpoena.

A party to a submission may sue out a writ of *subpoena ad testificandum* or a writ of *subpoena duces tecum*, but no person shall be compelled under any such writ to produce a document that he could not be compelled to produce on the trial of an action.

9. Power to extend time for making award.

The time for making an award may from time to time be extended by order of the Court, whether the time for making the award has expired or not.

10. Power to remit award.

(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 reconsideration of the arbitrators or umpire.

(2) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

11. Power to set aside award.

(1) Where an arbitrator or umpire has misconducted himself, the Court may remove him.

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

12. Enforcing award.

(1) By leave of the Court, an award on a submission may be enforced in the same manner as a judgement or order to the same effect.

(2) No writ of attachment shall be issued to enforce payment of any money, costs or expenses under any such award, but writs of *feri facias* or *capias ad satisfaciendum*, and such other writs as are necessary, shall be issued by order of the Court, and such an order has the force and effect of a judgement of the Court.

PART III.—REFERENCES UNDER ORDER OF COURT.**13. Power to refer in certain cases.**

In a cause or matter (other than a criminal proceeding by the State)—

(a) if all the parties interested, who are not under disability, consent; or

(b) if the cause or matter requires a prolonged examination of documents or a scientific or local investigation that, in the opinion of the Court, is not conveniently conducted by the Court through its other ordinary officers; or

(c) if the question in dispute consists wholly or in part of matters of account,

the Court may at any time order the whole cause or matter, or any question or issue of fact arising in the cause or matter, to be tried before an arbitrator agreed on by the parties, or before a referee appointed by the Court for the purpose.

14. Powers and remuneration of referees and arbitrators.

(1) In all cases of reference under an order of the Court in a cause or matter, the referee or arbitrator shall be deemed to be an officer of the Court, and has such authority, and shall conduct the reference in such manner, as is prescribed by the Rules and, subject to the Rules, as the Court directs¹.

(2) The report or award of a referee or arbitrator on a reference referred to in Subsection (1) is, unless set aside by the Court, equivalent to the verdict of the Court.

(3) The remuneration to be paid to a referee or arbitrator to whom a matter is referred under order of the Court shall be determined by the Court.

15. Court to have powers as in references by consent.

The Court has all the powers as to references under order of the Court that by this Act are conferred on the Court as to references by consent out of the Court.

¹ But see Section 19 and the footnote to it.

PART IV.—GENERAL.

16. Power to compel attendance of witness, and to order habeas corpus to issue.

(1) The Court may order that a writ of *subpoena ad testificandum* or *subpoena duces tecum* issue to compel the attendance before a referee, or before an arbitrator or umpire, of a witness wherever he may be within the jurisdiction.

(2) The Court may also order that a writ of *habeas corpus ad testificandum* issue to bring up a prisoner for examination before a referee, or before an arbitrator or umpire.

17. Witnesses entitled to expenses.

A person whose attendance is required as a witness is entitled to the same conduct money and payment of expenses and for loss of time as for and on attendance at a trial of an action in the Court.

18. Statement of case pending arbitration.

A referee, arbitrator or umpire may, at any stage of the proceedings under a reference, and shall, if so directed by the Court, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference, and any opinion given is subject to appeal.

19. Chief Justice may make general rules and orders¹.

The Chief Justice may, from time to time, make general rules and orders for carrying the purposes of this Act into effect.

20. Costs.

An order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

21. Penalty for perjury.

A person who wilfully and corruptly gives false evidence before a referee, arbitrator or umpire is guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted and punished accordingly.

22. State to be bound.

(1) Subject to Subsection (2), the application of this Act extends to any arbitration to which the State or a servant of the State is a party.

(2) This Act does not—

(a) empower the Court to order any proceedings to which the State, or a servant of the State, is a party, or any question or issue in any such proceedings, to be tried before an arbitrator or referee without the consent of the Head of State, acting on advice; or

(b) affect the law as to costs payable by the State.

¹ But see Constitution, Sections 184, 185.

23. Application of Act to references under statutory powers.

This Act applies to every arbitrator under an enactment as if the arbitration were under a submission, except in so far as it is inconsistent with the enactment regulating the arbitration or with any rules or procedure authorized or recognized by the enactment.

SCHEDULE.

Sec. 3.

PROVISIONS TO BE IMPLIED IN SUBMISSIONS

Sch.1.1. If no other mode of reference is provided, the reference is to a single arbitrator.

Sch.1.2. If the reference is to two arbitrators, they may appoint an umpire at any time within the period during which they have power to make an award.

Sch.1.3. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, from time to time extend the time for making the award.

Sch.1.4. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to a party to the submission or to the umpire a written notice stating that they are unable to agree, the umpire may enter on the reference in place of the arbitrators.

Sch.1.5. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire, by any writing signed by him, from time to time extends the time for making his award.

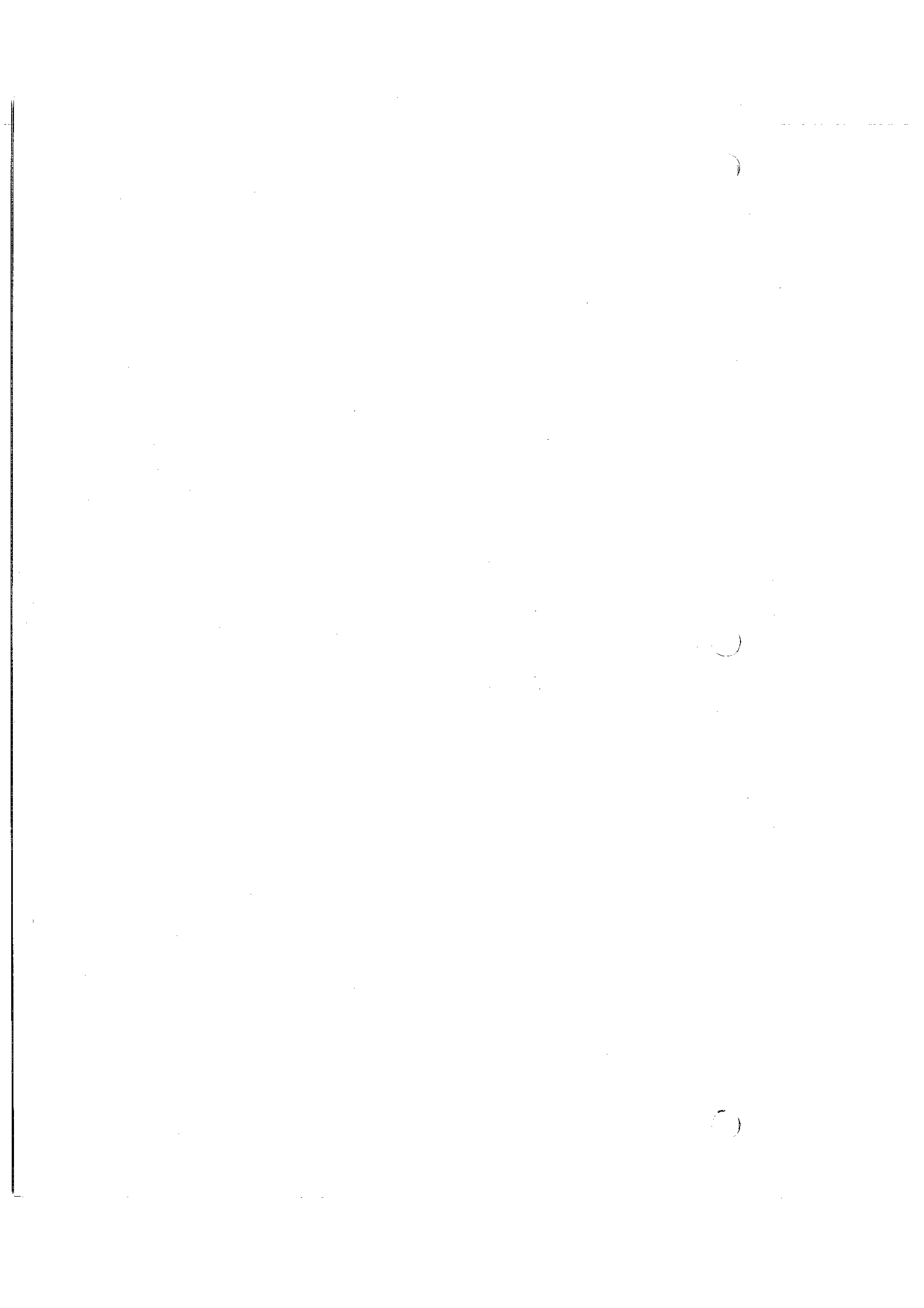
Sch.1.6. Subject to any legal objections, the parties to the reference and all persons claiming through them respectively shall—

- (a) submit to be examined by the arbitrator or umpire on oath, in relation to the matters in dispute; and
- (b) produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their respective possession or powers that are required or called for; and
- (c) do all other things that, during the proceedings on the reference, the arbitrators or umpire require.

Sch.1.7. If the arbitrators or umpire think fit, the witnesses on the reference shall be examined on oath.

Sch.1.8. The award to be made by the arbitrators or umpire is final and binding on the parties and the persons claiming under them respectively.

Sch.1.9. The costs of the reference and award are in the discretion of the arbitrators or umpire, who may direct to and by whom, and in what manner, the costs or any part of the costs are to be paid, and may tax or settle the amount of costs to be paid or any part of the costs, and may award costs to be paid as between solicitor and client.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 46.

Arbitration.

APPENDIX.

SOURCE OF THE ARBITRATION ACT.

Part A.—Previous Legislation.

Arbitration Act 1951 (No. 46 of 1951).

Part B.—Cross References.

Section, etc., in Revised Edition	Previous Reference ¹	Section, etc., in Revised Edition	Previous Reference ¹ .
1	5	13	17
2	6	14	18
3	7	15	19
4	8	16	20
5	9	17	21
6	10	18	22
7	11	19	23
8	12	20	24
9	13	21	25
10	14	22	26
11	15	23	27
12	16	Schedule	Second Schedule.

¹ Unless otherwise indicated, references are to the Act set out in Part A.

