

Commercial Arbitration (Amendment) Act 1990 No. 100 (NSW)

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The provisions of the Commercial Arbitration (Amendment) Bill 1990 (NSW) were reported upon in Issue #17 of the Newsletter. This Bill has now been enacted and was proclaimed to come into effect on 25 January 1991.

Since the legislation was enacted without change, the comments in Issue #17's report on the Bill are relevant to section 20, Representation; section 26, Consolidation of Arbitration Proceedings; section 27, Settlement of Disputes Otherwise Than By Arbitration; Section 34, Costs; Section 38, Judicial Review of Awards; Section 46, Delay in Prosecuting Claims; and with respect to the recognition and enforcement of foreign awards and agreements and the amendments for the purposes of uniformity.

Section 5, Savings and Transitional Provisions, provides that the amendments made by this Act apply in relation to an arbitration agreement (whenever made) and an arbitration under such an agreement. However, Section 5(2) provides that the amendments to Section 20, Representation, do not apply in relation to arbitration proceedings that were commenced before the commencement of

the amendment. Similarly, Section 5(3) provides that Section 26, Consolidation of Arbitration Proceedings, as in force before the commencement of the amending Act, continues to apply in relation to:

- (a) an order made under that section before the commencement of the amending Act; or
- (b) an application pending under that section immediately before commencement of the amending Act.

As a further comment on Section 38, Judicial Review of Awards, the requirement that the Court must not grant leave to appeal on a question of law unless satisfied that there is "a manifest error of law on the face of the award" (see Section 38(5)(b)(i)) may result in a renewed importance of the cases involving the common law ground of appeal for error of law upon the face of the award prior to the commencement of the 1984 Act.

Despite enquiries in the other States and Territories, the Newsletter was unable to uncover the programme for review of the other States and Territories' "uniform" Commercial Arbitration Acts.