



Speech by

# Hon. Jarrod Bleijie

MEMBER FOR KAWANA

Hansard Tuesday, 30 October 2012

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## COMMERCIAL ARBITRATION BILL

### Introduction

 **Hon. JP BLEIJIE** (Kawana—LNP) (Attorney-General and Minister for Justice) (2.30 pm): I present a bill for an act to provide for the conduct of commercial arbitration, to repeal the Commercial Arbitration Act 1990 and to make consequential amendments to the acts mentioned in schedule 1. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

*Tabled paper:* Commercial Arbitration Bill 2012 [[1409](#)].

*Tabled paper:* Commercial Arbitration Bill 2012, explanatory notes [[1410](#)].

I am pleased to introduce the Commercial Arbitration Bill 2012. The Newman government is committed to updating and modernising Queensland's commercial arbitration law in line with national and international best practice. Arbitration is intended to provide parties to disputes with cost-effective, expedient access to an enforceable determination as an alternative to lengthy, expensive and public court proceedings. Industry frequently uses commercial arbitration to settle disputes, with resolution taking the form of an award which is enforceable by the court.

The bill adopts the provisions of a model bill developed by the former Standing Committee of Attorneys-General—SCAG. The model bill combines the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration and domestic commercial arbitration provisions. By replicating the model bill, Queensland's domestic commercial arbitration law and practice will align with all other Australian jurisdictions except the Australian Capital Territory and with the Commonwealth International Arbitration Act 1974. Progressing these reforms may also increase opportunities for Queensland arbitrators and arbitration facilities to compete for and facilitate the resolution of commercial disputes with flow-on effects to the local economy.

There is strong stakeholder support for the passage of the bill. Broadly, the bill applies to domestic commercial arbitration only and expressly recognises that the Commonwealth act governs international commercial arbitrations; defines the form and scope of arbitration agreements; provides for the selection, appointment and challenge of arbitrators; sets out an arbitrator's powers; contains procedural provisions; applies a confidentiality regime to the parties and arbitral tribunal alike but contains a consensual opt-out provision; addresses the making of awards and termination of proceedings, including costs and settlement; outlines preconditions for applications to a court to have an award set aside or to appeal on a question of law; and recognises interstate awards as binding and allows applications to a court for their enforcement.

The bill promotes autonomy and participation of parties, finality of binding awards, protection of confidentiality and access to alternative methods of dispute resolution. Parties can have a greater say in how proceedings are structured. If they cannot agree, the decision about procedures defaults to the arbitrator. Concerns about an arbitrator's impartiality, independence or qualifications can found a challenge to his or her appointment to be resolved by agreement or in default by the court. Interim-measure powers allow arbitrators to make decisions about discovery, the preservation of evidence and provision of security for costs. They are binding and enforceable upon application to the court.

The finality and binding nature of awards is strengthened through confining the grounds for court challenges. An optional appeals mechanism on questions of law cannot operate without the parties' consent and court's leave. Applications to set aside awards are restricted to specific grounds. They include incapacity, invalidity, breaches of natural justice, public policy or the arbitration agreement as it concerns the award or tribunal's composition and court decisions regarding the legality of arbitrating a particular dispute's subject matter. The bill protects the finality of awards made interstate by recognising them as binding and providing for applications to court for enforcement of such awards. A statutory duty of confidence protects confidentiality of arbitration and award information. The parties can opt out and specific exceptions also apply. Arbitrators can allow disclosure after parties have been heard on the issue and a court can make decisions on disclosure in some circumstances.

The bill provides for procedural matters not present in the existing act, such as a requirement that parties provide statements of claim and defence in commencing proceedings and powers for arbitrators to make an award on settlement and to appoint an expert.

In conclusion to this exciting introduction of this exciting piece of legislation, I would like to respond to the matters raised by the former Legal Affairs, Police, Corrective Services and Emergency Services Committee in its report of 16 February 2012 recommending the passage of the lapsed Commercial Arbitration Bill 2011. I support the former government's recommendation that in future agreements of the Standing Council on Law and Justice and all proposed uniform legislation be tabled in the Legislative Assembly either immediately following the relevant agreement or at the time of the introduction of the relevant bill at the latest. I note that such documents pertaining to uniform commercial arbitration legislation were tabled before the former committee reported.

I also note the former committee's recommendation that the former Attorney-General should review the effectiveness of clause 5 of the bill, which states that the court must not intervene in the arbitration process unless expressly allowed under the act. In line with the former committee's recommendations, the department sought the Solicitor-General's advice on this clause. I am satisfied that the provision is appropriate from a constitutional perspective. I commend this bill to the House.

### **First Reading**

 **Hon. JP BLEIJIE** (Kawana—LNP) (Attorney-General and Minister for Justice) (2.36 pm): I move—  
That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

### **Referral to the Legal Affairs and Community Safety Committee**

**Madam DEPUTY SPEAKER** (Mrs Cunningham): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.