

THE CHARTERED INSTITUTE OF ARBITRATORS (AUSTRALIA) LIMITED

ACN 118 131 016

ARBITRATION RULES

(2006 Edition)

Where any agreement, submission or reference provides for arbitration in Australia under the Rules of the Chartered Institute of Arbitrators (Australia) Limited (“the Institute”), the parties shall be taken to have agreed that the arbitration shall be conducted in accordance with these Rules or any modified, amended or substituted Rules which the Institute may have adopted and which have come into effect before the commencement of that arbitration.

Article 1 Introductory

- 1.1 These Rules are intended to govern arbitrations under the commercial arbitration legislation of the States and Territories of Australia and incorporate all the provisions of such legislation (whether mandatory or non-mandatory) of a State or Territory as may be applicable to the parties unless any such provision is non-mandatory and is expressly excluded or modified by these Rules or by the agreement of the parties.
- 1.2 The parties may not amend or modify these Rules or any procedure under them after the appointment of an arbitrator unless the arbitrator agrees to such amendment or modification.
- 1.3 All expressions used in these Rules which are also used in the Act have the same meaning as they do in the Act and any reference to a section number means the section of the Act having that number.

Article 2 Commencement of the Arbitration

- 2.1 The arbitration shall be regarded as commenced in accordance with the provisions of section 3(5) of the Act.

- 2.2 Any party wishing to commence an arbitration under these Rules (the claimant) shall serve upon any other party (the respondent) a written notice requiring arbitration under these Rules (the arbitration notice) which shall include or be accompanied by:-
- (a) the names and addresses of the parties to the arbitration;
 - (b) copies of the contractual documents (if any) in which the arbitration agreement is contained or under which the arbitration arises;
 - (c) a brief statement describing the nature and circumstances of the dispute and specifying the relief claimed; and either:
 - (d) any proposal which the claimant may have with regard to the identity, qualifications or number of arbitrators or the name of any Appointing Authority if such be needed; or
 - (e) if the arbitration agreement provides for each party to appoint an arbitrator, the name and address (and telephone and facsimile numbers and e-mail address if known) of the arbitrator appointed by the claimant.
- 2.3 Within 14 days of the service of the arbitration notice the respondent may serve upon the claimant a response containing some or all of the following:-
- (a) an admission or denial of all or any part of the claim;
 - (b) a brief statement of the nature and circumstances of any proposed counterclaim; and either:
 - (c) confirmation or rejection of any proposals contained in the arbitration notice; or
 - (d) if the arbitration agreement calls for each party to appoint an arbitrator, the name and address (and telephone and facsimile numbers and e-mail address if known) of the arbitrator appointed by the Respondent;
- 2.4 Failure to send a response or to include therein any of the matters referred to at Article 2.2 above shall not preclude the respondent from denying any claim or raising any counterclaim in any defence properly served subsequently in the arbitration, but failure to appoint an arbitrator within the 14 day period where each party is to appoint an arbitrator shall bring the provisions of section 8 of the Act into effect.

Article 3 Appointing Authority

- 3.1 The parties may agree to nominate an Appointing Authority, but if there is no such agreement the Appointing Authority shall be the President or in the absence of the President, a Vice-President of the Institute.
- 3.2 Any application to the Appointing Authority to act under the provisions of these Rules shall be accompanied by:-
- (a) copies of the arbitration notice and any response or other related correspondence or documentation;
 - (b) written confirmation that a copy of the application has been served upon each other party;
 - (c) particulars of any method of or criteria for selection of arbitrators agreed between the parties.
- 3.3 The Appointing Authority or the Institute if it is not the Appointing Authority may require payment of a fee by any or all parties for any services rendered under these Rules.

Article 4 Appointment of the Arbitrator

- 4.1 Any reference in these Rules to the arbitrator means and includes a sole arbitrator or all the arbitrators where two or more are appointed.
- 4.2 The provisions of sections 6, 7, 8, 9 and 10 of the Act shall apply to the procedure for the appointment of the arbitrator but if no appointment is made under those provisions the arbitrator shall be appointed by the Appointing Authority on the application of any party.
- 4.3 If an umpire is to be appointed (whether by agreement or under the provisions of section 12(1) of the Act) and no umpire has been appointed the umpire shall be appointed by the Appointing Authority on the application of any party.
- 4.4 If any arbitrator dies or is unable, or refuses, to act, subject to the operation of sections 6, 7, 8, 9 and 10 of the Act, the Appointing Authority will appoint another arbitrator on the application of any party or of the remaining arbitrators, if any.

- 4.5 In exercising or considering how to exercise any power of appointing an arbitrator under these Rules an Appointing Authority shall have due regard to any agreement of the parties as to the qualifications required of the arbitrator.

Article 5 Communications between Parties and the Arbitrator

- 5.1 When the arbitrator sends any communication to one party he shall send a copy to each other party marked as having been so copied.
- 5.2 Any communication sent by a party to the arbitrator shall be copied by that party to each other party and marked as having been so copied.
- 5.3 The addresses of the parties or their representatives for the purpose of communications during the course of the proceedings shall be as most recently notified to the arbitrator and each other party and the provisions of section 60 shall apply to all such communications.
- 5.4 With the agreement of the parties the arbitrator may appoint the Institute to act as arbitration administrator whether or not the Institute is the Appointing Authority under these Rules.
- 5.5 Where the Institute is so appointed all communications or notices in writing between a party and the arbitrator will be sent through the Institute and communications addressed to the arbitrator will be deemed to be received by him when received by the Institute.

Article 6 Arbitration Procedure

- 6.1 It shall be for the arbitrator to decide all procedural and evidential matters subject to the right of the parties to agree any matter and subject also to Article 1.2 above.
- 6.2 Before making any application to the arbitrator for directions as to procedural or evidential matters a party must give any other party a reasonable opportunity (being not less than 14 days unless the arbitrator directs otherwise) to agree the terms of the directions proposed and any agreement on directions must be communicated to the arbitrator promptly.

- 6.3 Where there is more than one arbitrator and an umpire has been appointed the umpire sitting alone may give directions on procedural or evidential matters after consulting the other arbitrators.
- 6.4 Any application for directions on procedural or evidential matters or response thereto must be accompanied by all such evidence or reasoned submissions as the applicant may consider appropriate in the circumstances or as directed by the arbitrator and the arbitrator may direct a time limit for making or responding to such applications.
- 6.5 Unless the arbitrator orders that a meeting shall take place or one is requested by the parties or either of them the arbitrator will give directions on any such application on receipt of the response thereto or, if there is no response, on expiry of the time allowed for such response or such other time as the arbitrator may direct.

Article 7 Powers of the Arbitrator

- 7.1 The arbitrator shall have all the powers given to an arbitrator by the Act (including, but limited as hereafter set out, those contained in section 23 of the Act (interim awards) and section 26 (consolidation of proceedings and concurrent hearings)).
- 7.2 The arbitrator may limit the number of expert witnesses to be called by any party or may direct that no expert be called on any issue or issues or that expert evidence may be called only with the permission of the arbitrator.
- 7.3 Where the same arbitrator is appointed under these Rules in two or more arbitrations which appear to raise common issues of fact or law, whether or not involving the same parties, the arbitrator may direct that such two or more arbitrations or any specific claims or issues arising therein be consolidated or heard concurrently.
- 7.4 Where an arbitrator has ordered consolidation of proceedings or concurrent hearings he may give such further directions as are necessary or appropriate for the purposes of such consolidated proceedings or concurrent hearings and may exercise any powers given to him by these Rules or by the Act either

separately or jointly in relation thereto.

- 7.5 Where proceedings are consolidated the arbitrator will, unless the parties otherwise agree, deliver a consolidated award or awards in those proceedings which will be binding on all the parties thereto.
- 7.6 Where the arbitrator orders concurrent hearings the arbitrator will, unless the parties otherwise agree, deliver separate awards in each arbitration.
- 7.7 Where an arbitrator has ordered consolidation or concurrent hearings, the arbitrator may at any time revoke any orders so made and give such further orders or directions as may be appropriate for the separate hearing and determination of each arbitration.
- 7.8 The arbitrator has power to grant relief by way of an interim award on a provisional basis in respect of the following matters:-
- (a) an order for the payment of money or the disposition of property as between the parties;
 - (b) an order for interim payment on account of the costs of the arbitration;
 - (c) an order for the grant of any relief claimed in the arbitration.
- 7.9 The arbitrator may exercise the power of granting interim relief set out in Article 7.8 above on the application of a party or of his own motion provided that he gives notice to all parties of his intention to do so and provides an opportunity to each party to make representations in respect thereof.
- 7.10 The arbitrator may order any money or property which is the subject of an order for provisional relief to be paid or delivered to a stakeholder on such terms as he considers appropriate.
- 7.11 An order for interim relief may be confirmed, varied or revoked in whole or in part by the arbitrator who made it or any other arbitrator who may subsequently have jurisdiction over the dispute to which it relates.

Article 8 Form of Procedure

- 8.1 Subject to the rights of the parties to agree to adopt a documents only or some

other simplified or expedited procedure and subject to the arbitrator's right under section 18 of the Act to proceed in the absence of a party in default, each party has the right to be heard before the arbitrator.

- 8.2 The parties may agree to adopt the alternative procedure for pleadings set out in the first schedule to these Rules.
- 8.3 Unless the arbitrator otherwise directs the arbitration will proceed on the basis of exchange of statements of case as hereafter set out.
- 8.4 All statements of case shall contain the following:-
- (i) a full statement of the party's arguments of fact and law;
 - (ii) copies of all documents the contents of which the party relies on;
 - (iii) a full statement of all relief or remedies claimed;
 - (iv) detailed calculations of any sums claimed;
- 8.5 Unless the arbitrator otherwise directs the parties will exchange statements of case as follows:-
- (a) Within 14 days of the receipt by the claimant of the arbitrator's acceptance of the appointment the claimant shall send to the arbitrator and to each other party a statement of case;
 - (b) Within 14 days of the receipt of the claimant's statement of case the respondent will send to the arbitrator and to the other party the respondent's statement of case but if no respondent's statement of case is served within that time limit or such extended time limit as the arbitrator may allow, the respondent will be debarred from serving a statement of case and the arbitration shall proceed;
 - (c) If the respondent wishes to make any counterclaim then his statement of case shall include that counterclaim;
 - (d) Within 14 days of the receipt of the respondent's statement of case and counterclaim (if any) the claimant may send to the arbitrator and to each other party a further statement of case by way of reply (and defence to counterclaim if any) but if no reply is served within that time limit or such extended time limit as the arbitrator may allow, or if no defence to counterclaim is served, the claimant will be debarred

from serving any reply or further statement of case by way of defence and the arbitration shall proceed;

- (e) Within 14 days of the receipt of a statement of case by way of defence to counterclaim (if any) the respondent may send to the arbitrator and to each other party a further statement of case by way of reply to defence to counterclaim and if on the expiry of that time limit or such extended time limit as the arbitrator may allow, the respondent shall not have served such further statement of case, the respondent shall be debarred thereafter from doing so and the arbitration shall proceed;
- (f) When a respondent or claimant has been debarred from serving a defence or defence to counterclaim under Article 2.4(b) or (d) above the other party or parties will still be required to prove any allegations made in his or their respective statements of case.

8.6 Before or after close of exchanges of statements of case the arbitrator may give detailed directions with any appropriate timetable for all further procedural steps in the arbitration, including (but not limited to) the following:-

- (a) Any amendment to, expansion of, summary of, or reproduction in some other format of, any statement of case or any extension to or alteration of time limits for service of statements of case;
- (b) disclosure and production of documents as between the parties;
- (c) the exchange of signed and dated statements of the evidence of any witness on which the party intends to rely;
- (d) the number and types of experts and exchange of their reports;
- (e) meetings between experts;
- (f) arrangements for any oral hearing if, in the exercise of his discretion he concludes that any oral hearing is necessary including any time limits to be imposed on the length of oral submissions or the examination or cross examination of witnesses;
- (g) the procedures to be adopted at any hearing;
- (h) any time limits to be imposed on the length of oral submissions or the examination or cross-examination of witnesses.

- 8.7 The arbitrator may at any time order any of the following to be delivered to him in writing submissions to be advanced by or on behalf of any party.

Article 9 Awards

- 9.1 Any award shall be in writing, dated, and signed by the arbitrator (or, where there is more than one, all the arbitrators agreeing to the award), and shall contain sufficient reasons to show why the arbitrator has reached the decisions contained in it, unless the parties otherwise agree or the award is by consent.
- 9.2 The arbitrator may notify any award to the parties as a draft or proposal and may in his discretion consider any further submissions or proposals put to him by any party but subject to any time limit which he may impose.
- 9.3 Any award shall state the seat of the arbitration.

Article 10 Costs

- 10.1 The general principle is that costs shall be paid by the losing party, but subject to the overriding discretion of the arbitrator as to which party will bear what proportion of the costs of the arbitration.
- 10.2 In the exercise of that discretion the arbitrator shall have regard to all the material circumstances, including such of the following as may be relevant:-
- (a) which of the issues raised in the arbitration has led to the incurring of substantial costs and which party succeeded in respect of such issues;
 - (b) whether any claim which succeeded was unreasonably exaggerated;
 - (c) the conduct of the party which succeeded on any claim and any concession made by any other party;
 - (d) the degree of success of each party;
 - (e) any admissible evidence of any offer of settlement or compromise made by any party.
- 10.3 In considering any admissible evidence of any offer of settlement or compromise by the respondent (whether such offer was made before or after the commencement of the arbitration) the arbitrator shall normally follow the principle that a claimant who is awarded the same as or less overall than was

offered should recover the costs otherwise recoverable only up to the date when it was reasonable that the offer should have been accepted and the party making the offer should recover costs thereafter.

- 10.4 In considering any admissible evidence of any offer of settlement or compromise by the claimant (whether such offer was made before or after the commencement of the arbitration) the arbitrator shall normally follow the principle that a claimant who is awarded the same as or more than the sum at which he offered to settle or otherwise obtains a more advantageous award should recover his costs otherwise recoverable on an indemnity basis from the date when it was reasonable that the offer should have been accepted unless the arbitrator has good reason to depart from this principle.

Article 11 General

- 11.1 Subject to section 20 of the Act, any party may be represented by any one or more person or persons of their choice subject to such proof of authority as the arbitrator may require.
- 11.2 The arbitrator shall establish and record addresses and telephone numbers (including e-mail addresses or facsimile and telex numbers) of each party and their respective representatives.
- 11.3 (1) The parties shall inform the arbitrator promptly of any settlement or compromise.
- (2) The arbitrator shall terminate the substantive proceeding to the extent of the settlement or compromise and, if so requested by the parties may, if the arbitrator thinks fit, record the settlement in the form of an agreed award.
- 11.4 The parties shall inform the arbitrator promptly of any proposed application to the court and shall provide him with copies of all documentation intended to be used in any such application.

Article 12 Definitions

- 12.1 For the avoidance of doubt the following expressions have the following

meanings:

The Act	In relation to an arbitration governed by the laws of the State of New South Wales, the <i>Arbitration Act 1984</i> (NSW) including any statutory modification or re-enactment thereof. In that event the provisions of the <i>Interpretation of Legislation Act 1987</i> (NSW) apply to these Rules. In relation to an arbitration governed by the laws of another State or Territory, the applicable legislation of that State or Territory including any statutory modification or re-enactment thereof. In that event, the provisions of the applicable legislation governing the interpretation of legislation of that State or Territory apply to these Rules.
Arbitration notice	the written notice which marks the commencement of the arbitration
Appointing Authority	the Authority specified under Article 3
Article	Any article set out in these Rules
Claim	includes counterclaim
Claimant	includes counterclaimant
Concurrent hearing	any two or more arbitrations being heard together
Consolidation	any two or more arbitrations being treated as one proceeding
The Institute	The Chartered Institute of Arbitrators (Australia) Limited
Party	one of the parties to the arbitration
Provisional order	any order for provisional relief under section 39

Respondent includes respondent to a counterclaim

FIRST SCHEDULE

ALTERNATIVE PROCEDURE

Adoption of the Procedure for pleadings

- 1.1 The parties may agree at any time prior to or during the course of the arbitration to adopt this alternative procedure for pleadings, and in that event the Rules set out above shall be modified as hereafter provided;
- 1.2 Articles 8.2 to 8.7 (both inclusive) of the above Rules shall be deleted, and the alternative Articles 8.2 to 8.8 set out below in this schedule shall be substituted.

Alternative Article 8

- “8.2 Unless the arbitrator otherwise directs the arbitration will proceed on the basis of pleadings exchanged as hereafter set out.
- 8.3 Pleadings should contain all allegations of fact or matters of opinion which it is intended to establish by evidence and set out all items of relief or other remedies sought together with the total value of all quantifiable sums claimed, and must be signed by or on behalf of the party advancing it. A respondent who denies any allegation –
- (a) must state the reasons for doing so; and
 - (b) if the respondent intends to put forward a different version of events from that given by the claimant, the respondent must state that version.
- 8.4 Parties may but are not obliged to –
- (a) include in any pleading statements of law or of evidence;
 - (b) give the name of any witnesses whom they propose to call; or
 - (c) attach or serve with any pleading a copy of any document which they consider necessary to their claim including any expert report.
- 8.5 Where a claim is based on a written agreement a copy of the contract or any documents constituting the agreement should be attached to or served with the

particulars of claim.

- 8.6 Unless the arbitrator otherwise directs the parties will exchange pleadings as follows:-
- (a) Within 21 days of the receipt by the claimant of the arbitrator's acceptance of the appointment the claimant shall send to the arbitrator and to each other party particulars of claim;
 - (b) Within 21 days of the receipt of the particulars of claim the respondent will send to the arbitrator and to each other party a defence but if no defence is served within that time limit or such extended time limit as the arbitrator may allow then the respondent will be debarred from serving a defence and pleadings are deemed to be closed;
 - (c) If the respondent wishes to make any counterclaim then a counterclaim shall be served with the defence;
 - (d) Within 21 days of the receipt of the defence and counterclaim (if any) the claimant may send to the arbitrator and to each other party a reply (and defence to counterclaim if any), but if no reply or defence to counterclaim (as the case may be) is served within that time limit or such extended time limit as the arbitrator may allow then the claimant will be debarred from serving a reply and defence to counterclaim and pleadings are deemed to be closed;
 - (e) Within 14 days of the receipt of a defence to counterclaim (if any) the respondent may send to the arbitrator and to each other party a reply to defence to counterclaim and pleadings are closed on the expiry of that time limit or such extended time limit as the arbitrator may allow or on the service of a reply to defence to counterclaim if sooner;
 - (f) Any further pleadings may only be served with the leave of the arbitrator;
 - (g) When a party has been debarred from serving a defence or defence to counterclaim under article 8.5(b) or (d) above each other party shall still be required to prove any allegations made in the particulars of claim or counterclaim as the case may be.
- 8.7 Before or after close of pleadings the arbitrator may give detailed directions

with any appropriate timetable for all further procedural steps in the arbitration, including (but not limited to) the following:-

- (a) Any amendment to, expansion of, summary of, or reproduction in some other format of, any pleading or any extension to or alteration of time limits for pleadings;
- (b) disclosure and production of documents as between the parties;
- (c) the exchange of signed and dated statements of the evidence of any witness on which the party intends to rely;
- (d) the number and types of experts and exchange of their reports;
- (e) meetings between experts;
- (f) arrangements for any hearing;
- (g) the procedures to be adopted at any hearing;
- (h) any time limits to be imposed on the length of oral submissions or the examination or cross-examination of witnesses.

8.8 The arbitrator may at any time order any of the following to be delivered to him in writing submissions to be advanced by or on behalf of any party.”