Arbitration Victoria Arbitration Rules 2022

Arbitration Victoria Pty Ltd (ACN 658 104 646), (ABN 23 658 104 646)

530 Little Collins Street
Melbourne VIC 3000

www.arbitrationvictoria.com

e: secretariat@arbitrationvictoria.com

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When these Rules apply

1. These Arbitration Victoria Arbitration Rules ("Rules") apply to disputes where the parties have agreed in writing that a dispute or disputes are to be referred to arbitration under these Rules.

In-person/virtual hearing or documents only

2. These Rules shall apply to:

   (a) Arbitrations which involve a hearing involving the presentation of evidence and/or oral submissions on the merits of the dispute; or

   (b) Documents-Only arbitrations which are conducted on the basis of written documents only (i.e. "on the papers") without a hearing involving the presentation of evidence or oral submissions on the merits of the dispute.

3. Where the parties agree expressly to a "Documents-Only" arbitration, then the arbitration shall be conducted under Rule 2(b) above. In addition, if the value of the claim and counterclaim in total (the "Sum in Dispute") is $40,000 or less then, unless the arbitrator otherwise orders, the arbitration will be conducted as a "Documents-Only" arbitration under Rule 2(b) above. All other arbitrations conducted under these Rules will be conducted under Rule 2(a) above.

4. Arbitrations under Rule 2(a) above may, if the parties agree, or if the Tribunal in its discretion determines, be conducted utilising a hybrid approach, where some matters are determined "on the papers" and others by an oral hearing.

5. Arbitrations under Rule 2(a) above may, if the parties agree, be conducted:

   (a) by way of virtual hearing using MS Teams, Zoom or other appropriate online technology which permits a remote hearing ("virtual hearing"); and/or

   (b) may be undertaken in a way that restricts the time available for the parties to present their case at the final hearing ("stop clock" arbitration).

   Unless the arbitrator orders otherwise or the parties otherwise agree, the procedure for "virtual hearings" and "stop clock" arbitrations, set in **Appendix 2** (virtual hearings) and **Appendix 3** (stop clock arbitrations) below will apply to any such hearing (i.e. a hearing which the parties agree is to be carried out on such a virtual and/or stop clock basis).

6. Unless the parties otherwise agree, in any arbitration conducted under these Rules, Victoria will be the place of arbitration and Victorian Law will apply.

Principal Objective

7. The principal objective of these Rules is to provide fast, final and affordable

arbitration, taking account of the amounts in dispute and the complexity of the facts or issues involved.

8. By arbitrating pursuant to these Rules, the parties accept the principal objective and its application by the Tribunal.

Service of documents

9. Under these Rules, notices, submissions, statements, or any other documents used in the arbitration may be:

   (a) delivered personally to the party; or

   (b) delivered by leaving the document at the party's usual residence, place of business or mailing address; or

   (c) if the party is a company, by delivering the document to the company's registered office or place of business; or

   (d) if none of the subparagraphs (a)-(c) above can be determined after making reasonable inquiries, then documents may be delivered by leaving them at the party's last-known residence or place of business.

10. Unless the arbitrator otherwise orders, once the Applicant delivers the Notice of Arbitration to the Respondent, each party must provide to the other party (or parties), and the arbitrator, an email address for delivery of documents in the arbitration and delivery to that email address will be taken as delivery in the arbitration.

11. A party is deemed to have notice of a document on the date that the document is delivered to the party. When required, parties shall deliver documents to the Secretariat of Arbitration Victoria ("Secretariat") under these Rules to secretariat@arbitrationvictoria.com. To avoid doubt, any notice in writing required to be given by one party (first party) to the other party or to the Secretariat may also be given by the other party, should the first party fail to do so.

Calculating time

12. Under these Rules, to calculate a period of time the period will begin to run on the day following the day when a notice, statement, submission or other document is received or when the act prescribed takes place or is to take place. If the last day of the period is a Saturday, Sunday or public holiday, the period is extended until the next day that is not a Saturday, Sunday or public holiday. Saturdays, Sundays or public holidays occurring during the course of the period of time are included in calculating the period.

Commencing an Arbitration

13. To commence an arbitration under these Rules, the Claimant must deliver to the Respondent a written notice stating that the Claimant is commencing an arbitration under these Rules (the "Notice of Arbitration"). A copy of the Notice of Arbitration must, for administrative purposes, also be delivered at the same time to Arbitration Victoria at

secretariat@arbitrationvictoria.com, or at such other place or address as nominated by Arbitration Victoria and be marked for the attention of the Secretariat.

14. The Notice of Arbitration must:

    (a) include the names and mailing addresses of the parties to the dispute (including an email address if available);

    (b) contain a short statement of the matter(s) in dispute which is to be identified in brief terms;

    (c) refer to the agreement by which the dispute is to be arbitrated under these Rules;

    (d) provide the names and professional details of three (3) individuals nominated by the Claimant as candidates for the role of single arbitrator of the dispute;

    (e) include a copy of the arbitration agreement; and

    (f) include a comprehensive Statement of Case signed by or on behalf of the Claimant.

15. At the same time as emailing Arbitration Victoria a copy of the Notice of Arbitration, being a copy of the notice of arbitration described in Rules 13 and 14 above, the Claimant must pay Arbitration Victoria such sum as may from time to time be prescribed by Arbitration Victoria as the fee for commencing an arbitration under these Rules ("Commencement fee"). The Claimant shall pay the Commencement fee to Arbitration Victoria. The Commencement fee is not payable when a case is referred to arbitration from a court or tribunal

16. In the alternative to commencing an arbitration under Rules 13 and 14 above, the parties may commence an arbitration under these Rules by written consent to do so (and the date on which the parties agree, in writing, to arbitrate their dispute shall be the date of commencement of the arbitration).

Appointment of the Arbitrator

17. Any arbitration conducted under these Rules must be conducted by a sole arbitrator ("Arbitrator") whose appointment must be agreed in writing by the parties within 7 days of the commencement of the arbitration.

18. Where the parties are unable to agree in writing as to the appointment of an Arbitrator after 7 days from the commencement of the arbitration, the Claimant must within 7 days after that date notify the Secretariat of the same in writing and refer the appointment of the Arbitrator to the Secretariat. Arbitration Victoria or its delegate shall use its best endeavours within 7 days from such notification to:

    (a) appoint an Arbitrator to hear and determine the dispute;

(b) notify the parties of the appointment; and

(c) provide the parties with the Arbitrator's name and contact address.

19. Where an Emergency Arbitrator is appointed under Appendix 1 to these Rules, these timelines shall continue to run concurrently, save that Arbitration Victoria or its delegate must not appoint the Arbitrator until the Emergency Arbitrator has delivered their interim order or award.

20. Excluding matters which are referred to arbitration from a court or tribunal, the party requesting the appointment of an arbitrator must pay to Arbitration Victoria the Commencement fee (see Rule 15 above)That party shall pay that sum using one of the payment methods identified by Arbitration Victoria at www.arbitrationvictoria.com or as otherwise advised by the Secretariat.

21. The Arbitrator's remuneration must be by such rates and fees as may from time to time be prescribed by Arbitration Victoria as the rates and fees applicable to arbitrators' remuneration for arbitration under these Rules (available at www.arbitrationvictoria.com and which are set out in the Arbitration Victoria User Manual (**AV User Manual**)), subject to any rates and fees agreed between the parties and the Arbitrator. Parties are jointly and severally liable for the Arbitrator's fees and expenses, without prejudice to any order on costs that the Arbitrator may make.

Deposit for Arbitrator's fees

22. As soon as practicable after the commencement of the arbitration, the arbitrator may request the parties to each deposit an equal amount as an advance for the arbitrator's fees.

23. If the required deposits are not paid in full within 14 days after receipt of the request, the arbitrator must inform the parties so that one or another of them may make the required payment. If such payment is not made, the arbitrator may order the suspension or termination of the arbitration or continue with the arbitration on such basis and in respect of such claim or counterclaim as the arbitrator considers fit.

24. If a party pays the required deposits on behalf of another party, the arbitrator may make an award for reimbursement of the payment (plus interest at a rate not exceeding the applicable penalty interest rate in Victoria) at the request of the paying party.

25. When releasing the final award, the arbitrator must render an account to the parties of the deposits received. Any unexpended balance shall be returned to the parties in the shares in which the parties paid it, or as otherwise ordered by the arbitrator.

Arbitration procedure

26. Subject to these Rules, the Arbitrator has all powers permitted by law to finally determine the dispute, including the power to abridge or extend time periods prescribed by these Rules. In this regard, the Arbitrator must conduct the arbitration in such manner as they consider appropriate, save that at all times, the Arbitrator must ensure that the parties are treated equally and are given a reasonable opportunity to present their case.

Statement of Case

27. Each of the Statement of Case, Statement of Defence, any Counterclaim, and Reply, as described below, must be comprehensive and must contain, as far as reasonably practicable, all the material relied on.

28. The Statement of Case must contain the following:

    (a) a concise statement of the facts (including particulars) and law supporting the claim;

    (b) all items of relief and remedy sought by the Claimant; and

    (c) all quantifiable items of claim with associated calculations and breakdown (where applicable).

29. The Claimant must, as far as practicable, annex to its Statement of Case all the documents and other evidence on which it relies in support of its claim.

30. The Statement of Case (excluding any supporting material annexed to it) must not exceed 15 A4 pages.

31. Subject to any agreement reached by the parties, and subject to hearing the parties, the Arbitrator may vary any of the requirements in Rules 28 to 30 above as he or she deems appropriate.

Statement of defence (and any statement of counterclaim)

32. Within 28 days of the commencement of the arbitration, or within some other time period fixed by the Arbitrator, the Respondent must deliver to the Arbitrator and to the Claimant a statement of defence ("Statement of Defence") to the Claimant's claim signed by or on behalf of the Respondent. Where the Respondent wishes to make a counterclaim against the Claimant, a statement of the counterclaim signed by or on behalf of the Respondent must be included in the same document as the Statement of Defence, and such document must be titled "Statement of Defence and Counterclaim".

33. The Statement of Defence (and Counterclaim, if any) must contain the following information:

    (a) an admission of or denial of the Claimant's claim(s);

(b) a concise statement of the facts (including particulars) and law supporting the Respondent's position in defending the claim;

(c) where a counterclaim or set-off defence is advanced, the same types of information prescribed in Rule 28.

34. The Respondent must, as far as practicable, annex to its Statement of Defence all documents and other evidence materials on which it relies in support of its defence and its counterclaim, if any.

35. The Statement of Defence (excluding the supporting material annexed to it) must not exceed 15 A4 pages.

36. Subject to any agreement reached by the parties, and subject to hearing the parties, the Arbitrator may vary any of the requirements in Rules 33 to 35 above as he or she deems appropriate.

Statement of Reply (and any statement of defence to counterclaim)

37. Within 14 days of receipt of the Respondent's Defence (and Counterclaim, if any), or within some other time period fixed by the Arbitrator, the Claimant may (if it so chooses) deliver to the Arbitrator and the Respondent a concise statement of reply ("Statement of Reply") to the Respondent's defence signed by or on behalf of the Claimant. Further, where the Respondent has advanced a counterclaim against the Claimant, the Claimant must deliver to the Arbitrator and the Respondent a comprehensive statement of the defence to the Respondent's counterclaim signed by or on behalf of the Claimant which must be included in the same document as the Statement of Reply, and such document must be titled "Statement of Reply and Defence to Counterclaim".

38. The Statement of Reply (and Defence to Counterclaim, if applicable) must contain the following information:

(a) (Reply) an admission or denial of the Respondent's defence;

(b) (Reply) a concise statement of the facts (including particulars) and law supporting the Claimant's position in replying to the defence;

(c) (Defence to Counterclaim) where a defence to counterclaim is advanced by the Claimant, the same kind of information that a Respondent is obliged to give in their Statement of Defence.

39. If the Claimant, in response to the Statement of Defence, or the Respondent, in response to the Statement of Defence to Counterclaim, does not deliver a Statement of Reply within the time allowed, then joinder of issue on the Statement of Defence, or on the Statement of Defence to Counterclaim, shall be implied.

40. The Statement of Reply and the Defence to Counterclaim, if applicable, must not exceed fifteen (15) A4 pages each;

41. Subject to any agreement reached by the parties, and subject to hearing the parties, the Arbitrator may vary any of the requirements in Rules 38 and 39 above as they deem appropriate.

Amendments

42. During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a set-off, provided that the Arbitrator considers it appropriate to allow such amendment or supplement having regard to the delay in making the application for amendment and/or any prejudice to other parties or any other circumstances.

Documents-only arbitration for disputes under $40,000 or as agreed

43. Where parties agree expressly to a "Documents-Only" arbitration or where the Sum in Dispute is not more than $40,000 (subject to Rule 3 above), the Arbitrator must, upon receipt of the Statements referred to in Rules 27 to 41 above (where applicable) and such other documents as the Arbitrator may direct or require, proceed to consider and determine the dispute and publish the Award under these Rules.

44. A hearing for the presentation of evidence or oral submissions on the merits of the dispute (for disputes under $40,000 or as agreed) is not required unless, in exceptional circumstances, the Arbitrator deems it necessary to resolve the dispute.

Case management hearing

45. Where the arbitration is not a "Documents-Only" arbitration under Rule 2(b) above, the Arbitrator must convene a hearing to be attended by both parties (the "Case Management Hearing"), which must take place, unless the arbitrator otherwise orders, no later than 6 weeks from the date of commencement of the arbitration. The Arbitrator may, if the Arbitrator considers it appropriate, conduct the Case Management Hearing by way of virtual hearing using MS Teams or Zoom or other appropriate online technology. If a party fails to attend a Case Management Hearing (or any other hearing conducted under these Rules) then the Arbitrator may reconvene the hearing or continue with the hearing and make orders despite the party's failure to attend.

46. At the Case Management Hearing, the Arbitrator must enquire into the status of the arbitration and will give directions for the further conduct of the arbitration, including, where appropriate:

    (a) orders for the exchange of statements of case, defence or reply (if parties have not been able to exchange such statements within the time prescribed by these Rules);

(b) orders for the exchange of witness statements;

(c) an order that all or any applications for interim rulings, interim relief, awards and/or directions be delivered to the Arbitrator no later than seven 7 days from the date of the Case Management Hearing (if such applications have not by such time already been delivered to the Arbitrator); and for a further or resumed Case Management Hearing to be held within 14 days of the original Case Management Hearing at which all applications for interim relief, awards and/or directions are to be heard and disposed of; and

(d) orders, as may be appropriate, for the presentation of evidence by witnesses, including expert witnesses, if any, and for oral and/or written submissions to be made on behalf of the parties;

(e) unless otherwise agreed or ordered, following the service of the documents to which Rules 27 to 41 above refer, the parties shall not serve further pleadings or case statements (save for documents served in accordance with leave granted under Rule 42 above).

Interim Relief

47. Subject to Rule 46(c) above, at any stage of the arbitration before the Case Management Hearing, a party may deliver to the Arbitrator and to the other party any application(s) for interim rulings, awards and/or directions signed for or on behalf of the party making the application. Such applications must be supported by a statement signed by or on behalf of the parties setting out the grounds for the application and all supporting documents.

48. Applications for interim relief, awards and/or directions delivered to the Arbitrator after the time limit stipulated in Rule 46(c) above may be refused by the Arbitrator on the sole ground that they are not delivered in accordance with the said time limits. The Arbitrator may consider and grant applications for interim relief, awards and/or directions delivered after the time limit stipulated in Rule 46(c) if the Arbitrator determines that the application is necessary for the fair disposal of the arbitration.

49. If a party wishes to seek emergency interim relief before the appointment of the Arbitrator, the party may apply for such relief under the procedures set out in Appendix 1.

50. A request for interim relief made by a party to a court of law before the appointment of the Arbitrator, or in exceptional circumstances after that time, is not incompatible with these Rules.

Substantive Hearing

51. Unless the parties otherwise agree or the arbitrator otherwise orders, the Arbitrator must direct that the substantive hearing be heard as soon as reasonably practicable and that such hearing shall be completed no later than 90 days from the commencement of the arbitration.

52. Each Party shall have the burden of proving the facts relied on to support its claim or defence.

53. In the absence of witness statements or other oral evidence given at the substantive hearing, the parties' signed Statement of Case, Statement of Defence (and Counterclaim, if any) and Statement of Reply (and Defence to Counterclaim, if applicable) and the evidence served with these documents will serve as the parties' evidence at the hearing.

54. Unless a party entitled to cross-examine foregoes that right, any witness who has provided a witness statement or given oral evidence and/or the party or parties identified in the statements and/or supporting evidence, must be made available for cross-examination at the hearing. If a witness (or party) fails to attend, the Arbitrator may elect, in the Arbitrator's discretion:

    (a) to proceed with the hearing and place such weight on the witness statement or evidence as the Arbitrator deems just and appropriate; or

    (b) to proceed with the hearing and exclude the statement or evidence altogether.

55. Unless the Arbitrator otherwise orders, the arbitrator must determine the admissibility, relevance, materiality and weight of the evidence presented in the Arbitration.

Closure of Proceedings

56. Following the delivery of the final submissions, the Arbitrator shall promptly declare the closure of proceedings, provided that it is satisfied that the Parties have no further relevant and material evidence to produce or submissions to present

57. Following the closure of proceedings by the Arbitrator, no further evidence or submissions in respect of the matters to be decided in the relevant Final Award is to be allowed.

58. Notwithstanding the above, the Arbitrator may on its own initiative or upon the application of a Party, decide to re-open the arbitral proceedings at any time before the Final Award is made, provided that exceptional circumstances exist.

59. Where the arbitral proceedings are re-opened pursuant to Rule 58 above the Arbitrator shall thereafter re-declare the closure of the proceeding.

Awards

60. Each party is entitled to apply for an interim ruling or award (as the case may be) and must as far as possible do so under these Rules.

61. Applications for interim rulings or awards must be supported by a statement signed by or on behalf of the party making the application setting out the grounds for the application and relevant facts and documents. The Arbitrator may hear such applications for interim rulings or awards, and is empowered, without limitation and among other things, to determine the following:

    (a) objections that the Arbitrator has no jurisdiction, including any complaints in respect of the validity of an arbitration agreement;

    (b) applications to correct any contract or arbitration agreement under the substantive rules of law applicable;

    (c) preliminary questions or points of law arising in the arbitration by which determination the arbitration may be disposed of;

    (d) applications for permission to amend the statements described above (i.e. Statement of Case, Statement of Defence, Statement of Reply) or other documents delivered in the arbitration;

    (e) applications for extension to or abridgment of time periods prescribed by these Rules;

    (f) applications for disclosure of documents and facts (except that, unless good cause is shown, no order for the disclosure of documents shall be made by the Arbitrator);

    (g) such further or other applications for directions as may appear to the Arbitrator to be necessary for the fair and expedient resolution of the dispute under arbitration; and

    (h) without prejudice to the general powers conferred on the Arbitrator under these Rules, make orders as to costs in relation to or for the purposes of Rules 61(a)-(g) to above.

62. The award must provide reasons for the Arbitrator's decision, be signed by the Arbitrator and must contain the date on and place in which the award is made.

63. The Arbitrator must, upon payment of all outstanding fees due to the Arbitrator, deliver the award to the parties with a copy provided to the Secretariat. Awards must be made in writing and are final and binding on the parties. The parties undertake to give effect to the award as soon as practicable and without delay.

64. In connection with "Documents-Only" arbitrations, the Arbitrator must publish their final award expeditiously and as far

as practicable within 90 days from the commencement of the arbitration.

65. In relation to arbitrations with a substantive hearing, the Arbitrator must publish their final award expeditiously and as far as practicable within 120 days from the commencement of the arbitration.

66. To save costs and expenses, the parties to an arbitration may agree that:

    (a) the Arbitrator is not required to give reasons for their award; or

    (b) the Arbitrator may give only summary reasons for their award.

Extension of Time for the award

67. If the Arbitrator considers that the final award may not be published within the time limits provided in these Rules, the Arbitrator must, before the lapse of the time limits, notify the Secretariat and the parties, in writing, of the revised estimated date of publication of the award, for information only.

Interpreting or correcting the award

68. Within 14 days after receiving the Award, any party, with notice to the other parties, may request the Arbitrator to interpret the award or correct any clerical, typographical or computation errors or make an additional award as to claims presented in the arbitration but omitted from the award.

69. If, after considering the parties' contentions, the Arbitrator considers such a request justified, the Arbitrator must comply with such a request and interpret or correct the Award within 14 days after the receipt of the request.

Costs

70. In making any Award under these Rules, the Arbitrator must, at their discretion, which must be exercised judicially, order by whom and in what proportion the parties are to pay the costs of the arbitration, including the Arbitrator's fees. Provided that, where money is in dispute, costs awarded shall, unless the arbitrator otherwise orders, not exceed 25% of the amount of money in dispute (claim plus counterclaim), including disbursements but excluding the Arbitrator's fees.

Confidentiality

71. Subject to Rule 73 below, all matters disclosed during the arbitral proceedings, whether by the parties or by witnesses and all matters relating to the arbitration or the Award must be kept confidential by the Arbitrator (including an Emergency Arbitrator), Arbitration Victoria and the parties, save for the following exceptions:

    (a) where otherwise agreed by the parties in writing;

    (b) where disclosure is made to a party's professional advisors, insurers or third-party funders or as required by law. Where a party discloses such matters to its professional advisors,

insurers or third-party funders, it must ensure that these persons are subject to confidentiality obligations that are similar to this paragraph;

(c) where a party makes an application to a court of competent jurisdiction:

(i) in relation to the enforcement of, or challenge to, the Award; or

(ii) to pursue its legal rights;

(d) if compelled or required by law including by any regulatory body; or

(e) where such matters have come into the public domain through no fault, or breach of these Rules, by either party.

72. Unless the Arbitrator otherwise orders or a party makes a request in writing to the Arbitrator or to Arbitration Victoria prior to the publication of the final Award (including as to interest and costs), Arbitration Victoria shall be permitted to publish the final Award (on its website or otherwise) provided that Arbitration Victoria takes reasonable steps to anonymise the Award such that the parties cannot reasonably be identified.

Exclusions

73. Notwithstanding the delivery of documents to Arbitration Victoria for its information and the appointment of an Arbitrator where parties cannot agree, Arbitration Victoria, its officers, employees and agents are not, for the purpose of these Rules, a body administering the arbitration and are under no duty or obligation to administer or control the arbitration. Parties agree not to hold Arbitration Victoria, its officers, employees and agents responsible or liable for anything done or omitted to be done in the discharge or purported discharge of any power, function or duty under these Rules or in connection with any Arbitrator or arbitration under these Rules.

Commercial Arbitration Act 2011

74. The determination of an arbitration under these Rules by the Arbitrator by way of the final award is final and binding on the parties and nothing in these Rules is taken as an agreement by the parties that any appeal may be made under the s 34A of the Commercial Arbitration Act 2011 (Vic).

Exclusion of liability and indemnity

75. Except in the case of fraud, each of the parties to any arbitration under these Rules agrees:

(a) that the Arbitrator is not liable for any act or omission done in the exercise or purported exercise of the powers or duties as an arbitrator in, arising out of or in connection with this reference; and

(b) to forever release, indemnify and keep indemnified the Arbitrator (and

Arbitration Victoria) against any and all actual or threatened claims demands actions suits or proceedings of whatever kind made by that party and for all costs and expenses incurred or suffered by the Arbitrator (or Arbitration Victoria) whether such claims arise:

(i) under or in connection with any contract;

(ii) in tort for negligence, negligent advice or otherwise;

(iii) for breach of any fiduciary relationship or obligation, actual or implied; and/or

(iv) otherwise at law (including by statute to the extent it is possible so to release, exclude or indemnify) and in equity generally, including without limitation for restitution for unjust enrichment –

in, arising out of or in connection with this reference/any arbitration conducted under these Rules.

76. Without limiting Rule 75 above, each of the Arbitration parties agrees that the Arbitrator shall have the same protection and immunity as given by Section 27A of the Supreme Court Act 1986 (Vic) as a Judge of the Supreme Court of Victoria has in the performance of their duties as a Judge.

77. The provisions of this agreement are to be construed as additional to and not in any way derogating from the application, operation and effect of any applicable statutory provisions or arbitration rules conferring immunity on or otherwise releasing or indemnifying the Arbitrator in, arising out of, or in connection with the reference.

Authority to sign

78. If any of the parties to an arbitration under these Rules is a corporation, then the signatory on behalf of that corporate party covenants with the Arbitrator and each of the other parties that they are entitled to sign this Agreement on behalf of that corporate party.

Dated: 16 May 2022

Appendix 1 to the Arbitration Victoria Rules – Emergency Interim Relief

1. Any application for emergency interim relief must include:

   (a) A description of the nature of the relief sought;

   (b) The reasons why the party says it is entitled to such relief; and

   (c) A statement which certifies that all other parties have been provided with a copy of the application or, if not, an explanation of the steps taken to provide a copy of the application or notification to all other parties.

2. Any application for emergency interim relief must be include payment of the non-refundable administration fee of $500 (plus GST) and a deposit of $2,500 towards the Emergency Arbitrator's fees and expenses. The Emergency Arbitrator's fees will be determined according to Arbitration Victoria's Scale Fees for arbitrators in force at the relevant time.

3. The Secretariat of Arbitration Victoria must, if they determine that the application for emergency interim relief should proceed, take reasonable steps to appoint an Emergency Arbitrator within 2 (two) working days after receipt by the Secretariat of any application and payment of the administration fee and deposit. Before accepting an appointment, a prospective Emergency Arbitrator shall disclose to the Secretariat any circumstances that may give rise to justifiable doubts as to the prospective Emergency Arbitrator's impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within two days of the communication to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.

4. An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute unless otherwise agreed by the parties.

5. The Emergency Arbitrator shall, as soon as practicable but, in any event, within two days of their appointment, establish a timetable for consideration of the application for emergency interim relief. The Emergency Arbitrator may arrange for proceedings to proceed by telephone or video conference or based on written submissions as alternatives to a hearing in person. The Emergency Arbitrator has the powers vested in the Arbitrator under these Rules, including the authority to rule on their own jurisdiction, without prejudice to the Arbitrator's determination.

6. The Emergency Arbitrator must make their interim order or award within 14 days from the date of their appointment unless the Secretariat extends the time or unless extenuating

circumstances apply. The Emergency Arbitrator may modify or vacate any interim order or award for good cause until the (main) Arbitrator's appointment.

7. The Emergency Arbitrator shall have no power to act after the (main) Arbitrator is appointed. The (main) Arbitrator may reconsider, modify or vacate an interim order or award issued by the Emergency Arbitrator, including a ruling on their own jurisdiction. The Arbitrator is not bound by the reasons given by the Emergency Arbitrator. Any interim order or award issued by the Emergency Arbitrator will, in any event, cease to be binding if the (main) Arbitrator is not appointed within 60 days of such order or award or when the Arbitrator makes a final award or if the claim is withdrawn.

8. Subject to paragraph 7 of this Appendix, the Emergency Arbitrator shall have the power to order or award any interim relief that they deem necessary, and shall deliver brief reasons for their decision in writing.

9. The parties agree that an order or award by an Emergency Arbitrator shall be binding on them from the date it is made and undertake to carry out the interim order or award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any court in any State or other judicial authority concerning such award insofar as such waiver may be validly made.

10. Subject to paragraph 7 of this Appendix, the Emergency Arbitrator shall have the power to apportion costs of emergency interim relief applications, subject to the power of the Arbitrator to re-allocate and make a final determination as to the apportionment of such costs.

11. If the parties (or one of them) fail to pay the Emergency Arbitrator’s fees when they fall due, the Secretariat has the discretion to delay the appointment of the (main) Arbitrator until the relevant fees have been paid.

Appendix 2 to the Arbitration Victoria Rules: guidelines for virtual hearings

1. The guidelines below are designed to facilitate the fast, final and affordable conduct of arbitrations under the Victorian Arbitration Rules. The parties may adopt or adapt these procedures by agreement. If the parties have agreed to adopt online video technology so as to facilitate virtual hearings, but they cannot agree on any aspect of the use of that technology in the arbitration (including the adoption of these guidelines), the arbitrator will decide that matter.

2. Where agreed[1], the arbitration, including aspects of the arbitration and the final hearing, may be conducted remotely using online video technology like MS Teams or Zoom or other similar technology which facilitates a virtual hearing (Rule 5 of the Rules).

3. The purpose of these guidelines is to facilitate the use of online video technology in connection with the final hearing and at directions hearings. Electronic discovery and document exchange can be dealt with using similar procedures as agreed, adapted or as directed by the arbitrator.

Documents

4. All documents in the arbitration are to be provided, as far as possible, electronically.

5. The parties should agree upon an appropriate protocol for electronic discovery and/or for exchange of electronic documents (if appropriate).

6. Evidence in chief will usually be given by witness statements, and witness statements should contain hyperlinks to the documents referred to in the statements.[2]

7. The parties should agree upon a digital platform[3] to be used to transmit or store documents (shared or otherwise), and, where appropriate, the parties may agree upon or the arbitrator may impose restrictions on the access to documents.

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1 The agreement to proceed by virtual hearing should be recorded in writing.

2 So that exhibits referred to in the witness statements can be opened, electronically, within the document.

3 For example, Dropbox or iCloud. Electronic file sharing, arrangement and storage platforms like “eBrief” or Bundledocs may also be used.

Directions and case management hearings

8. The parties may agree that directions hearings or case management hearings will be conducted remotely using online video technology,[4] or by telephone in exceptional circumstances. Even if both parties do not agree, the arbitrator may order that a directions hearing or case management hearing be conducted by way of a virtual hearing. The parties should agree on the technology to be used, and if no agreement can be reached, the arbitrator will decide.[5]

9. Normally, the claimant should take responsibility for ensuring that an appropriate online technology platform[6] is available and that the parties and the Tribunal have adequate notice of log-in details for directions hearings.[7]

10. Ordinarily, it shall not be necessary for the parties to organise the transcription of directions hearings. If the parties cannot reach an agreement in this regard, the arbitrator will decide the matter, taking into account the parties' submissions and the amount(s) in dispute.

Venue and internet access

11. If the parties agree to conduct the arbitration (or any part of the arbitration) using online technology, then each party is responsible for ensuring that they, and the witnesses they will call to give evidence, have a high-quality internet connection so as to properly facilitate a remote hearing.

12. If:

    (a) a party's internet connection (including that of any witness called by that party) is of poor quality; and/or

    (b) a party is unable to properly proceed with the virtual hearing because of some other reason,

    so as to cause delay, disruption or disadvantage to the other party, subject to the parties' submissions, the Arbitrator may make any order he or she considers appropriate – including

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4 Participants must ensure a video camera is working and available for video conferencing.

5 Once the technology platform has been determined, each party must ensure they have appropriate hardware and software to access and use the technology.

6 Zoom, BlueJeans, Cisco Webex Meetings, or Microsoft Teams, or similar, may be appropriate.

7 Ordinarily, at least 48 hours' notice of the log-in details for directions hearings should be provided.

(without limitation) adjourning the hearing and/or that any costs thrown away are to be paid by the party in default.

13. To ensure confidentiality and to avoid interruption, where possible, physical rooms occupied by participants in virtual hearings, whether in their own homes (not preferred), offices or in special hearing rooms, should be completely separate from non-participants in the arbitration.

Technology

14. Prior to the hearing, the parties should take appropriate steps to ensure that they, and any witnesses they will call to give evidence, are familiar with and able to use, correctly, the relevant virtual technology platform to be used for the final hearing.

15. The parties may agree to the use of neutral assistants to provide technical support during the hearing.

Final hearing

16. If the parties decide to conduct the final hearing virtually by using online technology, they should consider and agree upon (or by a determination of the arbitrator absent agreement) the following:

    (a) The provision before the hearing[8] of:

        i. the names and roles of each participant in the virtual hearing (including counsel, instructing solicitors, witnesses, interpreters and any other person);

        ii. a list of documents to be relied on by each party at the hearing.

    (b) A technology platform and virtual hearing room to be used for the final hearing that will allow:

        i. documents to be viewed simultaneously (shared) during the hearing;

        ii. for virtual breakout rooms so the parties and their witnesses can communicate confidentiality during breaks or other allocated periods.

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[8] The parties should agree upon the time by which lists of participants are to be provided prior to hearing (and the Arbitrator may determine the matter absent agreement).

(c) An electronic tribunal book that is prepared by the claimant (for example, with the use of https://www.bundledocs.com, or other similar technology).

(d) Electronic bundles of documents to be used for cross-examination of lay and expert witnesses, and these will usually be provided immediately before cross-examination.

(e) Whether a transcript of the final hearing will be obtained.

(f) Logistical issues including whether each party should:

i. be "in attendance" in the virtual hearing room 5 minutes prior to the allocated commencement time;

ii. ensure a representative of that party is in the hearing at all times;

iii. brief any remote witness who is to give evidence about the process that will take place, including in relation to cross-examination.

17. If important factual matters are in dispute, and the arbitrator determines that they would be assisted by direct (oral) evidence-in-chief about disputed matters, the arbitrator may order that limited oral evidence in chief may be given[9].

18. All submissions and chronologies filed by the parties should, where possible, include hyperlinks to the relevant document in the electronic version of the Hearing Book and List of Authorities.

19. Nothing in this procedure limits the Arbitrator's discretion to determine how the virtual hearing is to proceed so as to ensure that the parties are treated equally and to enable the Arbitrator to determine the dispute in accordance with the paramount object of the *Commercial Arbitration Act* 2011 (Vic), that is, "to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense" (see section 1AC).

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9 Nothing in this procedure limits the Arbitrator's discretion to determine how the evidence is to be given so as to ensure that the parties are treated equally and to enable the Arbitrator to properly determine the dispute.

Appendix 3 to the Arbitration Victoria Rules: procedure for “stop clock” arbitrations[10]

1. Where the parties agree that the dispute is to be heard and determined by way of “stop clock” arbitration then this procedure shall, unless the arbitrator otherwise orders, apply to the arbitral hearing.

2. A stop clock arbitral hearing[11] shall, unless the arbitrator otherwise orders, be conducted as follows:

   (a) The duration of the hearing shall be determined, by agreement, or by arbitral order, in advance of the final hearing. If the parties cannot agree on the duration, then the arbitrator, in determining the duration, shall ensure that each party is given a reasonable opportunity to present their case and that the parties are treated equally.[12]

   (b) The time available is to be allocated between the tribunal (to question the parties or witnesses or to attend to procedural matters and the like) and each party.

   (c) The time allocated to each party is to be equal (subject to rules of procedural fairness).

   (d) The parties are entitled to use their time as they see fit (whether by opening or closing submissions, evidence in chief, cross-examination, or otherwise).

   (e) Either a person shall be appointed by agreement to keep track of each party’s time used and the time available, or each party may appoint a representative and each representative shall liaise and agree the amount of time used and time remaining (with the arbitrator to rule on, usually each day, any disagreement).

   (f) Unsuccessful objections to evidence, and a party resisting a successful objection, shall have that time debited to the party’s account (unless the arbitrator otherwise orders).

   (g) The arbitrator maintains a discretion in the debiting of time.

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10 This procedure has been prepared by reference to, among other things, the article prepared by Albert Monichino entitled “Stop Clock Hearing Procedures in Arbitration”, Asian Dispute Review, July 2019.

11 Usually only the final hearing is conducted by way of stop clock arbitration.

12 Ultimately, if the allocation of a fixed time is likely to produce injustice, the arbitrator may decide not to conduct the hearing on a stop clock basis.

(h) Absent agreement between the parties, time for the final hearing will not be extended, save in exceptional circumstances.

(i) Failure to cross-examine a witness (at all, or on a particular matter) does not, of itself, amount to acceptance of the evidence.[13]

3. A draft procedural order for a stop clock arbitration is set out below:

Draft procedural order for use in stop clock arbitration hearings

(1) The hearing of the arbitration shall commence on [insert date] and shall conclude on [insert date] in [insert city].

(2) The sitting hours shall be 9.30 am to 5.00 pm each day with one hour for lunch and a morning and afternoon break of 15 minutes each.

(3) The time fixed for the hearing, (after allowing one hour each day for the Tribunal's interventions and for administrative and procedural matters), will be apportioned equally between the parties such that:

(a) the claimant shall have a total of [insert] hours; and

(b) the respondent shall have a total of [insert] hours.

(4) Each party is responsible for the manner in which it uses its available time.

(5) Usually, the following matters will be charged against each party's time allocation:

(a) Examination of witnesses (examination in chief or cross-examination);[14]

(b) Oral submissions;

(c) Unjustified interruption;[15]

(d) Setting up displays or presentations while the Tribunal is sitting;

(e) Other unjustified delay.

(6) Each party shall designate a person to keep track of time who shall, jointly if possible, report to the arbitrator each day or as required as to the usage of time.

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13 Although cross-examination may be expected on significant matters in dispute.

14 Subject to adjustment in the event of consistent unresponsiveness.

15 For example, unsuccessful objection or resisting a justified objection.

(7) A party is not bound by opposing evidence that it does not challenge by cross-examination but is expected to cross-examine at least one witness with respect to any significant matter which the other party should be given the opportunity to answer.