

Rules for mediation of commercial disputes

Authority For Rules

The Council of The Institute of Arbitrators Australia having resolved in September 1995 that where any two or more parties have agreed between them that a dispute arising or having arisen between them shall be submitted to Mediation in accordance with The Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes, the following Rules numbered 1-14 shall apply ;

1 Agreement To Negotiate

By submitting the dispute to Mediation, the parties have agreed to participate in the Mediation process and are committed to negotiate in good faith for a resolution of the dispute.

2 Selection Of Mediator

Where the parties have not agreed upon the Mediator or some other process of appointment of the Mediator and either party calls for an appointment, the Mediator shall be the person appointed by the President for the time being of The Institute of Arbitrators Australia or a State or Territory Chapter Chairman appointed by the President to make the appointment

3 Role Of The Mediator

(a) The Mediator's role is to assist the parties to negotiate between themselves, a mutually acceptable resolution of the dispute

(b) Specifically, the Mediator's functions include :

(i) to assist the parties to clarify the issues in dispute;

(ii) where it is appropriate, to suggest particular dispute resolution techniques appropriate to individual issues (for example non-binding appraisal, mini-trial) ;

(iii) to act as the facilitator of direct negotiations between the parties

4 Preliminary Conference

(a) The parties may be required by the Mediator to participate in a preliminary conference with the Mediator to be conducted as soon as possible after the reference of the dispute to Mediation

(b) The purpose of the preliminary conference is for the parties, with the assistance of the Mediator, to :

(i) discuss and agree upon the issues in dispute, or to formulate a process by which those issues are to be clarified and agreed ;

(ii) plan and agree upon how a negotiated resolution of the dispute is to proceed (including where appropriate the content of and timing for the necessary position statements or other documents) ;

(iii) confirm that paragraph 9 has been complied with (for persons involved with the Mediation at that time);

(iv) provide for such other planning and administrative arrangements as are necessary and appropriate to enable the Mediation to proceed 	(including the Mediator's terms of appointment)

5 Mediator May Confer Privately With Parties

(a) The parties agree that throughout the Mediation process, the Mediator may at his or her own unfettered discretion, communicate and discuss the dispute privately with any of the parties or their representatives or advisers

(b) The Mediator must preserve absolute secrecy of the content of any such communications and must not expressly or impliedly convey any knowledge or impression of the content of private communications to any other party unless specifically authorised to do so

6 Authority

Each Party to the Mediation must declare whether it is represented at any negotiating session by a person with full authority to settle the dispute and if the parties do not have full authority, the limits of authority must be disclosed

7 Assistance

Each party may be assisted or represented in the conduct of the mediated negotiations by advisers (including lawyers)

8 Confidentiality

The Mediator, the parties and all advisers and representatives of the parties must keep all matters relating to or arising out of the Mediation confidential except :

(a) where disclosure is compelled by law;

(b) to the extent necessary to give effect to a mediation agreement or to enforce an agreement reached to settle or resolve the whole or any part of the dispute ;

(c) where disclosure of the fact of the occurrence of the Mediation (but not of any of the matters discussed or communicated in the Mediation process) is necessary or desirable for the purpose of making submissions to a tribunal in subsequent proceedings relating to the dispute.

9 Mediator And Parties' Representatives/Advisers To Sign Confidentiality Undertakings

The Mediator and the advisers and representatives of the parties must, before participating in the Mediation process, agree in writing (for example by letter) to abide by the terms of these Rules

10 Extension Of Limitation Period

If, during the Mediation, a limitation period for bringing any proceedings in relation to the dispute or any part of the dispute expires, the parties agree that the limitation period will be extended by the number of calendar days from and including the date of the reference of the dispute to Mediation to the date of the termination of the Mediation in accordance with these Rules. Each relevant party agrees that it will only plead or argue in its defence to any such proceedings that the limitation period expired on the extended date provided for in this paragraph

11 Termination

(a) Any party may terminate the Mediation by written notice to each of the other parties and to the Mediator

(b) The Mediator may terminate the Mediation by written notice to the parties if he or she forms the opinion that further negotiations are no longer worthwhile.

12 Mediator's Opinion

If the Mediation is terminated the Mediator may, if the parties consent, express his or her opinion as to what would be a just and equitable resolution of the dispute or any part of it, having regard to all the circumstances involved

13 Subsequent Proceedings

The Mediator will not, without the consent of all parties, accept appointment as an arbitrator nor act as an advocate nor provide advice to either party, in any arbitral or judicial proceeding relating to the dispute. Neither party will subpoena the Mediator to give evidence or to deliver up files in any subsequent proceedings

14 Exclusion Of Liability And Indemnity

Except in the case of fraud, the Mediator will not be liable to a party upon any cause of action whatsoever for any act or omission by him in the performance or purported performance of his obligations under these Rules

The parties jointly and severally hereby indemnify and shall keep indemnified, the Mediator against all claims, actions, suits, proceedings, disputes, differences, demands, costs, expenses and damages of any kind (except in the case of fraud by the Mediator) arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of his role as Mediator